History of Racial Segregation in the United States

By John Hope Franklin

THE enactment of state segregation statutes is a relatively recent phenomenon in the history of race relations in the United States. Of course there had been numerous segregation practices and some segregation statutes for many years, even before the nineteenth century. But it was not until the final quarter of the nineteenth century that states began to evolve a systematic program of legally separating whites and Negroes in every possible area of activity. And it was not until the twentieth century that these laws became a major apparatus for keeping the Negro "in his place." They were both comprehensive and generally acceptable, because they received their inspiration from a persistent and tenacious assumption of the innate inferiority of the Negro and because they had their roots deep in the ante-bellum period.[1]

Legacy of the Slave Regime

For centuries many Northerners and Southerners subscribed to the view that Negroes were of a permanently inferior type. As slavery came to be concentrated in the Southern states and as that section became conspicuous by the tenacity with which it held on to slavery, it built its defenses of the institution along lines of the inferiority of the Negro. A whole body of thought was set forth to demonstrate that "the faculties of the Negro, as compared with those of the Saxon, qualified him for a state of servitude and made him unfit for the enjoyment of freedom."[2] Slavery was, therefore, the natural lot of the Negro; and any efforts to elevate him to the status of freedom and equality were manifestly in opposition to the laws of nature and of God.

The slaveholder's task of keeping the Negro slave in his place was complicated by the presence of several hundred thousand Negroes who were not slaves, although they can hardly be described as wholly free. So that they would not constitute a threat to the slave regime, free Negroes were denied the full rights and privileges of citizens. They enjoyed no equality in the courts, their right to assemble was denied, their movements were circumscribed, and education was withheld. Their miserable plight caused them to be unfavorably compared with slaves and confirmed the views of many that Negroes could not profit by freedom. They were regarded as the "very drones and pests of society," pariahs of the land, and an incubus on the body politic.

Outside the South free Negroes fared

[1] For an illuminating discussion of the assumptions of the inferiority of the Negro see Guion Griffis Johnson, "The Ideology of White Supremacy, 1876–1910," in Fletcher M. Green (Ed.), *Essays in Southern History Presented to Joseph Grégoire de Roulhac Hamilton* (Chapel Hill: University of North Carolina Press, 1949), pp. 124–56.

[2] William S. Jenkins, *Pro-Slavery Thought in the Old South* (Chapel Hill: University of North Carolina Press, 1935), p. 243. See also Albert T. Bledsoe, "Liberty and Slavery, or Slavery in the Light of Moral and Political Philosophy," and Samuel C. Cartwright, "Slavery in the Light of Ethnology," in E. N. Elliott, *Cotton Is King, and Pro-Slavery Arguments* (Augusta, Ga.: Pritchard, Abbott and Loomis, 1860), pp. 271–458, 691–728.

only slightly better. White Christians began to segregate them in the churches in the first decade of the national period, and Negroes in Philadelphia and New York City withdrew rather than accept this humiliation. As early as 1787 a white philanthropic organization opened a separate school for Negroes in New York City. In 1820 the city of Boston established a Negro elementary school. Separate schools became the practice throughout the North. When Charles Sumner challenged the constitutionality of segregated schools in Massachusetts in 1849, his position was bitterly opposed; and it was not until 1855 that the legislature of that state abolished them. Meanwhile numerous acts of violence in urban communities underscored Northern hostility to free Negroes. Between 1830 and 1840 anti-Negro riots occurred in Utica, Palmyra, New York City, and Philadelphia.

These ante-bellum experiences with free Negroes proved invaluable in the period following the close of the Civil War. In 1865 white Southerners were not "caught short" in facing the problem of the freedmen. From their point of view the former slaves simply augmented the group of free Negroes that they already regarded as "the most ignorant . . . vicious, impoverished, and degraded population of this country." [3] Thus, the whites merely applied to the former slaves the principles and practices that had guided them in their relations with ante-bellum free Negroes. The latter had subsisted somewhere in the hazy zone between slavery and freedom. To concede the freedmen this "place" was regarded by white Southerners as generous, the Emancipation Proclamation and the Reconstruction amendments to the contrary notwithstanding.

[3] From a statement by Howell Cobb, quoted in Jenkins, *op. cit.* (note 2 *supra*), p. 246.

NEW LAWS, OLD RELATIONSHIPS

When the economic and social structure of the Old South toppled at the end of the Civil War, the ex-Confederates immediately began to erect a new structure based on the old philosophy. As a distinguished Southern writer put it not many years ago, "If the war had smashed the Southern world, it had left the Southern mind and will—the mind and will arising from, corresponding to, and requiring this world—entirely unshaken." [4] The smoke of battle had hardly cleared when the vanquished leaders, enjoying a remarkable amount of autonomy, began to fashion their new world upon the model of the old. With characteristic directness of action they went straight to the heart of their problem and worked out ways and means of holding on to the way of life that had meant so much to them.

As the ex-Confederates proceeded to restore order in their war-torn communities, they took little cognizance of the implications of the Emancipation Proclamation and the proposed Thirteenth Amendment. The major assumptions of the slave regime, the cornerstone of which was the permanent inferiority of the Negro, were still so powerful as to be controlling in most matters involving Negroes. While making some concessions, such as the competency of Negroes to testify in the courts, they nullified almost every semblance of freedom with numerous proscriptive laws. Mississippi legislators passed laws forbidding Negroes to rent or lease lands except in incorporated towns. They also enacted a law requiring every Negro, after January 1, 1866, to carry on his person written evidence that he had a home and an occupation. Louisiana forbade Negroes

[4] W. J. Cash, *The Mind of the South* (New York: Alfred A. Knopf, 1941), p. 103.

to move about in certain parishes or to be out at night without special permits. North Carolina extended to the freedmen the same privileges, burdens, and disabilities that had previously applied to free persons of color.

That the races should be kept apart, except where the whites were clearly in a superior role, was an important feature of most codes. Louisiana required that every Negro be in the regular service of some white person who was held responsible for his conduct. Mississippi forbade employees of railroads to permit Negroes to ride in first-class cars with white persons, except in the case of Negroes or mulattoes, "traveling with their mistress, in the capacity of maids." Many states provided that if Negro offenders could not pay their fines they were to be hired out to "any white person" who would pay the fines and costs and take the convicts for the shortest period of time.

Negroes were not indifferent to the process by which their former masters and their associates were nullifying the gains of the war. While they displayed no spirit of vindictiveness against those who had held them in slavery, they manifested a firm determination to secure the rights to which they, as free men, were entitled.[5] The better educated and the more articulate among them assumed the leadership in expressing apprehension regarding the developments that were pushing them back toward slavery. They were especially concerned about the numerous acts of violence perpetrated against the freedmen, the burning of their schools and churches, and the economic proscriptions to which they were subjected. In Harrisburg, Pittsburgh, Indianapolis, and Cleveland they met in conventions and solicited the support of their Northern fellows in the effort to attain first-class citizenship. In Alexandria, Norfolk, Raleigh, Charleston, and other Southern communities they met, exchanged views, and addressed appeals to Southerners, Northerners, and federal officials. These supplications fell on deaf ears in the South, but they contributed to the increasing awareness elsewhere that the victory at Appomattox was empty.

[5] On the point of the absence of vindictiveness among Negroes see Francis B. Simkins, "New Viewpoints of Southern Reconstruction," *Journal of Southern History,* Vol. 5 (February 1939), pp. 49–61.

FEDERAL INTERVENTION

The ex-Confederates looked upon the lenient Reconstruction policies of Lincoln and Johnson, which gave them virtual autonomy in every phase of life, as a normal concession to a section which was right on all the basic points in the dispute that led to the war. In the North, however, many people viewed the policy of leniency with skepticism from the outset; and congressional leaders made no secret of the fact that they regarded the resultant Presidential actions as unwise and improper, if not actually illegal. The first significant assertion of their own prerogatives was the passage of the Freedmen's Bureau Bill in March 1865, which called for an extensive program of relief and rehabilitation in the South.

The Bureau's establishment of schools for the former slaves and its attempt to protect them in their relations with white employers were especially obnoxious to the white Southerners. They were loud in their condemnation of both these features of the Bureau's program, calling them incendiary, radical, and political. They realized all too well the adverse effect that a successful prosecution of the program would have on the continued subordination of Negroes. The attempts of whites to drive out teachers of Negroes and to assert their authority over their employees were

well calculated to subvert the program of complete emancipation and to preserve the old relationships between Negroes and whites.

The findings of the Joint Committee on Reconstruction, established by Congress in 1865, convinced a majority of congressional members that federal intervention was necessary to salvage the victory over the South. The committee was of the opinion that there was in the South "no general disposition to place the colored race . . . upon terms even of civil equality" and that no semblance of order could be maintained without the interposition of federal authority.[6] In accordance with the recommendation of the Joint Committee, Congress proceeded to enact a civil rights measure, to submit the Fourteenth Amendment to the states, and to pass a series of laws placing the reconstruction of the former Confederate states under congressional control.

Civil Rights Act of 1866

The Civil Rights Act that became law on April 9, 1866, defined citizenship so as to include Negroes. Senator Lyman Trumbull of Illinois said that the purpose of the bill was to destroy the discrimination against the Negro in the laws of Southern states and to make effective the Thirteenth Amendment.[7] White Southerners were, of course, outraged that Congress should undertake to guarantee the equality of Negroes, especially since the law had been enacted in the absence of representatives from the former Confederate states. As a matter of fact, fear that at some later date a majority of Congress or a federal court would strike down the Civil Rights Act was an important motivation for writing the provisions of the act into the Fourteenth Amendment.[8]

Fourteenth Amendment

During the debates on the resolution that was to become the Fourteenth Amendment the question arose as to whether the proposed amendment protected Negroes against discrimination and segregation. There was no agreement, but proponents of the amendment were optimistic regarding its effect. In supporting the amendment, Senator Jacob M. Howard of Michigan said that the equal protection clause "abolishes all class legislation in the states and does away with the injustice of subjecting one caste of persons to a code not applicable to another." Representative John Bingham of Ohio declared that the amendment would protect "by national law the privileges and immunities of all the citizens of the Republic and the inborn rights of every person within its jurisdiction whenever the same shall be abridged or denied by the unconstitutional acts of any state" [9]

Southern resistance

Neither the Fourteenth Amendment nor the radical legislation embodied in congressional Reconstruction was sufficient to protect the Negro in his political and civil rights. Southern resistance was stiff and effective, while efforts at enforcement left much to be desired. Once they recovered from the initial staggering blow of Radical Reconstruction legislation the ex-Confederates grimly went about the task of nullifying it in every possible way. By violence, intimidation, and ingenious

[6] *Report of the Joint Committee on Reconstruction, at the First Session Thirty-ninth Congress* (Washington: Government Printing Office, 1866), p. xvii.

[7] Horace Edgar Flack, *The Adoption of the Fourteenth Amendment* (Baltimore, Md.: The Johns Hopkins Press, 1908), p. 21.

[8] *Ibid.*, pp. 75–87, and Benjamin B. Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction* (New York: Columbia University Press, 1914), pp. 267–69.

[9] *Congressional Globe,* Thirty-ninth Congress, First Session (Washington: F. and J. Rives, 1866), pp. 2766, 2459.

schemes of economic pressure, by increased participation in political affairs, they began to "redeem" their state governments. Neither the Fifteenth Amendment nor the Ku Klux Klan Acts could stem the tide. In one state after another, between 1870 and 1877, they were successful; and as they took over the Southern state governments, they began to enact laws to separate Negroes and whites.

Civil Rights Act of 1875

Congress, against the bitter opposition of the ex-Confederates who were taking over the seats the Radicals had occupied, made one final effort to prevent the destruction of the rights of Negroes. Between 1871 and 1875 it devoted much attention to various proposals for a comprehensive national civil rights bill. While the act that was passed in 1875 omitted the provision of earlier drafts requiring the admission of persons regardless of race to all public schools, it declared that all persons, regardless of race or color, should be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, theaters, and other places of public amusement. In its scope and in its provisions for enforcement it far surpassed anything that had ever been done in the area of protecting the civil rights of Negroes.

Although the Southern whites viewed the Act of 1875 with utter contempt and violated it with impunity, they were not entirely comfortable so long as it was on the statute books. They found it impossible, therefore, to restrain their elation when the Supreme Court declared the act unconstitutional in 1883. When the decision was announced during a performance at the Atlanta Opera House, the audience broke into "such a thunder of applause . . . as was never before heard within the walls of the opera house." [10] An Arkansas newspaper expressed hearty agreement with the majority of the Court when it said, "Society is a law unto itself, which in matters social in their nature overrides the statutes. Against its decrees the written law is powerless." [11]

SEGREGATION—THE FAVORABLE CLIMATE

Before the momentous decision in the Civil Rights Cases in 1883 segregation by statutes was confined to a relatively few but highly important areas. In many states, for example, the laws against intermarriage preceded the Civil War by many years.[12] Although they were omitted from some state codes during Reconstruction, there was no wholesale repeal of them, and they remained in effect in many parts of the North as well as in the South.[13] The practice of maintaining separate schools for white and Negro children was well established in the North before the Civil War; and in the South if ex-Confederates provided schools for Negro children at all they were of course separate. Although the Radicals made some attempts to break down segregated schools during their brief period of control, they met with little success.[14] In the military services Negroes had almost always been

[10] Atlanta *Constitution,* October 16, 1883.

[11] Little Rock *Daily Arkansas Gazette,* October 19, 1883.

[12] Intermarriage was prohibited in Arkansas in 1838; in Louisiana in 1810. For a discussion of these statutes see Charles S. Mangum, *The Legal Status of the Negro* (Chapel Hill: University of North Carolina Press, 1940), pp. 236–73.

[13] Gilbert Thomas Stephenson, *Race Distinctions in American Law* (New York: D. Appleton and Company, 1910), pp. 78–101.

[14] Francis B. Simkins and Robert H. Woody, *South Carolina During Reconstruction* (Chapel Hill: University of North Carolina Press, 1932), pp. 439–42, and T. Harry Williams, "The Louisiana Unification Movement of 1873," *Journal of Southern History,* Vol. 11 (August 1945), p. 362.

segregated, and the Civil War did much to strengthen the practice.

The decision in the Civil Rights Cases was an important stimulus to the enactment of segregation statutes. It gave the assurance the South wanted that the federal government would not intervene to protect the civil rights of Negroes. The decision coincided, moreover, with a series of political and intellectual developments that greatly accelerated the program of segregation. In the eighties several Southern governments were embarrassed by financial scandals, and some of them outstripped the Reconstruction governments in defalcations and pilfering.[15] Meanwhile, the agrarian unrest induced by widespread economic distress frightened the conservatives and forced them to adopt extreme measures in order to regain the leadership which in some states they had temporarily lost to white and Negro Populists. Distressed by the possibility of a strong new party composed of white and Negro farmers and workers, they dominated the Negro vote where they could and expressed grave fears of "Negro domination" where they could not. Thus, the magical formula of white supremacy, "applied without stint and without any of the old reservations of paternalism, without deference to any lingering resistance of Northern liberalism, or any fear of further check from a defunct Southern Populism," gained ascendancy in the final decade of the nineteenth century.[16]

These were the years that witnessed the effective constitutional disfranchisement of Negroes by such devices as understanding clauses, grandfather clauses, and good conduct clauses. They also saw the launching of an intensive propaganda campaign of white supremacy, negrophobia, and race chauvinism, supported by a sensational and irresponsible press that carried lurid stories of alleged Negro bestiality. New waves of violence broke out, with increased lynchings of Negroes, unspeakable atrocities against them, and race riots. Concurrently, and at a "higher level," the literary and scientific leaders of the South wrote numerous tracts and books designed to "prove" the inhumanity of the Negro.[17] In this climate segregation took a giant step toward a fully developed white supremacy apparatus.

SEGREGATION STATUTES—THE GIANT STEP

In the decade after the Civil War few laws were enacted demanding segregation. The first state segregation statutes were those of Mississippi and Florida in 1865, requiring segregation on public carriers. Texas followed in 1866, but five years later repealed the act. The Tennessee law of 1881, sometimes referred to as the first Jim Crow law, directed railroad companies to provide separate cars or portions of cars for first-class Negro passengers, instead of relegating them to second-class accommodations as had been the custom. There were only two votes against the measure in the House and one in the Senate.

In the ensuing twenty years separation of Negroes and whites on public carriers became a favorite preoccupation of Southern legislators. By 1892

[15] C. Vann Woodward, *Origins of the New South, 1877–1914* (Baton Rouge: Louisiana State University Press, 1951), pp. 67–70.

[16] C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1955), p. 65.

[17] See the books by Thomas Dixon, notably *The Leopard's Spots: A Romance of the White Man's Burden—1865–1900* (New York: Doubleday, Page & Company, 1902); Charles Carroll, *"The Negro a Beast;" or, "In the Image of God"* . . . (St. Louis, Mo.: American Book and Bible House, 1900); and Robert W. Shufeldt, *The Negro, A Menace to American Civilization* (Boston: R. G. Badger, 1907).

six other Southern states had joined the ranks—Texas, Louisiana, Alabama, Arkansas, Georgia, and Kentucky. In some states, however, opposition had been bitter. In Louisiana, for example, a Negro representative declared that the law would humiliate Negroes and "make them appear before the world as a treacherous and a dangerous class of people." [18] In Arkansas a Negro member of the House sought to ridicule the bill's supporters by insisting that if whites did not want to associate with Negroes there should be laws to divide the streets and sidewalks so that Negroes could go on one side and white people on the other. "He would like to see an end put to all intercourse between white and colored people by day, and especially by night." [19]

With the pattern firmly established in a number of Southern states and the pressure for segregation growing, the other Southern states followed before the end of the century. South Carolina passed its law segregating Negroes and whites on railroads in 1898; North Carolina, Virginia, and Maryland soon after. When Oklahoma entered the Union in 1907 segregation had already been provided for.

By this time laws were being extended to cover all activities related to transportation. In 1888 the railroad commission of Mississippi was authorized to designate separate waiting rooms for Negroes and whites. By 1893 the railroad companies, on their own initiative, were doing the same thing in South Carolina, and in 1906 the state required separation of the races in all station restaurants and eating houses. Ultimately, legislation covered steamboats, buses, and other forms of transportation.

[18] *Louisiana House Journal, Second Session, 1890,* pp. 202–203.

[19] Little Rock *Arkansas Gazette,* February 14, 1891.

Twentieth-century varieties

The first decade of the twentieth century witnessed the enactment of a wide variety of segregation statutes. Georgia had required separation of the races on streetcars as early as 1891. It was between 1901 and 1907, however, that North Carolina, Virginia, Louisiana, Arkansas, South Carolina, Tennessee, Mississippi, Maryland, Florida, and Oklahoma followed suit. Ordinances in Southern cities were even more specific than state laws. In 1906, for example, the city of Montgomery, Alabama, went so far as to insist that Negroes and whites use separate streetcars.

Wards of society—still separated

As the states assumed greater responsibility for the various wards of society they were careful to provide separate facilities for whites and Negroes. In 1875 Alabama made it unlawful for any jailer or sheriff to imprison white and Negro prisoners before conviction in the same apartments of the jail, if there were sufficient separate apartments, and ten years later prohibited the chaining of white and Negro convicts together or housing them together. In 1903 Arkansas directed that in the state penitentiary and in county jails, stockades, convict camps, and all other places where prisoners were confined, separate apartments should be provided and maintained for white and Negro prisoners. Within the next ten years most of the other Southern states had similar legislation. During the same period segregation of white and Negro insane, feeble-minded, blind and deaf, paupers, tubercular patients, and juvenile delinquents was provided for.

No detail too small

In rounding out the system of legal segregation some states provided for the separation of whites and Negroes at

work, at play, and at home. In 1915 South Carolina forbade textile factories to permit employees of different races to work together in the same room, or to use the same entrances, pay windows, exists, doorways, stairways, or windows at the same time, or the same lavatories, toilets, drinking-water buckets, pails, cups, dippers, or glasses at any time. In 1905 Georgia passed a law making illegal the use by Negroes and whites of the same park facilities; individuals were permitted to donate land for playground use only if they specified which race alone was to make use of it. Until 1940 Negroes and whites in Atlanta, Georgia, were not permitted to visit the municipal zoo at the same time. In 1929 Oklahoma authorized the Conservation Commission to segregate the races in the use of fishing, boating, and bathing facilities on lakes and streams under the supervision of the state. Arkansas enacted a law in 1935 requiring the separation of Negroes and whites at all race tracks and gaming establishments. Beginning in 1910 several cities, among them Baltimore, Atlanta, and Louisville, passed ordinances designating certain blocks, territories, and districts as Negro or white and forbidding members of one race to live in the area assigned to the other. Such zoning laws, however, were declared unconstitutional in 1917.

The supply of ideas for new ways to segregate whites and Negroes seemed inexhaustible. In 1915 Oklahoma authorized the Corporation Commission to order telephone companies to maintain separate booths for white and Negro patrons. North Carolina and Florida provided that textbooks used by the children of one race be kept separate from those used by children of the other race, despite the fact that both states have stringent rules covering fumigation of textbooks. In 1922 Mississippi forbade members of both races to ride in taxicabs at the same time unless the vehicle held more than seven passengers and was traveling from one city to another. New Orleans deemed it in the interest of the public welfare to enact an ordinance separating Negro and white prostitutes.

Two worlds—roads closed

The law had created two worlds, so separate that communication between them was almost impossible. Separation bred suspicion and hatred, fostered rumors and misunderstanding, and created conditions that made extremely difficult any steps toward its reduction. Legal segregation was so complete that a Southern white minister was moved to remark that it "made of our eating and drinking, our buying and selling, our labor and housing, our rents, our railroads, our orphanages and prisons, our recreations, our very institutions of religion, a problem of race as well as a problem of maintenance." [20]

EXTRALEGAL ASPECTS

Yet law was only one part of the mechanism keeping the races segregated. Numerous devices were employed to perpetuate segregation in housing, education, and places of public accommodation even in communities where civil rights statutes forbade such practices. Patriotic, labor, and business organizations kept alive the "Lost Cause" and all that it stood for, including the subordination of the Negro. Separate Bibles for oath taking in courts of law, separate doors for whites and Negroes, separate elevators and stairways, separate drinking fountains, and separate toilets existed even where the law did not require them. Finally, there was

[20] Edgar Gardner Murphy, *The Basis of Ascendancy* (New York: Longmans, Green & Company, 1909), p. 138.

the individual assumption of responsibility for keeping Negroes in their place, such as the white man who placed a rod across the boat to segregate his Negro fishing companion while they ate lunch, and the archivist of a Southern state who cleared a room of manuscripts, ordered a special key, and assigned an attendant to serve a visiting Negro scholar who would otherwise have had to use the regular search room, from which he was not barred by law.[21]

By the middle of the twentieth century the pattern of segregation was as irregular as it was complex. Every conceivable form of segregation had been evolved, although one would have to visit many places to observe all the variations. The wall of segregation had become so formidable, so impenetrable, apparently, that the entire weight of the American tradition of equality and all the strength of the American constitutional system had to be brought to bear in order to make even the slightest crack in it.

[21] For numerous examples of the informal but tenacious practices of segregation see Charles S. Johnson, *Patterns of Negro Segregation* (New York: Harper and Brothers, 1943).

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