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## Florida Black Codes

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## FLORIDA BLACK CODES

by JOE M. RICHARDSON

AFTER CIVIL GOVERNMENTS had been reorganized under President Andrew Johnson, the southern states passed laws popularly called "black codes" which frankly differentiated between Negroes and whites. These laws were products of the "baneful heritage" of slavery which rooted in the southern mind false ideas of the Negro, including biological inferiority and innate criminality. The first and among the harshest codes, passed by Mississippi and South Carolina in late 1865, activated a storm of protest from the North. Numerous northern editors warned the South that the sentiment of the country was "firmly fixed" upon the necessity of securing complete protection for freedmen. Failure of the South to do so might result in continued military government and other painful consequences.<sup>1</sup>

The South by 1866 was aware of northern reaction. Furthermore, most of the freedmen were now back on the plantations hard at work. There was less fear of the Negro's refusal to work and of his becoming a burden to the state. "Of the seven former Confederate states which did not enact Black Codes in 1865, only the laws of Florida failed to reflect the changed circumstances of 1866." Florida's code was as severe as any passed in the earlier year, and her legislature remained "bigoted, vindictive and shortsighted."<sup>2</sup> The question is why did Florida refuse to heed northern opinion and the changed conditions of 1866?

The reaction of a majority of white Floridians to emancipation was disapproval. It was difficult for many to comprehend that they no longer owned the blacks. Federal General Israel Vogdes reported in July 1865 that Floridians were generally opposed to the freeing of their slaves. Many still retained a

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1. Rembert W. Patrick, *The Reconstruction of the Nation* (New York, 1967), 44-47; *New York Times*, August 19, 1865. For a full discussion of Northern reaction to the black codes see Theodore B. Wilson, *The Black Codes of the South*, Southern Historical Publications No. 6 (University, Alabama, 1965).
  2. Wilson, *Black Codes of the South*, 96, 144; Patrick, *Reconstruction of the Nation*, 47.

lingering hope that some compensation would be awarded to them or that a system of apprenticeship would be established. The desire for slavery died hard. In August 1865 the Gainesville *New Era* reported: ". . . there are quite a number of persons who seem to hope that the next Congress will reestablish slavery. Their hopes for future happiness and prosperity are wrapped up in this idea. . . ." <sup>3</sup> Major General John G. Foster, commander of the Department of Florida, encountered the same idea. In September he found a large number of former slaveholders "who still hug the ghost of slavery, and hope that the State may get back into the Union with so loose guarantees upon that subject, that the institution may be revised by State laws at some future favorable opportunity." <sup>4</sup>

Though Floridians were forced to accept emancipation many could conceive of Negroes as little more than subordinate laborers. Many planters hoped to keep the freedmen on the plantations in some form of servitude. This desire for unpaid or poorly paid labor was widespread in the state. <sup>5</sup> The wish to control Negro labor was a major reason for the enactment of the black codes. The prevailing sentiment throughout the South was that Negroes would not work without physical com-

3. I. Vogdes to O. O. Howard, July 31, 1865, Records of the Freedmen's Bureau, Florida, National Archives, Washington. Cited hereafter as Bureau Records, Florida; Gainesville *New Era*, August 5, 1865.

4. J. G. Foster to G. A. Forsyth, September 20, 1865, Bureau Records, Florida. For further discussion of White Floridians' reluctance to accept emancipation see Jacksonville *Florida Union*, May 27, 1865; *New York Tribune*, June 20, 1865; Vogdes to B. C. Tilghman, May 20, 1865, U. S. Army Commands, Florida, National Archives; H. H. Moore to T. W. Osborn, February 25, 1866, Bureau Records, Florida; Ellen Call Long, "History of Florida," manuscript, Richard Keith Call Papers, Florida Historical Society Collection, University of South Florida Library, Tampa, 346 (microfilm copy at the P. K. Yonge Library of Florida History, University of Florida, Gainesville); Ellen Call Long, *Florida Breezes, or Florida, New and Old* (Jacksonville, 1883), 382. See also facsimile edition with introduction by Margaret L. Chapman (Gainesville, 1962).

5. A Union chaplain concluded that Floridians had "so long and so selfishly" regarded the Negro "as created to be their slave-only that and nothing more-that their minds are cast in that mold. . . ." A school teacher quoted a planter as saying after emancipation that a Negro "would still be their slave in some way." A *New York Tribune* correspondent heard of several plans in Florida to restore slavery under a different name. One plan was to place by state law a price upon labor without the workers consent. Another proposal was to give employers authority to use the whip and to chase down runaways. Planters also discussed entering into agreements to employ none but their own ex-slaves, thereby compelling freedmen to labor upon their former plantation on such terms as former masters prescribed. *New*

pulsion.<sup>6</sup> Even though an overwhelming majority of the freedmen were already toiling on the plantations by June 1865, white Floridians continued to believe that rigid controls were essential to force them to work.<sup>7</sup>

Even without the labor question, Florida would still have passed laws to regulate the freedmen. Like most southern whites, a majority of the citizens of Florida were racists. They generally considered the Negro inferior and criminally inclined; he was untruthful, disposed to steal, and fearfully licentious. The editor of the Gainesville *New Era* announced his policy in June 1865, as one of fairness and independence, but he continued, "this is a government of WHITE MEN," and "inferiority of social and political position for the Negro race, and superiority for the white race, is the natural order of American Society." Benjamin C. Truman, a *New York Times* correspondent who was usually fair to the South, discovered a class of people in Florida who pompously claimed to be Caucasians and who disparaged every effort made by the freedmen. They raved about his being totally unfit to care for himself, and insisted that he was "but a few removes from brute creation."<sup>8</sup>

The belief in the Negro's innate inferiority was not restricted to the illiterate and uneducated. The claim that the freedman was of a lower order appeared frequently in the public press

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*York Tribune*, September 5, 1865; *Senate Executive Documents*, 39th Cong., 1st Sess., No. 2, p. 21; Vogdes to Howard, July 31, 1865, Moore to Osborn, February 25, 1866, Bureau Records, Florida; National Freedman, I (July 15, 1865), 182-83.

6. A white man of Key West told a traveler the freedmen were "saucy and worthless"; would not work more than necessary; charged high prices for their labor; would rather steal than work; would "dance all night and be good for nothing" the next day; "were fearfully licentious"; and were "an unmitigated nuisance." Whitelaw Reid, *After the War: A Southern Tour, May 1, 1865 to May 1, 1866* (Cincinnati, 1866), 186.
7. *Senate Executive Documents*, 39th Cong., 1st Sess., No. 2, p. 16; W. G. Branch to Dear Sir, July 8, 1866, in Branch Family Papers, Southern Historical Collection, University of North Carolina at Chapel Hill; George F. Thompson Journal, December 12, 1865, in Bureau Records, Florida; Jacksonville *Florida Union*, May 27, September 30, 1865; E. Phillips to J. J. Phillips, October 27, 1865, James J. Phillips Papers, Southern Historical Collection, University of North Carolina; *New York Tribune*, September 5, 1865.
8. Vogdesto Howard, July 31, 1865, Osborn to Howard, January 10, 1866, W. L. Apthorp to A. H. Jackson, September 10, 1867, Bureau Records, Florida; Gainesville *New Era*, June 8, August 19, 1865, July 5, 1866; *New York Times*, December 25, 1865; Fritz W. Buchholz, *History of Alachua County Florida: Narrative and Biography* (St. Augustine, 1929), 130.

and in the personal correspondence of persons representing every economic and social class. "The freed people are looked upon as an inferior and distinct race," once bureau agent reported, "and the difference, which is made is almost as great as in other parts of the civilized world, the difference between man and beast." Even the clergy gave currency to such theories from the pulpit.<sup>9</sup> Florida newspapers approvingly quoted Dr. Josiah C. Nott of Mobile, Alabama, who avowed that the Negro had never shown any capacity for civilization or self government and that he attained his nearest approach to civilization by serving in a subordinate capacity. Naturally, since the freedman was considered inferior and criminal, it was assumed that special laws should be passed for his control so as to protect the rest of society.<sup>10</sup> Furthermore, there had always been laws to govern Negroes, slave and free, and few Floridians saw any reason why the practice should be stopped now. Indeed there was a similarity between parts of the black code and statutes regulating the free Negro in antebellum Florida. The committee appointed to advise the Florida legislature in making laws for the freedmen claimed that neither the federal nor the state constitution inhibited Florida's authority to pass discriminatory laws.<sup>11</sup> In addition, the long standing fear of Negro insurrection had not died with slavery, and whites demanded laws to curb the expected license of the freedmen. A Florida Supreme Court justice told the legislature which passed the black codes: "We have a duty to perform - the protection of our wives and children from threatened danger, and the prevention of scenes which may cost the extinction of an entire race."<sup>12</sup>

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9. J. E. Quentin to C. Mundee, August 1, 1866, Bureau Records, Florida; Warren Q. Dow Dairy, P. K. Yonge Library of Florida History; Emory F. Skinner, *Reminiscences* (Chicago, 1908), 282.

10. Gainesville *New Era*, October 20, 1865, May 11, 1866; Tallahassee *Semi-Weekly Floridian*, October 27, 1865; N. Yulee to D. L. Yulee, October 3, 1865, David L. Yulee Papers, P. K. Yonge Library of Florida History; Quentin to Mundee, August 1, 1866, Bureau Records, Florida.

11. Wilson, *Black Codes of the South*, 39-40; Julie Ann Lisenby, "The Free Negro in Antebellum Florida" (unpublished Masters thesis, Florida State University, 1967), 10-29; *Florida House Journal*, 1865-1866, 60-61.

12. Patrick, *Reconstruction of the Nation*, 34; *Florida House Journal*, 1865-1866, 64.

Most Floridians believed President Johnson would approve discriminatory legislation.<sup>13</sup> The newspaper spokesman of Florida Democrats interpreted Johnson's message to Congress December 4, 1865, to mean that his plan required only the adoption of the thirteenth amendment for restoration. A Florida legislative committee claimed that Johnson would protect the "brave people" in the South from the "bloody-minded, diabolical radicalism" of the North.<sup>14</sup> Both William Marvin, the provisional governor appointed by Johnson, and Governor David S. Walker had private conferences with the President and corresponded with him frequently. In none of the communications which went back and forth between Florida and Washington was there any indication of warning against discriminatory laws. In fact, after the constitutional convention which passed ordinances similar to the later black code, President Johnson congratulated the convention on a job well done. Later, Governor Marvin wrote the President thanking him for defending the southern constitutions.<sup>15</sup>

Military and bureau orders similar to the black codes probably encouraged Floridians in their determination to pass dis-

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13. Eric L. McKittrick said that "once it became certain that the Southerners were not to suffer wide-scale reprisals and that summary punishment was not to fall upon their leaders, another kind of uncertainty had apparently been allowed to invade their minds; they were not precisely sure what was now expected of them. There was a margin of doubt wide enough that they were encouraged to experiment with the spirit of the requirement." Eric L. McKittrick, *Andrew Johnson and Reconstruction* (Chicago, 1964), 9.
  14. The newspaper praised Johnson's message as worthy of Madison or Jefferson "contrasting most signally with the feeble utterances which during four years proceeded from Mr. Johnson's predecessor." A committee on federal relations made a report in which it was said: "In President Johnson is centered the hope of the Nation: He is, as it were, the great break-water, against which the raging billows of a bloody-minded, diabolical radicalism, which would otherwise, submerge, overwhelm and destroy, may lash itself into unavailing fury and exhaust its impotent range. With the swords of wisdom, justice and clemency in his hands, he stands over the prostrate body of a brave people to protect them from the radical wolves and hyenas who would suck their life-blood and revel at the repast." Tallahassee *Semi-Weekly Floridian*, January 16, 1866.
  15. Tallahassee *Semi-Weekly Floridian*, December 15, 1865; W. Marvin to A. Johnson, February 20, 1866, Johnson telegram to Marvin, November 20, 1865, D. S. Walker telegram to Johnson, July 12, 1865, Andrew Johnson Papers, Library of Congress; Marvin to W. H. Seward, August 22, 29, October 7, November 18, 1865, *Senate Executive Documents*, 39th Cong., 1st Sess., No. 26, pp. 205-06, 215, 258-59; Walker to D. L. Yulee, September 12, 1865, David L. Yulee Papers.

criminary legislation.<sup>16</sup> Though both bureau and military usually tried to secure justice for the Negro in white courts, defended his right to testify, and attempted to arrange fair labor contracts, their decrees regarding vagrancy and apprenticeship were similar to later Florida laws.<sup>17</sup> They forced freedmen to work. At least one military officer went even farther than the black codes; a few days before the Florida legislature met, the Federal commander at St. Augustine ordered that hereafter all Negroes "whether soldiers or citizens, on meeting white people will give them the inside of the street or walk."<sup>18</sup>

For the most part, Floridians believed that only a few "fanatical theorists" in the North favored equal rights for freedmen. These fanatics were sincere perhaps, but the refusal of voters in Connecticut, Wisconsin, and Minnesota to accept Negro suffrage in 1865 proved conclusively to Florida whites that "perfect equality" was not the sentiment of a majority of the northern states.<sup>19</sup> Most Floridians assumed, probably correctly, that a majority of whites in the United States were anti-Negro.<sup>20</sup>

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16. In September 1865, Assistant Commissioner T. W. Osborn threatened to move forcibly some indolent freedmen from Jacksonville to Tallahassee to work on plantations. For a detailed statement of military and bureau coercion of freedmen see Joe M. Richardson, *The Negro in the Reconstruction of Florida, 1865-1877*, Florida State University Studies No. 46 (Tallahassee, 1965), 53-65. See also Special Orders No. 15, September 13, 1865, Bureau Records, Florida; Wilson, *Black Codes of the South*, 58; James E. Sefton, *The United States Army and Reconstruction 1865-1877* (Baton Rouge, 1967), 43.

17. In Leon County Richard H. Bradford was authorized by the bureau to retain control of two Negro boys aged fifteen and seventeen until they were twenty-one. In return for their services they were to be fed and clothed and given \$100 and a suit of clothes when they were of age. Wilkinson Call was given authority to retain control over a Negro lad aged thirteen until he was twenty-one. In return for the eight years of service Call was to allow the youth enough education to learn to read and write and give him two suits when he reached twenty-one. There were several similar instances. On occasions the bureau and military also used force to coerce freedmen to work. See Bureau Records, Florida, Special Orders and Circulars of Assistant Commissioner, Special Orders No. 24, December 29, 1865, No. 4, January 8, 1866, No. 6, January 12, 1866; General Orders No. 22, May 4, 1865, No. 30, September 21, 1865; S. L. McHenry to E. Kellog, May 24, 1865, U. S. Army Commands, Florida.

18. This order was later countermanded by Assistant Commissioner T. W. Osborn. Moore to Osborn, January 4, 1866, Bureau Records, Florida.

19. *Florida House Journal, 1865-1866*, 62.

20. For detailed discussion of the northern attitude toward the Negro see James M. McPherson, *The Struggle for Equality: Abolitionists and the*

Apparently numerous white Floridians were not overly concerned with northern public opinion anyway. The state was far from the major theater of strife during the Civil War and did not feel "the terrible blows that brought down the revolt." Neither the United States nor the Confederacy considered Florida very important from a military point of view, and no major battles were fought in the state. Floridians boasted that theirs was the only capital east of the Mississippi not captured during the war. The only attempt to take Tallahassee had been defeated in large part by a group of young boys and old men in March 1865. Though the Confederacy had fallen, the people did not feel that Florida had been conquered and they were inclined to be defiant and belligerent.<sup>21</sup> As Chief Justice C. H. DuPont of the Florida Supreme Court said, "it is needless to attempt to satisfy the exactions of the fanatical theorists."<sup>22</sup>

The constitutional convention which convened in Tallahassee on October 25, 1865, was an omen. Provisional Governor Marvin believed that if the convention abolished slavery and guaranteed the "protection and security" of the former slaves, Florida would be readmitted to the Union. He expressed the hope that with progress, improved intelligence, and civilization the freedmen might in the future become "the best free agricultural peasantry" in the world. To ensure that they would be good laborers, Marvin suggested making vagrancy punishable by temporary servitude.<sup>23</sup> The convention responded with a special ordinance providing for a vagrancy law until the legislature could take action. Any able-bodied person who was "wandering or strolling about or leading an idle, profligate, or immoral course of life" could be arrested upon complaint of any citizen before a justice of peace or circuit court judge. Penalties

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*Negro in the Civil War and Reconstruction* (Princeton, 1964), and Leon F. Litwack, *North of Slavery* (Chicago, 1961).

21. *New York Tribune*, February 20, 1868; F. P. Fleming to M. Seton, May 3, 1865, Fleming Papers, Florida Historical Society Collection; F. F. L'Engle to E. M. L'Engle, June 26, 1865, Edward M. L'Engle Papers, Southern Historical Collection; A. B. Hart to B. H. Hart, December 18, 1866, A. B. Hart Letters, P. K. Yonge Library of Florida History; *House Executive Documents*, 40th Cong., 2nd Sess., No. 57, p. 77; *House Reports*, 39th Cong., 1st Sess., No. 30, pt. 4, pp. 1-2; Tallahassee *Semi-Weekly Floridian*, March 20, 1866.
22. *Florida House Journal*, 1865-1866, 64.
23. Tallahassee *Semi-Weekly Floridian*, October 27, 1865; *Senate Executive Documents*, 39th Cong., 1st Sess., No. 236, pp. 209-12.



included imprisonment, fine, or being sold to the highest bidder for as much as twelve months. It was this ordinance that provoked Senator Charles Sumner to tell Congress that Florida had provided for semi-peonage of the freedmen. Another ordinance permitted Negroes to testify in criminal proceedings when a member of their race was involved, but an all white jury would determine the witnesses' credibility.<sup>24</sup>

When the legislature met in late December it was controlled by former slaveholders and ex-Confederates.<sup>25</sup> Antebellum Florida had been controlled by a few families, and the same men who led the state out of the Union were dominant in the first post-war legislature. The assistant commissioner of the Freedmen's Bureau in Florida concluded that the legislature was opposed to the "equal or semi-equal rights" of freedmen. Their refusal to fly the United States flag over the capitol during the session, he thought, indicated their hostility toward the United States. A historian of the black codes decided that the Florida legislature was probably the most "bigoted and short-sighted of all southern legislatures of 1865-1866." Even after Florida's attorney general had declared that the law prohibiting freedmen from owning firearms was unconstitutional, and Governor Walker had recommended its repeal at the next session, and it had been opposed by the Freedmen's Bureau, the legislators still refused

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24. Wilson, *Black Codes of the South*, 66; *Senate Executive Documents*, 39th Cong., 1st Sess., No. 26, p. 212; William W. Davis, *The Civil War and Reconstruction in Florida* (New York, 1913), 364-65. See also facsimile edition with introduction by Fletcher M. Green (Gainesville, 1964); *Journal of Proceedings of the Convention of Florida, 1865*, 97; *Congressional Globe*, 39th Cong., 1st Sess., pt. 1, p. 97.
  25. Senator Charles Sumner charged that four-fifths of the members of the legislature were former rebel officers. The *Tallahassee Semi-Weekly Floridian* claimed that only twenty of eighty-eight were officers. There were other ex-Confederate soldiers, however. An indication of Florida's conservative leadership should be seen in the appointment to the three member state supreme court. Governor Walker nominated C. H. DuPont, chief justice, and A. E. Maxwell and J. M. Baker, associate justices. All were ex-Confederates. DuPont had been on the court before and during the war. Maxwell and Baker had both served in the Confederate Congress from February 1862 until the Confederacy's overthrow. The *Tallahassee Floridian* claimed no two men were more popular in the state and "none more deservedly popular." *Congressional Globe*, 39th Cong., 1st Sess., 1865-1866, pt. 1, p. 313; *Tallahassee Semi-Weekly Floridian*, February 9, 1866; Davis, *Civil War and Reconstruction in Florida*, 365-66.

to revoke it. This stubborn refusal was clearly an act of defiance.<sup>26</sup>

A three-man committee appointed at the request of the constitutional convention to recommend legislation relating to the freedmen bears much of the blame for the severity of Florida's black codes. As one historian noted, the committee presented a "report ridiculous for its pompous bigotry."<sup>27</sup> The committee quoted the Dred Scott case to prove that the Negro was not a citizen and that Congress had no power to make him such. After praising the institution of slavery and reminding the legislature that it had been destroyed without their concurrence, the committee members recommended legislation which would "preserve as many as possible" of the "better" features of slavery.<sup>28</sup> Ignoring the reaction of federal officials and Governor Marvin's warning, the legislature proceeded to enact most of the committee's recommendations.<sup>29</sup>

The freedmen were given no political rights whatsoever. They were permitted to testify only in cases involving other Negroes and even then the jury was to be white. Freedmen were forbidden to carry firearms of any kind.<sup>30</sup> A county criminal court was created to aid in handling the increase in crime caused by emancipation. These courts were considered necessary to replace the household tribunals that had previously punished slaves. The act creating the county courts provided that anyone who could not pay a fine would be sold at public

26. Wilson, *Black Codes of the South*, 143-44; Osborn to Howard, January 10, February, n. d., 1866, Bureau Records, Florida.

27. The committee was composed of C. H. DuPont, A. J. Peeler, and M. D. Papy.

28. The only "inherent evil" of slavery, the committee said, and it had been necessary, was in leaving the marriage relation of slaves up to the master. Wilson, *Black Codes of the South*, 96; *Florida House Journal, 1865-1866*, 58-59.

29. Assistant Commissioner of the Freedmen's Bureau Thomas W. Osborn had warned Provisional Governor Marvin that some of the proposed legislation was unwise. Osborn to Marvin, December 30, 1865, Osborn to Howard, December 30, 1865, Bureau Records, Florida; *Florida House Journal, 1865-1866*, 19-23; Wilson, *Black Codes of the South*, 97.

30. Florida, *Acts and Resolutions, 1865-1866*, 14th General Assembly, 1st Sess., 25. The provision forbidding freedmen to possess firearms was apparently motivated by fear of insurrection. The legislature passed a resolution calling upon the governor to use "utmost endeavors" to put Florida in a complete state of defense against any insurrectionary movement. There were repeated references in law to possible insurrections among "a certain portion of the population." The three-man committee had warned that the legislature had a duty to protect women and children from "threatened danger."

auction to any person who would take the delinquent, pay the fine and court costs. This of course was supposed to apply to Negroes. Special punishments for freedmen were also created. When the law called for line and imprisonment, there was super-added the alternative of thirty-nine lashes, standing in the pillory, or both. The discrimination, the legislators claimed, was based on the difference in the two races. "To degrade a white man" by whipping would make a bad member of society; to fine and imprison a Negro, on the other hand, would punish the state rather than the individual. Furthermore, to imprison a Negro petty offender would mean his withdrawal from the plantation, but whipping meant a speedier return to work.

The laws attempted to separate the two races. "A person of color" was defined by the legislature as anyone with one-eighth or more Negro blood. Cohabitation of white women and Negro men was punishable by a \$1,000 fine or three months imprisonment or both. It was unlawful for any person of either race to intrude himself upon a gathering or into a railway car assigned to another race. The statute to create schools for freedmen made the system separate from whites. Negro schools, to be operated at no expense to the state, were to be financed by levying a one dollar capitation tax on all Negro males between twenty-one and fifty-five.<sup>31</sup> Four types of offenses were made punishable by death: inciting of insurrection, administering poison, burglary, and rape of a white female. It was assumed that these laws would apply especially to freedmen; no mention was made of punishment for rape of a Negro woman. To raise revenue a head tax of three dollars was placed on all males between the ages of twenty-one and fifty-five. If the tax was not paid the delinquent could be seized and hired out to anyone who would pay the tax. It was obvious that this provision would bear directly upon the frequently penniless Negro.

Laws controlling labor were important provisions of the black codes. Vagrant freedmen could be arrested and sentenced to as much as twelve months labor. All contracts with Negroes

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31. *Ibid.*, 38. Any white person who taught in a Negro school without a license from the state was subject to fine and imprisonment. This clause was intended to discourage white northern teachers. The state did not open schools for Negroes though the capitation tax was collected.

were to be in writing. If a former slave entered into a contract and was disrespectful or impudent to his employer or refused to work, he could be sentenced for vagrancy.<sup>32</sup> Children of vagrants were at the disposal of the county as apprentices. Negro couples were given nine months to have their marital relationship solemnized.<sup>33</sup> Adult children of indigent parents were required to provide support for them. If they failed to do so, their wages or other income could be appropriated and paid to the parents.

Florida's black codes placed the Negro in a position distinctly inferior to the white.<sup>34</sup> That was in part the object of the laws - not to return the freedmen to slavery - but to subordinate him and to place him under the control of whites. White Floridians would have opposed any legislation that attempted to give the Negro equality. The laws in effect placed the state in much the same position of the former master; they provided for the control of a class of people through officers of the law and the courts.

The spirit in which the laws were enforced was perhaps as important as the laws themselves. Some of the legislation was inoperative largely because of Freedmen's Bureau interference,

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32. *Ibid.*, 32. If the contract was broken by the white employer, he would be tried by a jury and, if guilty, the laborer would be given a first lien on the crops to obtain his legal pay.

33. *Ibid.*, 31. In December 1866, an additional marriage law was passed providing that in "all cases where colored persons have resided and lived together as husband and wife, and have before the world recognized each other as husband and wife, they shall be deemed and taken to be husband and wife, and are so declared to be by this act, as fully and lawfully as if the marriage had been solemnized by a proper officer legally authorized to do and perform the same." Florida, *Acts and Resolutions, 1865-1866*, 14th General Assembly, 2nd Sess., 22.

34. There were other laws applying to freedmen not mentioned above. It was illegal for Negroes to own or have in their possession a bowie knife, dirk, or sword unless licensed by a probate judge. The penalty for having such an instrument was forfeiture of the weapon plus a whipping or one hour in the pillory. Offenses which were punishable by six months imprisonment, \$1,000 fine, whipping or standing in the pillory included: extinguishing street lights, injuring or cutting loose a boat, cutting timber, damaging any house, building, or anything attached to the land, malicious defacement, refusing to leave the premise of another or forbidden entry, selling of leaf tobacco or cotton without evidence of ownership, purposely setting fire to any agricultural produce, setting fires to buildings, fences, or bridges, and entering a house with intent to commit a felony. A public whipping or the pillory was decreed for injuring or killing animals of another person, unauthorized use of horses and hunting with a firearm on another's property. For the Florida black codes in their entirety see Florida, *Acts and Resolutions, 1865-1866*, 1st Sess., 23-29.

but a prejudiced court enforced some of the laws with a vengeance.<sup>35</sup> In June 1866, judges in Alachua and Marion counties sentenced a number of freedmen to receive lashes. A Negro boy was caught riding his employer's horse without permission, and he was fined \$200 and court costs. Being unable to pay he was sold at public outcry to the highest bidder. At Enterprise, a Negro was sold at auction for twelve months for assaulting his wife, and another man was sold for forty days for taking a drifting log out of the river and selling it.<sup>36</sup>

While freedmen were assessed large fines for petty offenses, white outrages against Negroes were frequently ignored or lightly punished. In Lake City two Negroes were convicted of stealing two boxes of goods from a railroad company and were fined \$500. When they could not pay they were sold to the highest bidder.<sup>37</sup> A few months later a white man was convicted of an unprovoked murder of a Negro; he was fined \$225 and sentenced to one minute imprisonment. In Alachua County three freedmen were charged with violation of contract and were sentenced to be publicly whipped. They also forfeited their wages and had to pay court costs. In Marianna a white man was convicted of assaulting a freedwoman and fined five cents.<sup>38</sup>

When Negroes attempted to bring a case to court, civil officers and justices of the peace usually demanded costs in advance. Even Florida's Democratic attorney general declared that demanding costs in advance from Negroes was not based on any principle of justice, but, on the contrary, appeared to "effect an absolute denial of justice and prevent the punishment of offenders." Such actions convinced General Vogdes that the rights of Florida Negroes extended little beyond "the simple

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35. The bureau especially protested the use of whipping and pillory. Nevertheless these punishments continued to be used for several months. Howard to Osborn, January 12, 1866, Bureau Records, Florida; Tallahassee *Semi-Weekly Floridian*, February 6, 1866.

36. For a detailed treatment of injustice of Florida courts see Richardson, *The Negro in the Reconstruction of Florida, 1865-1877*, 40-52. *New York Times*, July 4, 1866; F. E. Grossman to J. H. Lyman, October 19, 1866, Apthorp to Osborn, May 29, 1866, Bureau Records, Florida.

37. The Bureau agent at Lake City claimed that numerous freedpeople in the area had been sold for inability to pay large fines. He suspected that the courts intended the fines to be too high for the freedmen to pay. A Mahoney to McHenry, May 1, 1866, Bureau Records, Florida.

38. J. H. Durkee to McHenry, July 20, 1866, C. M. Hamilton to McHenry, March 31, 1866, Bureau Records, Florida.

condition of absolute bondage." Assistant Commissioner John T. Sprague declared in 1867, that the civil law offered "but little protection to the freedmen." They were severely punished by the courts, but when acts of violence and injustice were imposed upon them they could expect no redress. Sprague believed there was a determination on the part of state, county, and municipal officials to make the "freedman know and feel his inferiority." This was done by arrests for trifling offenses and the imposition of harsh penalties. "The freedman is made to feel that he is still a slave," Sprague added. General John G. Foster agreed that injustice in Florida courts was so frequent that Negroes looked upon them as instruments of oppression to their race.<sup>39</sup> The black codes and prejudiced courts relegated the Florida Negro to something less than a free man.<sup>40</sup>

The passage of black codes by Florida and other southern states was unfortunate and unwise. They insured what Florida wanted to avoid - intercession by the federal government. The Freedmen's Bureau immediately announced that laws decreeing the use of whipping and the pillory would not be tolerated. Assistant Commissioner Thomas W. Osborn warned that there must be no difference in treatment before the law because of color. A bureau protest resulted in the state attorney general declaring unconstitutional the law forbidding Negroes to carry arms. When agents thought Negroes received unjust sentences the assistant commissioner appealed to Governor Walker for executive clemency. When executive clemency was not forthcoming more positive action was taken. For a period the bureau set up its own courts with agents making arrests and acting as judges. More frequently bureau agents observed trials in the county courts and when they believed a decision to be unjust, the case was appealed to the appellate court. If the verdict of the appellate court was considered unfair, the case could then be appealed to the United States District Court, which was

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39. *House Executive Documents*, 40th Cong., 2nd Sess., No. 57, pp. 13, 86-87; *House Reports*, 39th Cong., 1st Sess., No. 30, pt. IV, p. 121; Foster to Howard, August 10, 1866, J. T. Sprague to Howard, January 31, 1867, April 6, 1868, J. A. Remley to E. C. Woodruff, December 31, 1866, Bureau Records, Florida; Sprague to Mundee, May 31, 1866, U. S. Army Commands, Florida.

40. The black codes most vigorously enforced were those concerning contracts, vagrancy, and apprenticeship.

regarded as final.<sup>41</sup> Bureau interference did not end all injustice, but it did much to neutralize the evil effect of Florida's black codes.

More important than provoking bureau intervention, Florida and the South by enacting special laws to control freedmen played directly into the hands of the Negroes' friends who wanted a more stringent reconstruction. Protagonists of the Negro were furious when they discovered that President Johnson's plan of reconstruction permitted southern whites to rule in a way uncomfortably similar to before the Civil War. They became more convinced that the freedmen's future was unsafe with Southerners. Republicans in Florida and the South insisted that the Negro must have suffrage for their protection. Lewis Tappan, famous New York abolitionist, was fond of saying that the black man would never have his rights until he had a "musket in one hand and a ballot in the other." Florida was frequently pointed out as an example of the worst in the South. The black codes, southern rejection of the fourteenth amendment, the Memphis and New Orleans riots, and President Johnson's increasing intransigence convinced a majority of Congress that the South had to be dealt with more harshly. The result was the reconstruction acts of 1867 which placed southern government under Republican control.<sup>42</sup>

The reconstruction acts of 1867 and the resulting Florida constitution of 1868 overturned the black codes.<sup>43</sup> The constitution recognized Negroes as political equals, prohibited discriminatory laws based on race, and permitted blacks to testify against whites in courts. The Florida legislature by its obstinance, bigotry, and refusal to heed Northern public opinion

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41. Tallahassee *Semi-Weekly Floridian*, February 6, 1866; *Senate Executive Documents*, 39th Cong., 2nd Sess., No. 6, p. 45; Mundee to Quentin, June 12, 1866, copy of the proceeding of the Bureau Court, Bureau Records, Florida.

42. Lewis Tappan to D. Baldwin, June 3, 1865, Lewis Tappan Papers, Library of Congress; *Congressional Globe*, 39th Cong., 1st Sess., pt. 1, p. 97; D. Richards to E. B. Washburne, May 7, 1866, Elihu B. Washburne Papers, Library of Congress; *American Missionary*, X (January, 1866), 7, XI (April, 1867), 82; John Hope Franklin, *From Slavery to Freedom: A History of Negro Americans*, 3rd ed. (New York, 1967), 303-05.

43. See Florida, *Constitution of 1868*, 17, 19, 22, 26-27.

contributed to what it most dreaded—laws intended to guarantee equal rights for Negroes.<sup>44</sup>

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44. That equal rights for Negroes were written into Florida's constitution of 1868 did not insure that they would always be treated equally. Black men continued to receive unfair treatment in many white courts, their labor system did not change, and even though school revenue was fairly distributed under the Republicans schools remained segregated.