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CUSTOM, LAW, AND HISTORY: THE ENDURING INFLUENCE OF FLORIDA'S "BLACK CODE"

by JERRELL H. SHOFNER*

IN OCTOBER 1956, Dr. Deborah Coggins, health officer for Madison, Jefferson, and Taylor counties, sat down to lunch in Madison, Florida, with a public health nurse to discuss a matter of mutual official concern. Because of their busy schedules the lunch hour was the only mutually available time for the meeting. But since the doctor was white and the nurse black, the business luncheon led to the dismissal of the doctor by indignant commissioners of the three counties. Her "breach of social tradition" had been so serious, according to the commissioners, that it rendered her unfit to continue in the office to which she had been appointed about six months earlier. While Governor LeRoy Collins disagreed, and incensed citizens of South Florida condemned the commissioners, most white North Floridians nodded approval. As they saw it, Dr. Coggins had violated one of the strictest taboos of her community when "she ate with the darkies." As a native of Tampa married to a descendant of an old Madison County family, she should have known better.[1]

Social intercourse between whites and blacks was forbidden by both law and custom in Florida in the 1950s. And it had been that way as long as most people then living could remember. The one brief period following the Civil War when things had been different had merely proved that segregation was the best way for all concerned. This belief was reinforced by all the myths and folk tales, social institutions, and statute laws with which Floridians of the 1950s were acquainted.

Those few years following the Civil War had been crucial

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1. Wilson T. Sowder to Deborah Coggins, October 4, 1956, Records of the Jefferson County Commission, Jefferson County Courthouse, Monticello, Florida; *Milwaukee* [Wisconsin] *Journal,* November 29, 1956.

ones for white Floridians, most of whom had sympathized with and supported the Confederate war effort. Defeated, disorganized, and bankrupt in 1865, they had taken heart when President Andrew Johnson announced his plans for reconstructing the nation. Guaranteeing former Confederates retention of all their property except slaves, he appointed William Marvin as provisional governor to oversee the formation of a new government. To gain readmission to the Union, Florida had only to repudiate slavery, secession, and debts incurred in support of the Confederacy, and recognize all laws enacted by Congress while the state was out of the Union. Marvin repeatedly told white audiences that if they would change the laws to provide civil rights to the newly freed blacks that he believed they would not be required to implement Negro suffrage. Retrospectively this implied promise seems to have been an unfortunate one. Radical congressmen had been contending with Abraham Lincoln and later Andrew Johnson for control of Reconstruction policy. What white Floridians regarded as major concessions to former slaves was far less than Radical congressmen believed necessary. The latter watched with growing concern as the southern state governments created by President Johnson enacted their "black codes" which distinguished between black and white citizens. And the final decision on Johnson's Reconstruction program rested with Congress.

The delegates to the 1865 constitutional convention and the members of the 1865-1866 legislature who enacted the Florida "black code" had spent their lives as members of the dominant white class in a society whose labor system was based on racial chattel slavery. They brought to their law-making sessions all their past experiences gained from a lifetime acquaintance with a comprehensive ideological and legal framework for racial slavery. They believed that blacks were so mentally inferior and incompetent to order their own affairs that subjection to the superior white race was their natural condition. Whites benefited from the labor of blacks, and they were in turn obligated to provide guidance and welfare for their workers. Now that slavery was abolished these men met to comply with Andrew Johnson's requirements, while, at the same time, trying to salvage as much as possible of that system under which whites with their

paternalistic responsibilities to blacks, and Negroes with their natural limitations, had lived peacefully.

Florida had a comprehensive slave code regulating almost every activity touching the lives of blacks. Because "free Negroes" had constituted an anomaly in a society where racial slavery was so central, there was also an extensive set of laws regulating their affairs. It was understandable that the lawmakers of 1865-1866 should draw on their past experiences and the codes regulating slaves and free blacks. But in doing so they invited criticism from suspicious Radicals in Congress who believed that the president had erred in his lenient requirements.

A three-member committee was named by the constitutional convention of 1865 to recommend to the first legislature, scheduled to meet the following year, changes in the old laws necessary to make them conform to the post-war situation. The committee's report did nothing to assuage congressional suspicions. It urged the legislature to preserve, insofar as possible, the beneficial features of that "benign, but much abused and greatly misunderstood institution of slavery." It strenuously asserted the legislature's power to discriminate. Such power had always been executed by all the states of the Union, including those of New England. Slavery had been abolished, but nothing had been done to the status of the "free negro." Certainly, therefore, "Freedmen" could not possibly occupy a higher position in the scale of rights than had the "free negro" before the war.[2]

Provisional Governor William Marvin, who had been appointed by President Johnson in 1865, warned that Congress was likely to intervene unless the state legislature accepted the concept of Negro freedom and extended to freedmen equal protection of the law.[3] Despite this warning, the legislature followed the committee's recommendations. It enacted laws dealing with crime and punishment, vagrancy, apprenticeship, marriages, taxation, labor contracts, and the judicial system which were collectively referred to as the "black code." The "code" clearly established a separate class of citizenship for blacks making them inferior to whites.

A long list of crimes was enumerated and penalties assigned. The death penalty was imposed for inciting insurrection, raping

2. Florida *House Journal,* 1865-1866, 60-62, 65.
3. Florida *Senate Journal,* 1865-1866, 20.

a white female, or administering poison. Burglary was punishable by death, a fine not exceeding $1,000, or a public whipping and the pillory. Malicious trespass, buying or selling cotton without evidence of ownership, defacement of public or private property, and other crimes of similar nature were punishable by fines, imprisonment, or whipping and the pillory. Whipping or the pillory was also the prescribed punishment for injuring someone else's livestock, hunting with a gun on another's property, or unauthorized use of a horse whether in the employ of the owner or not.[4] According to an antebellum statute continued in force by the 1865-1866 legislature, Negroes were specifically denied the right to carry firearms, bowie knives, dirks, or swords without a license from the probate judge. The punishment was forfeiture of the weapon and a whipping, the pillory, or both.[5] This provision reflected some concern among white Floridians at the time about a rumored Negro insurrection, which had no substantive basis.[6]

"AN ACT to punish Vagrants and Vagabonds" made all persons subject to arrest who could not demonstrate that they were gainfully employed. Aimed at preventing congregation of freedmen in the towns, this law was especially alarming to Radical congressmen. A convicted vagrant could post bond as a guarantee of good behavior for the following year, but if no bond was posted, he could be punished by the pillory, whipping, prison, or by being sold for his labor up to one year to pay his fine and costs.[7] "AN ACT in relation to Apprentices" allowed the courts to apprentice the children of vagrants or paupers to persons who could supervise their activities, provide for them, and teach them a trade.[8] It applied to both races, but in the aftermath of emancipation most of the children affected were black. This was only a slight extension of an antebellum law requiring that all free blacks over twelve years of age have a duly registered white guardian.

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4. *Laws of Florida,* 1865-1866, 23-25.
5. *Ibid.,* 37.
6. G. R. Hughes to Assistant Adjutant General, June 30, 1866; R. Hall to T. W. Osborn, December 30, 1865; E. C. Love to Osborn, January 8, 1865, Records of the Bureau of Refugees, Freedmen, and Abandoned Lands, Florida, Record Group 105, National Archives, Washington, D.C.
7. *Laws of Florida,* 1865-1866, 28.
8. *Ibid.,* 34.

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For the first time, a statute defined a Negro as any person with one-eighth Negro blood. Although that standard still left much to interpretation, some such ruling was necessary to the enforcement of several acts intended to separate the races. Both blacks and whites were enjoined from attending the meetings of the other race. They were also required to ride only in railroad cars designated for their respective races. Marriages between Negro men and white women were prohibited. White violators of the enactment could be fined $1,000, jailed for three months, or both. In addition to the fine, Negroes could be made to stand in the pillory for one hour, receive thirty-nine lashes, or both.[9]

One of the most controversial enactments was "AN ACT to establish and enforce the Marriage Relation between Persons of Color." Negro couples were given nine months to decide whether they wished to continue living together. After that time they had either to separate or be legally married.[10] This method of correcting a problem arising from slavery and its abolition caused so much criticism in the northern press that the legislature in November 1866 simply passed a law declaring all freedmen living as man and wife to be legally married.[11]

Even the revenue laws seemed discriminatory. There was a provision for a five-mill property tax on real property and a capitation tax of three dollars on every male between twenty-one and fifty-five. The Negroes often did not learn of the tax in time or did not have the money to pay it. If they were delinquent they could be arrested and sold for their labor for a period long enough to liquidate the obligations incurred.[12] Several cases of tax-delinquent blacks being sold for a year's labor soon caught the attention of the northern press.[13] Such an exorbitant punishment for failure to pay a three dollar tax seemed to some congressmen to be a substitute for the bonded servitude which had just been abolished.[14]

9. *Ibid.,* 30, 38, 65.
10. *Ibid.,* 31.
11. Florida *House Journal,* 1866, 15-19; *Laws of Florida,* 1866, 22; Theodore Brantner Wilson, *The Black Codes of the South* (University, Alabama, 1965), 99.
12. *Laws of Florida,* 1865-1866, 65.
13. Reports of Sub-Assistant Commissioners J. A. Remley and J. H. Durkee, Florida, Record Group 105.
14. *Congressional Globe,* 39th Cong., 1st sess., 1865-1866, Part I, p. 313;

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Although the legislators followed closely a system already established by the military commanders, their "ACT in relation to Contracts of Persons of Color" also distinguished between the races. Contracts were to be in writing and witnessed by two white persons. If Negroes broke their agreements, they could be punished as common vagrants by being whipped, put in the pillory, imprisoned, or sold for up to one year's labor. They could also be found in violation of their contract for "willful disobedience," "wanton impudence," "disrespect" to the employer, failure to perform assigned work, or "abandonment of the premises." If the employer broke the contract, the laborer could seek redress in the courts. Although the state attorney general ruled the law unconstitutional, the next legislature rewrote it so as to apply to both races in occupations limited almost entirely to Negroes.[15]

An early crop lien law was intended to keep tenants on the land. A landlord was empowered to seek a writ placing a lien against growing crops on rented land if the rent was not paid within ten days of the due date. If a tenant did not pay out at the end of the year, the lien could be extended to the next year and he could be legally held on the land.[16] Attracting little attention as part of the "black code" at the time, this statute, with subsequent additions, contributed largely to an agricultural system which kept many tenants in economic bondage for years after the Civil War.

Central features of the "black code" were "AN ACT to extend to all the inhabitants of the State the benefits of the Courts of Justice and the processes thereof" and another "prescribing additional penalties for the commission of offenses against the State, and for other purposes."[17] The convention-appointed committee in its recommendations to the legislature had bemoaned the loss of that highly efficient institution which had existed on the plantations for punishing those "minor offenses to which Negroes are addicted." Since those offenses were now under the jurisdiction of the judiciary, the committee declared that circuit courts would be unable to handle the increased volume of litiga-

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Joe M. Richardson, "Florida Black Codes," *Florida Historical Quarterly,* XLVII (April 1969), 372.

15. *Laws of Florida,* 1865-1866, 32; *Laws of Florida,* 1866, 21-22.
16. *Laws of Florida,* 1865-1866, 62.
17. *Ibid.,* 37, 23-27.

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tion. It accordingly proposed that criminal courts be established in each county and the legislative assembly complied.[18] These courts were soon handling cases, but the heritage of slavery days was too much for them. The legislators had permitted Negroes the right to testify only in cases involving blacks, and juries were made up of white men only. These whites had lived in a society where Negro slaves had had no standing in the courts, and they were now unwilling to accept the word of blacks. The courts were abject failures as legal remedies for freedmen accused of crimes or seeking redress of wrongs committed by whites.

The law "prescribing additional penalties" was a response to the special committee's recommendation that "whenever a crime be punishable by fine and imprisonment we add an alternative of the pillory for an hour or whipping up to thirty-nine lashes or both at the discretion of the jury." This discrimination was "founded upon the soundest principles of State policy, growing out of the difference that exists in social and political status of the two races. To degrade a white man by physical punishment is to make a bad member of society and a dangerous political agent. To fine and imprison a colored man . . . is to punish the State instead of the individual."[19]

The Floridians who enacted the "black code" were surprised and angered by the national reaction they caused. Thomas W. Osborn, assistant commissioner of the Freedmen's Bureau in Florida, intervened to prevent the administration of corporal punishment.[20] Radicals in Congress pointed to the discriminatory legislation to show that Negroes could not expect equal treatment as long as the antebellum Florida leaders remained in power. With similar legislation in other former Confederate states, the Florida "black code" helped the Radicals convince their moderate colleagues that President Johnson's Reconstruction plan had failed to furnish necessary protection to newly-freed persons. In a mammoth executive-legislative struggle which lasted through most of 1866, Congress overturned the Johnson governments in the South and implemented Congressional Reconstruction in 1867-1868.

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18. *Ibid.,* 20-21.
19. Florida *House Journal,* 1865-1866, 59, 62-63.
20. Osborn to William Marvin, December 20, 1865; O. O. Howard to Osborn, January 12, 1866, Florida, Record Group 105.

Based on Negro suffrage– which Provisional Governor Marvin had said would not happen– and military supervision, the congressional plan seemed to Floridians to be a broken bargain. In late 1866 Governor Walker complained that the state had complied with President Johnson's Reconstruction requirements, but that Floridians were still being denied their rights.[21] The subsequent implementation of Negro suffrage, enactment of the 1868 constitution, and the election victory of the newly-founded Florida Republican party were considered by local whites as unwelcome and unwise invasions of the rights of the state.

These developments also embittered them toward their former slaves. When Negro suffrage was first announced, the planters assumed that they could control the freedman's vote. At assemblages throughout the black belt counties former owners competed with "carpetbaggers" for the allegiance of the new voters. When the blacks quite understandably ignored their former masters in favor of the new Republican leaders, the native whites lost most of their paternalistic sentiment toward the freedmen. They determined to resist Negro suffrage and Republican hegemony by every means they could muster.

Landowners and storekeepers applied economic pressures on black voters. Politicians resorted to ingenious political tactics. Conservatives in the legislature blocked action whenever possible by dilatory parliamentary maneuvers. But by far the most visible, and in the long run the costliest, method was violence. With black legislators sitting in the Capitol, black marshals advertising their tax-delinquent property for sale in the county seats, and white Republicans wielding power dependent on black voting majorities, white Floridians believed that destruction of Republican power was a goal which justified any successful means. According to one sympathetic historian who lived in post-Reconstruction Pensacola, "in this contest for a very necessary supremacy many a foul crime was committed by white against black."[22] According to their reasoning, Republican politicians in Washington had overpowered reasonable, well-meaning President Johnson and had implemented, over his

21. Florida *House Journal,* 1866, 9.
22. William Watson Davis, *The Civil War and Reconstruction in Florida* (New York, 1913; facsimile edition, Gainesville, 1964), 586.

vigorous vetoes and in violation of agreements already made with southern leaders, and contrary to sound constitutional theory, a policy of Negro suffrage. Although it was not the fault of the blacks, this policy had subjected an educated, property-owning class to the mismanagement and corruption of ignorant Negroes and their "carpetbagger" leaders. This wrong had to be corrected regardless of the methods necessary. But in permitting the use of violence for this purpose, the white leaders unleashed a force which was almost impossible to stop.

As soon as the military commander turned over control of the state to Republican Governor Harrison Reed in July 1868, and withdrew his troops to garrison duty, violence began increasing. At first night-riding bands of hooded horsemen attempted to frighten rural Negroes into submission. But partially because many blacks showed more courage than expected and partially because it was easy to commit excesses against helpless people while shrouded in the anonymity of darkness and disguise, the scare tactics soon degenerated into merciless beatings and murder. Threats were delivered and when they went unheeded, recipients were ambushed. Dozens of white Republicans and Negroes were assassinated throughout the Florida black belt from Jackson County on the Apalachicola River to Columbia County on the Suwannee and southward to Gainesville. In Jackson County alone between 1868 and 1871, more than 150 persons were killed.[23]

Congress responded with corrective legislation. A national elections law empowered the United States government to place supervisors at every polling place in Florida and the other southern states. Military guards were also to be deployed during elections to potentially dangerous locations. Two enforcement acts authorized President Grant to declare martial law and employ soldiers where disorder was beyond the ability of state governments to control. Before the 1872 election the worst of the violence had subsided in Florida, as much from the belief among native whites that it had achieved its purpose as from the presence of United States military forces. This episode nurtured

23. Tallahassee *Weekly Floridian,* May 2, 1871; W. J. Purman to Commissioner of Internal Revenue, June 24, 1873, Applications for Collector, Department of the Treasury, Record Group 56, National Archives; Jerrell. H. Shofner, *Nor Is It Over Yet: Florida in the Era of Reconstruction, 1863-1877* (Gainesville, 1974), 233.

the growth of two important aspects of the evolving myth of the Lost Cause: the idea that helpless white Southerners were being mercilessly suppressed by the military power of a hostile central government, and that they were driven to the use of violence to correct an even greater wrong– dominance of the state by an ignorant Negro electorate.

After years of delay due to opposition from Conservative-Democrats and some of the white Republicans, the legislature of 1873 enacted a civil rights law calling for equal accommodations in public places, although it *permitted,* without requiring, integrated schools.[24] Within months of its enactment it was essentially nullified by a Leon County jurist. When several Negroes complained that they had been denied access to a skating rink in Tallahassee, the judge ruled that private owners or commercial establishments had the right to refuse service to anyone they chose.[25] Although it remained on the books for a time, the 1873 civil rights law was a dead letter. Because its principles were opposed by a majority of white Floridians, it did nothing to change social conduct.

During the four years following President Grant's reelection in 1872 the Reconstruction process continued with diminishing velocity. Most southern states were recaptured by native white Conservative-Democratic parties despite the efforts of the Grant administration. A national depression, repeated scandals in the administration, and other matters caused northern interest in the South to wane. As the 1876 presidential election approached, many Northerners were anxious for a settlement of "the southern question." The stage was set for the final episode in the growth of the myth of the Lost Cause. When the campaign of Samuel J. Tilden and Rutherford B. Hayes for president ended in an uncertain election, the nation was subjected to nearly four months of anxiety. Hayes was ultimately inaugurated after tacitly agreeing to withdraw United States soldiers from the South. This resolution of the disputed election became known as the "compromise of 1877." When he withdrew the troops, all remaining Republican administrations in the South collapsed, and Conservative-Democratic regimes took over in their places. The men who headed those new governments came to be called

24. *Laws* of *Florida,* 1873, 25; Florida *Senate Journal,* 1873, 52-53.
25. *Marianna Courier,* March 18, 1873.

"Redeemers" who had ousted the "carpetbaggers" and restored "home rule" in the southern states.

Left to their own devices white and black Republicans were unable to maintain themselves. During the next few years the southern Republican parties became permanent minorities and eventually almost disappeared. The United States Supreme Court's 1883 decision in the *Civil Rights Cases* was regarded as national acceptance of the failure of Reconstruction and restoration of white supremacy in the South. In that decision the court limited the civil rights guarantees of the fourteenth amendment so that they applied only against official discrimination. Thus, while it was unconstitutional for a state to pass a law discriminating on grounds of race, it was legal for private owners of hotels, restaurants, and theatres to refuse service to blacks.

Cautiously at first, but with increasing confidence, white Floridians began rewriting their laws with a view to establishing a society similar to that envisioned in the "black codes" of 1865-1866. The 1868 constitution was regarded as a "carpetbagger" document, imposed on the state by outsiders supported by a black electorate and military force. The demand for its replacement swelled in the early 1880s. Attended by a minority of Republicans, only seven of whom were Negroes, an 1885 convention wrote a constitution which prepared the way for disfranchisement of blacks and dissolution of the Republican Party. It authorized a poll tax as a condition for voting and required that all officeholders post bonds before assuming office. The latter was intended to make it difficult for blacks to qualify for office if they were able to win in the northern counties where there were overwhelming majorities of blacks. But the poll tax provision was most important. The 1889 poll tax law required that potential voters pay their tax for two years immediately prior to elections. If the county records did not show the tax paid, then the would-be voter was required to produce receipts to prove that he was eligible to vote. An accompanying statute required separate ballot boxes for each office.[26] These made it necessary that the voter be able to read the names on the boxes in order to place his ballots in the correct places and have them counted. The result was dramatic. Statewide

26. *Laws of Florida,* 1889, 13, 101-02.

Republican candidates received more than 26,000 votes in 1888; in 1892 they received fewer than 5,000.

The legal changes were accompanied by incessant racist rhetoric from public officials and the state press. School histories taught young children that the "Redeemers" had saved the state from the excesses of "Radical Reconstruction." When white Floridians divided on policy matters, Conservative-Democratic politicians reminded the voters that whites must stand together or risk a return to "Negro rule."

This tactic prevented the sundering of the paramount white man's party, but it also increased the gap between the races. Violence had declined after 1872, but it had never ceased As the possibility of United States intervention diminished in the 1880s and the doctrine of white supremacy became more firmly entrenched, violence as a means of repressing blacks increased. The brutal Savage-James lynching at Madison in 1882 went without serious investigation.[27] Another in Jefferson County in 1888 resulted in the arrest of five white men, but all of them were acquitted by all-white juries.[28] Two especially repugnant lynchings in the mid-1890s led Governor William D. Bloxham to deplore the practice in his 1897 inaugural address, but he offered no remedy.[29] The praise of white supremacy and persistent reminders of its alternatives from prominent men perpetuated a climate of tolerance for violence by whites against blacks.

Floridians were reinforced in their views by similar developments in other southern states. Worse yet, racial developments in the South coincided with a growing racial theory throughout the United States. Relying on Joseph Gobineau and other European racist writers, social theorists in the United States were preaching the idea of Anglo-Saxon superiority and the corresponding inferiority of blacks to a receptive audience. At the same time the United States acquired the Philippine Islands, and a little later Theodore Roosevelt added his "corollary" to the Monroe Doctrine. Our decision to uplift our "little brown brothers" in the Philippines and "protect" our Latin American

27. Edward C. Williamson, "Black Belt Political Crisis: The Savage-James Lynching, 1882," *Florida Historical Quarterly,* XLV (April 1967), 402-09.
28. Records of the Circuit Court, Order Book D, 208, 220, 237, Jefferson County Courthouse.
29. Florida *Senate Journal,* 1897, 28-29.

neighbors from European interference by intervening in their internal affairs added powerful impetus to the growing racial theories in our country.

By the turn of the century the Lost Cause myth was virtually beyond question in the South and was gaining adherents elsewhere. It placed little emphasis on the demise of slavery and the failure of secession. Rather it focused on the unsuccessful efforts at post-war Reconstruction. President Johnson had been willing to permit Southerners to reform their society along lines that allowed for the innate inferiority of blacks. But a misguided Radical-controlled Congress had taken direction of Reconstruction away from him. These crusading Northerners had attempted to change natural conditions by legislative fiat, causing immense difficulties for all involved in an experiment which was doomed by nature to failure. Finally seeing the errors of their ways, they had withdrawn from the struggle, leaving Southerners to solve their own racial problems. This was a powerful and satisfying rationale for a caste system which ultimately degraded Negroes to the point where they had absolutely no defense against the worst excesses of the most lawless elements of white society.

Beginning in 1889 a series of "Jim Crow" laws were passed which gave legal sanction to the segregation which already existed by custom. These laws went far beyond the earlier "black codes" in separating the races, but they did little more than legalize existing conditions. Racial segregation in Florida was more extensive in 1900 than it had been in 1865.

An 1895 statute prohibited anyone from conducting a school in which whites and Negroes attended the same classes, or separate classes in the same building, or classes taught by the same teachers. Fines and jail sentences were provided for violators.[30] Others soon followed. In 1903 intermarriage was forbidden between white persons and Negroes, including anyone with at least one-eighth Negro blood. Either or both parties to such a marriage could be punished by up to ten years imprisonment or $1,000 fine.[31] A 1905 enactment required separation of the races on street cars and required companies operating them to provide separate facilities. Failure of the company to do so was punishable by a $50 fine with each day constituting

30. *Laws of Florida,* 1895, 96.
31. *Ibid.,* 1903, 76.

a separate offense. Passengers violating the statute were subject to fines of $25 or up to thirty days in jail. Negro nurses travelling with white children or sick persons were exempt.[32] Since slavery days there had been almost unlimited contact between the races where the blacks were in a servant capacity, and this continued. Segregation was a class rather than a physical matter.

In 1905 constables, sheriffs, and others handling prisoners were forbidden to fasten white male or female prisoners to colored prisoners, subject to fines up to $100 or sentences up to six months.[33] The same legislature required terminal and railroad companies to provide separate waiting rooms and ticket windows for whites and Negroes. The penalty for failure was a fine up to $5,000.[34] A 1909 statute required "equal" and "separate" railroad cars or divisions of cars.[35]

These legal reinforcements of existing practices had great significance. Law and custom had been in harmony during antebellum slavery days. The 1865-1866 "black code" reflected the social experiences of those who enacted them. Then it was overturned by national legislation which ran counter to the beliefs of the dominant groups of Florida society. Because they disagreed with the Reconstruction legislation and the circumstances of its enactment, native white Floridians not only overturned the laws but also developed a rationale– the Lost Cause myth and its corollary of the necessity for white supremacy– which justified and reinforced their actions following the celebrated 1876 election dispute. The "Jim Crow" laws were the final necessary step. By the early twentieth century white Floridians were living in a society whose customs, ideology, and law code were once more in harmony.

The first third of the twentieth century was the nadir of race relations in Florida and the nation. Although segregation seemed to be permanently entrenched, whites did not let the matter rest. Politicians always referred to it in their campaigns. Newspapers carried editorials dealing with racism and news stories casting obliquy and odium on Negroes. Creative writers dealt with the subject in the same way. There was a widespread move-

32. *Ibid.,* 1905, 99.
33. *Ibid.,* 132.
34. *Ibid.,* 1907, 103.
35. *Ibid.,* 1909, 39.

ment to solve the race problem by sending the blacks to Africa. A strong advocate of the idea was Frank Clark, an influential Florida congressman who once declared that, "Mr. Lincoln said that this nation could not exist 'half slave and half free.' I think it is equally true that this nation can not exist half white and *half black."*[36] Likewise, progressive Florida Governor Napoleon B. Broward went so far as to propose mass removal of Negroes from the United States in his 1907 message to the legislature.[37]

Without political rights, economic strength, or legal status, blacks had no defense. Their best hope was to keep away from whites unless they were fortunate enough to identify with someone who would assist them in legal and economic matters. Usually tied to the land by perpetual indebtedness and dependent on the good will of a white man for whatever security they had, blacks in the early twentieth century occupied a social position not significantly different from that of the antebellum "free Negro" who had been obliged by law to have a white guardian. But this unofficial paternalism was not available to all, and it was inadequate to prevent physical abuse on those occasions when blacks came into contact with unruly whites. Insults and petty violence could sometimes be borne in silence. But at other times it was impossible to avoid trouble. With no legal or social restraints, white ruffians and sometimes ordinary citizens angered by some incident assaulted blacks without fear of reprisal.

In 1911 Mark Norris and Jerry Guster of Wadesboro, Leon County, were arrested on a charge of stealing and resisting arrest. B. B. Smith, a sawmill owner who had been deputized especially to arrest them, had struck Norris with a pistol while doing so. In the justice of the peace court in Miccosukee, the two Negroes were acquitted. When they went to Smith's home to talk about the matter, a gun fight ensued, and Smith was killed. A group of blacks gathered to defend the two men against an anticipated mob, but they quietly surrendered when two deputies arrived to arrest them. Ultimately, ten Negroes were arrested, six of whom were charged with murder. A crowd gathered in Tallahassee, and talk of lynching increased. Six

36. Quoted in I. [Idus] A. Newby, *Jim Crow's Defense: Anti-Negro Thought in America, 1900-1930* (Baton Rouge, 1970), 169.
37. Samuel Proctor, *Napoleon Bonaparte Broward, Florida's Fighting Democrat* (Gainesville, 1950), 252.

of the men were smuggled out of Tallahassee and taken to Lake City for safekeeping. A few evenings later several men drove to Lake City and got the blacks out of jail on a forged release order, took them to the edge of town, and riddled all six with bullets for more than a half hour. No one in Lake City went to investigate the shooting until the assassins were driving away, thus there were no witnesses to the crime. Governor Albert Gilchrist offered a $250 reward for information about the lynching, but a cursory investigation was shortly abandoned without success.[38]

There was almost no provocation for an incident at Monticello in 1913. Sheriff's deputies went into Log Town, a black section, at about eleven o'clock one Saturday evening just "scouting around." Seeing a group of blacks walking down the road, the deputies called on them to stop to be searched. The Negroes ran. The deputies fired and three blacks were wounded; one of them permanently paralyzed by a shot in the back. No weapons were found on any of them.[39] Walking down the road on a Saturday night seemed to be sufficient cause for a presumption of guilt only in the case of blacks.

When J. A. McClellan shot and killed Charlie Perry, a black, in 1918, the coroner's jury found the shooting to have been in self-defense. It was true that an argument between them had been started by Perry. But the reason for the altercation was that McClellan and others had broken into Perry's house and had searched it without either a warrant or the owner's permission.[40] During the 1920 general election, July Perry of Ocoee, Orange County, caused a disturbance when he tried to vote without having paid his poll tax. He even threatened election officials, but it is inconceivable that the aftermath would have been the same had he been white. Whites followed Perry home and ordered him out of his house. He fired on them. When the altercation was over three days later, the entire Negro section of Ocoee had been burned and four innocent people consumed in the fire. The grisly episode ended only after a mutilated July Perry was finally put to death by the mob

38. Miami *Daily Metropolis,* May 13, 22, 1911; *Pensacola Journal,* May 14, 23, 1911; *Tallahassee True Democrat,* May 19, 26, 1911; *Jasper News,* May 26, 1911.
39. Monticello *News,* April 4, 1913.
40. *Ibid.,* August 16, 1918.

which had tired of torturing him.[41] Three years later at Rosewood, near Cedar Key, a white mob charged into the black community searching for an alleged rapist, burned six houses and a church, and killed five blacks. This time the blacks fought back and two whites also died.[42]

The lynching of Claude Neal in Jackson County in 1934 was so shocking that it stimulated a renewed effort in Congress to enact anti-lynching legislation. Neal was accused of murdering a white girl with whom it was charged he had had an illicit relationship. Transferred from jail to jail in West Florida and in southern Alabama he was finally overtaken by a mob in the latter state and brought back to Marianna. He was tortured and mutilated, dragged behind a car, and finally displayed on the streets before crowds, including school children, who attacked the then lifeless body. The corpse was hanged on the courthouse square. On the following day mobs threatened blacks on the streets of Marianna, and order was not restored until the militia was called in.[43] The NAACP published a report of the incident which aroused considerable ire across the nation, but nothing was done. The attorney general ruled that the recently enacted federal law against kidnapping across state lines did not apply because a monetary ransom had not been the purpose of the mob.[44] And as always there was no remedy under state law.

Violence was only the extreme and most visible surface of a racially segregated society. Many whites who deplored violence still obeyed the infinite daily reinforcements of their segregated system: separate dining facilities, theaters, restrooms, waiting rooms, railroad cars, and drinking fountains, as well as the customary racial divisions of labor. While blacks and whites often worked at comparable jobs at the lower end of the economic spectrum, nearly all the professional and white collar jobs were limited to whites and the most menial tasks were overwhelmingly filled by blacks. Even where employment of blacks and whites was comparable, compensation was disproportionate.

41. George Brown Tindall, *The Emergence of the New South, 1913-1945* (Baton Rouge, 1967), 165-66; David Chalmers, "The Ku Klux Klan in the Sunshine State: The 1920's," *Florida Historical Quarterly,* XLII (January 1964), 210.
42. Tindall, *Emergence of the New South,* 155.
43. Howard Kester, "The Lynching of Claude Neal," NAACP pamphlet published in 1934, copy in author's possession.
44. Tindall, *Emergence of the New South,* 551.

For example, black school teachers in the 1930s in one north Florida county earned from $37.50 to $40 per month, slightly less than half the salaries of their white counterparts.[45] At that time Confederate veterans were drawing pensions of $37.50 per month. Even the New Deal programs of the national government, designed to relieve the poverty of the 1930s, were affected by racism. Relief administrations in Jacksonville established a formula which gave forty-five per cent of the available funds to Negroes and fifty-five per cent to whites, while black relief families outnumbered white by three to one.[46] Florida Negroes were often denied access to the work-relief programs of the Civilian Conservation Corps and the National Youth Administration on the grounds that they were unqualified to meet admission standards.[47]

By the time Claude Neal was lynched in 1934 forces outside the state were already undercutting the racial status quo. Negro migration into northern cities had created potential black political power. Breaking traditional ties with the Republican party, large numbers of urban blacks voted for Franklin D. Roosevelt in 1936, beginning an alliance with the national Democratic party which still exists. The NAACP had gained considerable attention by its publicity of lynching statistics and its lobbying for an anti-lynch law. It won its first school desegregation case at the graduate level in 1937. In World War II blacks made significant gains in the armed services and in defense jobs at home. Further migrations out of the South occurred. The Truman administration called for fair employment practices and the 1948 Democratic platform endorsed the idea. The military services were integrated in 1949.

Despite all these changes, the 1954 United States Supreme Court decision in *Brown* v. *Board of Education of Topeka* and its 1955 directive to integrate the public schools with "all deliberate speed" fell like a bombshell on Florida and the other southern states. The Florida attorney general sent to the court the results of a study by social scientists showing that attempts to integrate the state's schools would cause violence. On the basis of the report he asked for a stay of execution of the

45. *Monticello News,* June 3, 1932.
46. Tindall, *Emergence of the New South,* 547.
47. *Ibid.,* 547-48.

decision. Some public officials said the court decision was too soon; others said it was an invasion of state rights and a usurpation of legislative power by the courts. State Senator John Rawls of Marianna introduced a resolution in the legislature which emphasized that the constitution of Florida added "legal force to the time honored custom and native inclination of the people of Florida, both negro and white, to maintain . . . a segregated public school system . . . integration . . . in the public schools . . . would tend to encourage the . . . unnatural, . . . abhorrent, execrable, and revolting practice of miscegenation."[48]

White Floridians girded themselves to resist. With a full range of laws requiring segregation and the widespread belief in state rights, theirs was a formidable defensive arsenal. Because the segregation laws conformed so closely to the social values of white Floridians, they emphasized the primacy of state legislation and branded the United States Supreme Court a usurper. Opponents of integration eventually destroyed much of the creditability of the national court system by emphasizing the clash of state law with the court. It was at this point that the "Jim Crow" laws were crucial, Instead of having to face the basic question of how a state could distinguish between its citizens by law, segregationists were able to attack the integrity of the agency which raised the question. It was much more satisfying to defend the right of the state against invasions of the national court than to defend the "Jim Crow" system on its dubious merits.

Governor LeRoy Collins's unwillingness to defy the court was a setback, but he promised to use all lawful efforts to maintain segregation while at the same time calling on Floridians to obey the law of the land.[49] The legislature went beyond the governor's position, passed a resolution calling on him to interpose the authority of the state to protect Florida citizens from any effort of the national government to enforce the Brown decision, and enacted legislation providing for the closing of the schools if the United States used force to integrate them.[50] Representative Mallory Horne of Leon County led an effort to

48. Florida *Senate Journal,* 1955, 183.
49. Joseph A. Tomberlin, "Integration and Education in Florida: The First Decade, 1954-1964" (M.A. thesis, Florida State University, 1964), 58.
50. *Ibid.,* 78, 84.

restrict the authority of the court, and many Floridians prepared to *defend the law by resisting* the Brown decision.

The moderation of Governor Collins made an immense difference in Florida. Despite the attorney general's warnings of incipient violence, and amidst reports of disruptions in other states, Florida passed through this "Second Reconstruction" with markedly little actual violence. Although there was almost no progress toward school integration for years after the Brown decision, the civil rights movement broadened to other areas and accelerated. White Floridians retreated slowly, resisting each attack on their social system by referring to the state laws. Gradually the national court system negated those laws. With constant pressure from the courts, and belatedly from Congress and the president, the legal framework of segregation crumbled.

But the initiative came almost entirely from outside the state. Some Floridians, exasperated at the national government's interference, argued that they had been gradually working out solutions for the racial problem before the Brown decision. Some social scientists argue that as a rural, agricultural society becomes urban and industrialized that racial segregation breaks down because it cannot function in such a society. However that may be, there was little change in the racial caste system in Florida until the nation once more became interested in it. The hideous lynchings of the early twentieth century ceased when Congress started seriously considering anti-lynching legislation. Education funds went to Negro schools in larger quantity as the NAACP began winning its desegregation cases. New congressional legislation on civil rights, public accommodations, and voting spearheaded changes in these areas.

With assistance from the national courts and marshals, blacks moved from the back of the buses, sat down at public lunch counters, came down out of the theater balconies, attended previously all-white schools at least in small numbers, and moved into the mainstream of Florida society in countless ways which had been denied them by both law and custom in the past. It was still a piece-meal movement, and social approval of segregation was still strong among whites, but the "Jim Crow" legal system had been nullified by the late 1960s.

Florida society still retains some of its traditional segregation.

Negroes still live mostly in the less desirable sections of towns. Many white families have taken their children from the public schools and sent them to "Christian" schools which cropped up rapidly after 1968. But there is a significant difference. Supported by custom *and the law* only a few years ago, segregation and its correlative of white supremacy and black inferiority were taken for granted by most political and other opinion leaders. Some applauded it as beneficial and even necessary for the South. Gubernatorial candidate Bill Hendricks campaigned throughout Florida in the 1950s as the Ku Klux Klan candidate.[51] White supremacists rested confidently and comfortably with their views, knowing that they were supported by the laws of the state.

That has changed. Few Floridians now speak publicly against basic civil rights for blacks. Racial jokes have moved from most drawing rooms into the rest rooms. Denial of the legal sanction for segregation has reversed the burden of public approval. It is no longer popular to advocate segregation, at least directly. Those who believe in it are on the defensive. In the 1974 election, Jeff Latham, a candidate for statewide office ruined his creditability and his chances for election when he admitted appealing for support from a racist organization.[52]

It is difficult to change the values of society by law– or in the jargon of the capitol hallways "You can't legislate morality"– but it is possible to take away the legal basis for repugnant practices. "Jim Crow" legislation had provided an immense reinforcement of a segregated society and the rationale for it. Its repeal was difficult because it complemented the values of the most powerful groups of Florida society. But once that legislation was nullified, segregationists found themselves on the opposite side of the law. Interposition was a last-ditch effort to justify the system in terms of state sovereignty along lines enunciated by John C. Calhoun more than a century earlier and negated by the Civil War. The state rights defense was gradually discredited in the 1960s by repeated revelations of

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51. Bill Hendricks campaigned as the Ku Klux Klan candidate for governor in 1952, 1956, and 1966.
52. Jeff Latham, candidate for the office of treasurer and insurance commissioner, sought and received support from the Ku Klux Klan. When challenged by newsmen, he refused to repudiate that organization's backing. Thomas O'Malley defeated Latham, despite serious charges of malfeasance pending against the former.

southern law enforcement officials using the color of law to commit criminal acts in defense of segregation.

Finally forced to the basic question of how to justify segregation on its merits in terms of mid-twentieth century America and without the support of "Jim Crow" laws– much as their ancestors had had to deal with the problem of converting slaves to freedmen in 1865-1866– white Floridians have exerted remarkable effort to overcome their segregationist views. They have come far from the time when violence was justified on the ground of the necessity for white supremacy. Many people who still prefer a segregated society restrain themselves from open advocacy of it. And most important of all, most Floridians are willing to accept recent changes, albeit sometimes reluctantly, because they are reinforced by the law.

Racial divisions of American society persist and have become a national problem, but they are no longer being dealt with at the level to which they had descended in the early twentieth century. Americans have probably gone as far toward an integrated society as legal changes will take them. Difficulties encountered with the Supreme Court's "busing" decisions reveal the limits on law as a positive force. Legal provisions cannot diverge too far from custom and belief without disruption. But the disparity is not as great in 1977 as in 1867-1868 when the "black code" was replaced by laws calling for equality. With time– history– and tolerance, custom and the law will once more coincide as they did for white Floridians before 1860.