

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 6: The Civil War and Reconstruction—Equality/Race/Implementing the Thirteenth Amendment

The Mississippi Black Code (1865)¹

The black codes were the legal means by which white southerners immediately after the passage of the Thirteenth Amendment maintained white supremacy. Every state that joined the Confederacy passed laws limiting the employment, political, legal, and personal opportunities of all persons of color. Former slaves were required to make contracts with planters, often on restrictive conditions. They faced criminal sanctions if they broke those contracts in an effort to improve their economic lot. Laws forbade persons of color from traveling without official permission, from testifying in court, and from owning weapons. A prominent citizen of Mississippi explained the rationale for such restrictions on persons of color when he declared, "I have but little faith in Negro labor unless our state can make sufficient laws to require the negro to remain in one place and labor."²

The following provisions are from the Mississippi Black Code, enacted in 1865. Compare the restrictions on free blacks with antebellum restrictions on free blacks. Did the status of free blacks in Mississippi remain the same or worsen after 1865? Under what, if any, understanding of slavery might these codes be consistent with the Thirteenth Amendment? Are they best understood as a legal attempt to promote as much white supremacy as legally plausible or did the former Confederates who passed these measures simply hope to do whatever was politically possible to promote white supremacy?

Apprentice Law

Section 1. *Be it enacted by the legislature of the state of Mississippi*, that it shall be the duty of all sheriffs, justices of the peace, and other civil officers of the several counties in this state to report to the Probate courts of their respective counties semiannually, at the January and July terms of said courts, all freedmen, free Negroes, and mulattoes under the age of eighteen within their respective counties, beats, or districts who are orphans, or whose parent or parents have not the means, or who refuse to provide for and support said minors; and thereupon it shall be the duty of said Probate Court to order the clerk of said court to apprentice said minors to some competent and suitable person, on such terms as the court may direct, having a particular care to the interest of said minors:

...

Section 4. *Be it further enacted*, that if any apprentice shall leave the employment of his or her master or mistress without his or her consent, said master or mistress may pursue and recapture said apprentice and bring him or her before any justice of the peace of the county, whose duty it shall be to remand said apprentice to the service of his or her master or mistress.

Section 5. *Be it further enacted*, that if any person entice away any apprentice from his or her master or mistress, or shall knowingly employ an apprentice, or furnish him or her food or clothing, without the written consent of his or her master or mistress, or shall sell or give said apprentice ardent spirits, without such consent, said person so offending shall be deemed guilty of a high misdemeanor,

¹ Excerpt taken from Edward McPherson, ed., *A Political Manual for 1866 and 1867* (Washington, DC; n.p., 1867), 29–32.

² Eric Foner, *Reconstruction: America's Unfinished Revolution: 1863–1877* (New York: Harper & Row, 1988), 198.

and shall, on conviction thereof before the county court, be punished as provided for the punishment of persons enticing from their employer hired freedmen, free Negroes, or mulattoes.

Vagrancy Law

Section 2. *Be it further enacted*, that all freedmen, free Negroes, and mulattoes in this state over the age of eighteen years found on the second Monday in January 1866, or thereafter, with no lawful employment or business, or found unlawfully assembling themselves together either in the day or nighttime, and all white persons so assembling with freedmen, free Negroes, or mulattoes, or usually associating with freedmen, free Negroes, or mulattoes on terms of equality, or living in adultery or fornication with a freedwoman, free Negro, or mulatto, shall be deemed vagrants; and, on conviction thereof, shall be fined in the sum of not exceeding, in the case of a freedman, free Negro, or mulatto, \$150, and a white man, \$200, and imprisoned at the discretion of the court, the free Negro not exceeding ten days, and the white man not exceeding six months.

...
Section 5. *Be it further enacted*, that all fines and forfeitures collected under the provisions of this act shall be paid into the county treasury for general county purposes; and in case any freedman, free Negro, or mulatto shall fail for five days after the imposition of any fine or forfeiture upon him or her for violation of any of the provisions of this act to pay the same, that it shall be, and is hereby made, the duty of the sheriff of the proper county to hire out said freedman, free Negro, or mulatto to any person who will, for the shortest period of service, pay said fine or forfeiture and all costs:

Civil Rights of Freedmen

...
Section 3. *Be it further enacted*, that all freedmen, free Negroes, and mulattoes who do now and have heretofore lived and cohabited together as husband and wife shall be taken and held in law as legally married, and the issue shall be taken and held as legitimate for all purposes. That it shall not be lawful for any freedman, free Negro, or mulatto to intermarry with any white person; nor for any white person to intermarry with any freedman, free Negro, or mulatto; and any person who shall so intermarry shall be deemed guilty of felony and, on conviction thereof, shall be confined in the state penitentiary for life; and those shall be deemed freedmen, free Negroes, and mulattoes who are of pure Negro blood; and those descended from a Negro to the third generation inclusive, though one ancestor of each generation may have been a white person.

Section 4. *Be it further enacted*, that in addition to cases in which freedmen, free Negroes, and mulattoes are now by law competent witnesses, freedmen, free Negroes, or mulattoes shall be competent in civil cases when a party or parties to the suit, either plaintiff or plaintiffs, defendant or defendants, also in cases where freedmen, free Negroes, and mulattoes is or are either plaintiff or plaintiffs, defendant or defendants, and a white person or white persons is or are the opposing party or parties, plaintiff or plaintiffs, defendant or defendants. They shall also be competent witnesses in all criminal prosecutions where the crime charged is alleged to have been committed by a white person upon or against the person or property of a freedman, free Negro, or mulatto:

Section 5. *Be it further enacted*, that every freedman, free Negro, and mulatto shall, on the second Monday of January 1866, and annually thereafter, have a lawful home or employment, and shall have a written evidence thereof, as follows, to wit: if living in any incorporated city, town, or village, a license from the mayor thereof; and if living outside of any incorporated city, town, or village, from the member of the board of police of his beat, authorizing him or her to do irregular and job work, or a written contract, as provided in Section 6 of this act, which licenses may be revoked for cause, at any time, by the authority granting the same.

Section 6. *Be it further enacted*, that all contracts for labor made with freedmen, free Negroes, and mulattoes for a longer period than one month shall be in writing and in duplicate, attested and read to

said freedman, free Negro, or mulatto by a beat, city, or county officer, or two disinterested white persons of the county in which the labor is to be performed, of which each party shall have one; and said contracts shall be taken and held as entire contracts; and if the laborer shall quit the service of the employer before expiration of his term of service without good cause, he shall forfeit his wages for that year, up to the time of quitting.

Section 7. *Be it further enacted*, that every civil officer shall, and every person may, arrest and carry back to his or her legal employer any freedman, free Negro, or mulatto who shall have quit the service of his or her employer before the expiration of his or her term of service without good cause, and said officer and person shall be entitled to receive for arresting and carrying back every deserting employee aforesaid the sum of \$5, and 10 cents per mile from the place of arrest to the place of delivery, and the same shall be paid by the employer, and held as a setoff for so much against the wages of said deserting employee:

Penal Code

Section 1. *Be it enacted by the legislature of the state of Mississippi*, that no freedman, free Negro, or mulatto not in the military service of the United States government, and not licensed so to do by the board of police of his or her county, shall keep or carry firearms of any kind, or any ammunition, dirk, or Bowie knife; and, on conviction *thereof in the county court*, shall be punished by fine, not exceeding \$10, and pay the costs of such proceedings, and all such arms or ammunition shall be forfeited to the informer; and it shall be the duty of every civil and military officer to arrest any freedman, free Negro, or mulatto found with any such arms or ammunition, and cause him or her to be committed for trial in default of bail.

Section 2. *Be it further enacted*, that any freedman, free Negro, or mulatto committing riots, routs, affrays, trespasses, malicious mischief, cruel treatment to animals, seditious speeches, insulting gestures, language, or acts, or assaults on any person, disturbance of the peace, exercising the function of a minister of the Gospel without a license from some regularly organized church, vending spirituous or intoxicating liquors, or committing any other misdemeanor the punishment of which is not specifically provided for by law shall, upon conviction thereof in the county court, be fined not less than \$10 and not more than \$100, and may be imprisoned, at the discretion of the court, not exceeding thirty days.

Section 4. *Be it further enacted*, that all the penal and criminal laws now in force in this state defining offenses and prescribing the mode of punishment for crimes and misdemeanors committed by slaves, free Negroes, or mulattoes be and the same are hereby reenacted and declared to be in full force and effect against freedmen, free Negroes, and mulattoes, except so far as the mode and manner of trial and punishment have been changed or altered by law.

Section 5. *Be it further enacted*, that if any freedman, free Negro, or mulatto convicted of any of the misdemeanors provided against in this act shall fail or refuse, for the space of five days after conviction, to pay the fine and costs imposed, such person shall be hired out by the sheriff or other officer, at public outcry, to any white person who will pay said fine and all costs and take such convict for the shortest time.