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NAACP

A Statement
on the
Denial of Human Rights
to minorities
in the case
of
Citizens of Negro Descent
in the
United States of America
and an appeal to the United Nations for redress
prepared
for the
National Association for the Advancement of Colored People
under the editorial supervision
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Chapter I.
Introduction

by

W. E. Burghardt Du Bois

There were in the United States of America, 1940, 12,865,518 native-born citizens, something less than a tenth of the nation, who form largely a segregated caste, with restricted legal rights, and many illegal disabilities. They are descendants of the Africans brought to America during the sixteenth, seventeenth, eighteenth and nineteenth centuries and reduced to slave labor. This group has no complete biological unity, but varies in color from white to black, and comprises a great variety of physical characteristics, since many are the offspring of white European-Americans as well as of Africans and American Indians. There are a large number of white Americans who also descend from Negroes but who are not counted in the colored group nor subjected to caste restrictions because the preponderance of white blood conceals their descent.

The so-called American Negro group, therefore, while it is in no sense absolutely set off physically from its fellow Americans has nevertheless a strong, hereditary cultural unity, born of slavery, of common suffering, prolonged prescription and curtailment of political and civil rights; and especially because of economic and social disabilities. Largely from this fact, have arisen their cultural gifts to America - their rhythm, music and folk-song; their religious faith and customs; their contribution to American art and literature; their defense of their country in every war, on land, sea and in the air; and especially the hard, continuous toil upon which the prosperity and wealth of this continent has largely been built.

The group has long been internally divided by dilemma as to whether its striving upward, should be aimed at strengthening its inner cultural and group bonds, both for intrinsic progress and for offensive power against caste; or whether it should seek escape wherever and however possible into the surrounding American culture. Decision in this matter has been largely determined by outer compulsion rather than inner plan; for prolonged policies of segregation and discrimination have involuntarily welded the mass almost into a nation within a nation with its own schools, churches, hospitals, newspapers and many business enterprises.

The result has been to make American Negroes to wide extent provincial, introvertive, self-conscious and narrowly race-loyal; but it has also inspired them to frantic and often successful effort to achieve, to deserve, to show the world their capacity to share modern civilization. As a result there is almost no area of American civilization in which the Negro has not made creditable showing in the face of all his handicaps.

If, however, the effect of the color caste system on the North American Negro has been both good and bad, its effect on white America has been disastrous. It has repeatedly led the greatest modern attempt at democratic government to deny its political ideals, to falsify its philanthropic assertions and to make its religion to a great extent hypocritical. A nation which boldly declared "That all men are created equal", proceeded to build its economy on chattel slavery; masters who declared race-mixture impossible, sold their own children into slavery and left a mulatto progeny which neither law nor science can today disentangle; churches which excused slavery as calling the heathen to God, refused to recognize the freedom of converts or admit them to equal

communion. Sectional strife over the profits of slave labor and conscientious revolt against making human beings real estate led to bloody civil war, and to a partial emancipation of slaves which nevertheless even to this day is not complete. Poverty, ignorance, disease and crime have been forced on these unfortunate victims of greed to an extent far beyond any social necessity; and a great nation, which today ought to be in the forefront of the march toward peace and democracy, finds itself continuously making common cause with race-hate, prejudiced exploitation and oppression of the common man. Its high and noble words are turned against it, because they are contradicted in every syllable by the treatment of the American Negro for three hundred and twenty-eight years.

Slavery in America is a strange and contradictory story. It cannot be regarded as mainly either a theoretical problem of morals or a scientific problem of race. From either of these points of view, the rise of slavery in America is simply inexplicable. Looking at the facts frankly, slavery evidently was a matter of economics, a question of income and labor, rather than a problem of right and wrong, or of the physical differences in men. Once slavery began to be the source of vast income for men and nations, there followed frantic search for moral and racial justifications. Such excuses were found and men did not inquire too carefully into either their logic or truth.

The twenty Negroes brought to Virginia in 1619, were not the first who had landed on this continent. For a century small numbers of Negroes had been arriving as servants, as laborers, as free adventurers. The southwestern part of the present United States was first traversed by four explorers of whom one was an African Negro. Negroes accompanied early explorers like D'Ayllon and Menendez in the southeastern United

States. But just as the earlier black visitors to the West Indies were servants and adventurers and then later began to appear as laborers on the sugar plantations, so in Virginia, these imported black laborers in 1619 and after, came to be wanted for the raising of tobacco which was the money crop.

In the minds of the early planters, there was no distinction as to labor whether it was white or black; in law there was at first no discrimination. But as imported white labor became scarcer and more protected by law, it became less profitable than Negro labor which flooded the markets because of European slave traders, internal strife in Africa; and because in America the Negroes were increasingly stripped of legal defense. For these reasons America became a land of black slavery, and there arose first, the fabulously rich sugar empire; then the cotton kingdom, and finally colonial imperialism.

Then came the inevitable fight between free labor and democracy on the one hand, and slave labor with its huge profits on the other. Black slaves were the spear-head of this fight. They were the first in America to stage the "sit-down" strike, to slow up and sabotage the work of the plantation. They revolted time after time and no matter what recorded history may say, the enacted laws against slave revolt are unanswerable testimony as to what these revolts meant all over America.

The slaves themselves especially imperiled the whole slave system by escape from slavery. It was the fugitive slave more than the slave revolt, which finally threatened investment and income; and the organization for helping fugitive slaves through Free Northern Negroes and their white friends, in the guise of an underground movement, was of tremendous influence.

Finally it was the Negro soldier as a co-fighter with the whites for independence from the British economic empire which began emancipation. The British bid for his help and the colonials against their first impulse had to bid in return and virtually to promise the Negro soldier freedom after the Revolutionary War. It was for the protection of American Negro sailors as well as white that the war of 1812 was precipitated and, after independence from England was accomplished, freedom for the black laboring class, and enfranchisement for whites and blacks was in sight.

In the meantime, however, white labor had continued to regard the United States as a place of refuge; as a place for free land; for continuous employment and high wage; for freedom of thought and faith. It was here, however, that employers intervened; not because of any moral obliquity but because the Industrial Revolution, based upon the crops raised by slave labor in the Caribbean and in the southern United States, was made possible by world trade and a new and astonishing technique; and finally was made triumphant by a vast transportation of slave labor through the British slave-trade in the eighteenth and early nineteenth centuries.

This new mass of slaves became competitors of white labor and drove white labor for refuge into the arms of employers, whose interests were founded on slave labor. The doctrine of race inferiority was used to convince white labor that they had the right to be free and to vote, while the Negroes must be slaves or depress the wage of whites; western free soil became additional lure and compensation, if it could be restricted to free labor.

On the other hand the fight of the slave-holders against democracy increased with the spread of the wealth and power of the Cotton

Kingdom. Through political power based on slaves they became the dominant political force in the United States; they were successful in expanding into Mexico and tried to penetrate the Caribbean. Finally they demanded for slavery a part of the free soil of the West, and because of this last excessive, and in fact impossible effort, a Civil War to preserve and extend slavery ensued.

This fight for slave labor was echoed in the law. The free Negro was systematically discouraged, disfranchised and reduced to serfdom. He became by law the easy victim of the kidnapper and liable to treatment as a fugitive slave. The Church, influenced by wealth and respectability, was predominately on the side of the slave owner and effort was made to make the degradation of the Negro, as a race, final by Supreme Court decision.

But from the beginning, the outcome of the Civil War was inevitable and this not mainly on account of the predominant wealth and power of the North; it was because of the clear fact that the Southern slave economy was built on black labor. If at any time the slaves or any large part of them, as workers ceased to support the South; and if even more decisively, as fighters they joined the North, there was no way in the world for the South to win. Just as soon then as slaves became spies for the invading Northern armies; laborers for their camps and fortifications, and finally produced 200,000 trained and efficient soldiers with arms in their hands, and with the possibility of a million more, the fate of the slave South was sealed.

Victory however brought dilemma; if victory meant full economic freedom for labor in the South, white and black; if it meant land and education, and eventually votes, then the slave empire was doomed, and the profits of Northern industry built on the Southern slave foundation would also be seriously curtailed. Northern industry had a stake

in the Cotton Kingdom and in the cheap slave labor that supported it. It had expanded for war industries during the fighting, encouraged by government subsidy and eventually protected by a huge tariff rampart. When war profits declined there was still prospect of tremendous post war profits on cotton and other products of Southern agriculture. Therefore, what the North wanted was not freedom and higher wage for black labor, but its control under such forms of law as would keep it cheap; and also stop its open competition with Northern labor. The moral protest of abolitionists must be appeased but profitable industry was determined to control wages and government.

The result was an attempt at Reconstruction in which black labor established schools; tried to divide up the land and put a new social legislation in force. On the other hand, the power of Southern land owners soon joined with Northern industry to disfranchise the Negro; keep him from access to free land or to capital, and to build up the present caste system for blacks founded on color discrimination, peonage, intimidation and mob-violence.

It is this fact that underlies many of the contradictions in the social and political development of the United States since the Civil War. Despite our resources and our miraculous technique; despite comparatively high wage paid many of our workers and their consequent high standard of living, we are nevertheless ruled by wealth, monopoly and big business organization to an astounding degree. Our railway transportation is built upon monumental economic injustice both to passengers, shippers and to different sections of the land. The monopoly of land and natural resources throughout the United States both in cities, and in farming districts is a disgraceful aftermath to the vast land heritage with which this nation started.

In 1876 the democratic process of government was crippled throughout the whole nation. This came about not simply through the disfranchisement of Negroes but through the fact that the political power of the disfranchised Negroes and of a large number of equally disfranchised whites was preserved as the basis of political power, but the wielding of that power was left in the hands and under the control of the successors to the planter dynasty in the South.

Let us examine these facts more carefully. The United States has always professed to be a Democracy. She has never wholly attained her ideal, but slowly she has approached it. The privilege of voting has in time been widened by abolishing limitations of birth, religion and lack of property. After the Civil War, which abolished slavery, the nation in gratitude to the black soldiers and laborers who helped win that war, sought to admit to the suffrage all persons without distinction of "race, color or previous condition of servitude". They were warned by the great leaders of abolition, like Sumner, Stevens and Douglass, that this could only be effective, if the Freedmen were given schools, land and some minimum of capital. A Freedmen's Bureau to furnish these prerequisites to effective citizenship was planned and put into partial operation. But Congress and the nation, weary of the costs of war and eager to get back to profitable industry, refused the necessary funds. The effort died, but in order to restore friendly civil government in the South the enfranchised Freedman, seventy-five per cent illiterate, without land or tools, was thrown into competitive industry with a ballot in his hands. By herculean effort, helped by philanthropy and his own hard work, the Negro built a school system, bought land and cooperated in starting a new economic order in the

South. In a generation he had reduced his illiteracy by half and had become a wage-earning laborer and share-cropper. He still was handicapped by poverty, disease and crime, but nevertheless the rise of the American Negro from slavery in 1860 to freedom in 1880, has few parallels in modern history.

However, opposition to any democracy which included the Negro race on any terms was so strong in the former slave-holding South, and found so much sympathy in large parts of the rest of the nation, that despite notable improvement in the condition of the Negro by every standard of social measurement, the effort to deprive Negroes of the right to vote succeeded. At first he was driven from the polls in the South by mobs and violence; and then he was openly cheated; finally by a "Gentleman's agreement" with the North, the Negro was disfranchised in the South by a series of laws, methods of administration, court decisions and general public policy, so that today three-fourths of the Negro population of the nation is deprived of the right to vote by open and declared policy.

Most persons seem to regard this as simply unfortunate for Negroes, as depriving a modern working class of the minimum rights for self-protection and opportunity for progress. This is true as has been shown in poor educational opportunities, discrimination in work, health protection and in the courts. But the situation is far more serious than this: the disfranchisement of the American Negro makes the functioning of all democracy in the nation difficult; and as democracy fails to function in the leading democracy in the world, it fails in the world.

Let us face the facts: the representation of the people in the Congress of the United States is based on population; members of the House of Representatives are elected by groups of approximately 275,000

to 300,000 persons living in 435 Congressional Districts. Naturally difficulties of division within state boundaries, unequal growth of population, migration from year to year, and slow adjustment to these and other changes, makes equal population of these districts only approximate; but unless by and large, and in the long run, essential equality is maintained, the whole basis of democratic representation is marred and as in the celebrated "rotten borough" cases in England in the nineteenth century, representation must be eventually equalized or democracy relapses into oligarchy or even fascism.

This is exactly what threatens the United States today because of the unjust disfranchisement of the Negro and the use of his numerical presence to increase the political power of his enemies and of the enemies of democracy. The nation has not the courage to eliminate from citizenship all persons of Negro descent and thus try to restore slavery. It therefore makes its democracy unworkable by paradox and contradiction.

Let us see what effect the disfranchisement of Negroes has upon democracy in the United States. In 1944, five hundred and thirty-one electoral votes were cast for the president of the United States. Of these, one hundred and twenty-nine, came from Alabama, Arkansas, Georgia, Louisiana, Oklahoma, North and South Carolina, Texas, Virginia, Florida and Mississippi. The number of these votes and the party for which they were cast, depended principally upon the disfranchisement of the Negro and were not subject to public opinion or democratic control. They represented nearly a fourth of the power of the electoral college and yet they represented only a tenth of the actual voters.

If we take the voting population according to the census of 1940, and the vote actually cast in 1946 for members of Congress, we have a fair picture of how democracy is working in the United States.

The picture is not accurate because the census figures are six years earlier than the vote; but this fact reduces rather than exaggerates the discrepancies. The following are the figures concerning the election of 1946.

UNITED STATES

TOTAL POPULATION, 21 AND OVER, 1940	79,863,451	
TOTAL VOTERS, 1946	34,410,009	43 %
NON-VOTERS: (DISFRANCHISED, INCOMPETENT, CARELESS)	45,453,442	57 %

SOUTH ATLANTIC STATES

TOTAL POPULATION, 21 AND OVER, 1940	10,402,423	
NEGROES, 21 AND OVER, 1940	2,542,366	24.4%
ACTUAL VOTERS, 1946		22.2%
NON-VOTERS: (DISFRANCHISED, INCOMPETENT, CARELESS)		77.8%

EAST SOUTH CENTRAL STATES

TOTAL POPULATION, 21 AND OVER, 1940	6,100,838	
NEGROES, 21 AND OVER	1,532,291	25 %
ACTUAL VOTERS		16.5%
NON-VOTERS: (DISFRANCHISED, INCOMPETENT, CARELESS)		83.5%

WEST SOUTH CENTRAL STATES

TOTAL POPULATION, 21 AND OVER, 1940	7,707,724	
NEGROES, 21 AND OVER	1,382,482	17.9%
ACTUAL VOTERS		14.2%
NON-VOTERS: (DISFRANCHISED, INCOMPETENT, CARELESS)		85.8%

WHOLE SOUTH

ACTUAL VOTERS	18 %
NON-VOTERS	82 %

The number of persons of voting age who do not vote in the United States is large. This is due partly to indifference; women particularly are not yet used to exercising the right to vote in large numbers. In addition to this, there is a dangerously large number of American citizens who have lost faith in voting as a means of social reform.

To these must be added the incompetent and those who for various reasons cannot reach the polls. This explains why only 43% of the population of voting age actually voted in 1946. Rivalry and economic competition between city and country districts has led to deliberate curtailment of the power of the city vote. Notwithstanding all this, in New England, the Middle Atlantic States and the Middle and Far West, about 100,000 persons cast their votes in a congressional election. In the sparsely settled mountain states this falls to 90,000. But where the Negro lives, in the Border states, less than 50,000 elect a congressman; while in the Deep South, where the Negro forms a large proportion of the population, men are sent to Congress by 22,000 votes; and in South Carolina by 4,000.

When we compare with this the record of the South, we see something more than indifference, carelessness and incompetence and discouragement. We see here the result of deliberate efforts not only to disfranchise the Negro but to discourage large numbers of whites from voting. In the South as a whole, eighty-two per cent of the persons of voting age did not vote and in the west-south-central states this percentage reached nearly eighty-six per cent.

Two tables follow which show the respective votes in three pairs of states where the same number of members of Congress were elected but the difference in number of votes cast is enormous. In the second table the number of votes cast for a single Congressman is contrasted for a series of states, showing a hundred and thirty-eight thousand votes to elect a Congressman from Illinois and four thousand votes to elect a Congressman in South Carolina.

ELECTION OF 1946

VOTE FOR 8 MEMBERS OF CONGRESS

Louisiana	106,009
Iowa	593,076

VOTE FOR 9 MEMBERS OF CONGRESS

Alabama	179,488
Minnesota	875,005

VOTE FOR 10 MEMBERS OF CONGRESS

Georgia	161,578
Wisconsin	983,918

NEGRO CONGRESSMEN

Powell, New York	32,573 in total of 53,087
Dawson, Illinois	38,040 in total of 66,885

SOUTHERN WHITE CONGRESSMEN

Dorn, South Carolina	3,527 in total of 3,530
Rankin, Mississippi	5,429 in total of 5,429

HOW MANY VOTERS DOES IT TAKE TO ELECT A REPRESENTATIVE IN CONGRESS?
IN

ILLINOIS	137,877 voters
RHODE ISLAND	136,197 "
NEW YORK	104,720 "
CALIFORNIA	101,533 "
IOWA	74,135 "

NORTH AND WEST

KENTUCKY	64,811 "
NORTH CAROLINA	37,685 "
VIRGINIA	28,207 "
ARKANSAS	21,619 "
TENNESSEE	19,345 "

UPPER SOUTH

ALABAMA	19,943 "
TEXAS	16,542 "
GEORGIA	16,158 "
LOUISIANA	13,251 "
MISSISSIPPI	7,148 "
SOUTH CAROLINA	4,393 "

LOWER SOUTH

In other words while this nation is trying to carry on the government of the United States by democratic methods, it is not suc-

ceeding because of the premium which we put on the disfranchisement of the voters of the South. Moreover, by the political power based on this disfranchised vote the rulers of this nation are chosen and policies of the country determined. The number of congressmen is determined by the population of a state. The larger the number of that population which is disfranchised means greater power for the few who cast the vote. As one national Republican committeeman from Illinois declared, "The Southern states can block any amendment to the United States Constitution and nullify the desires of double their total of Northern and Western states."

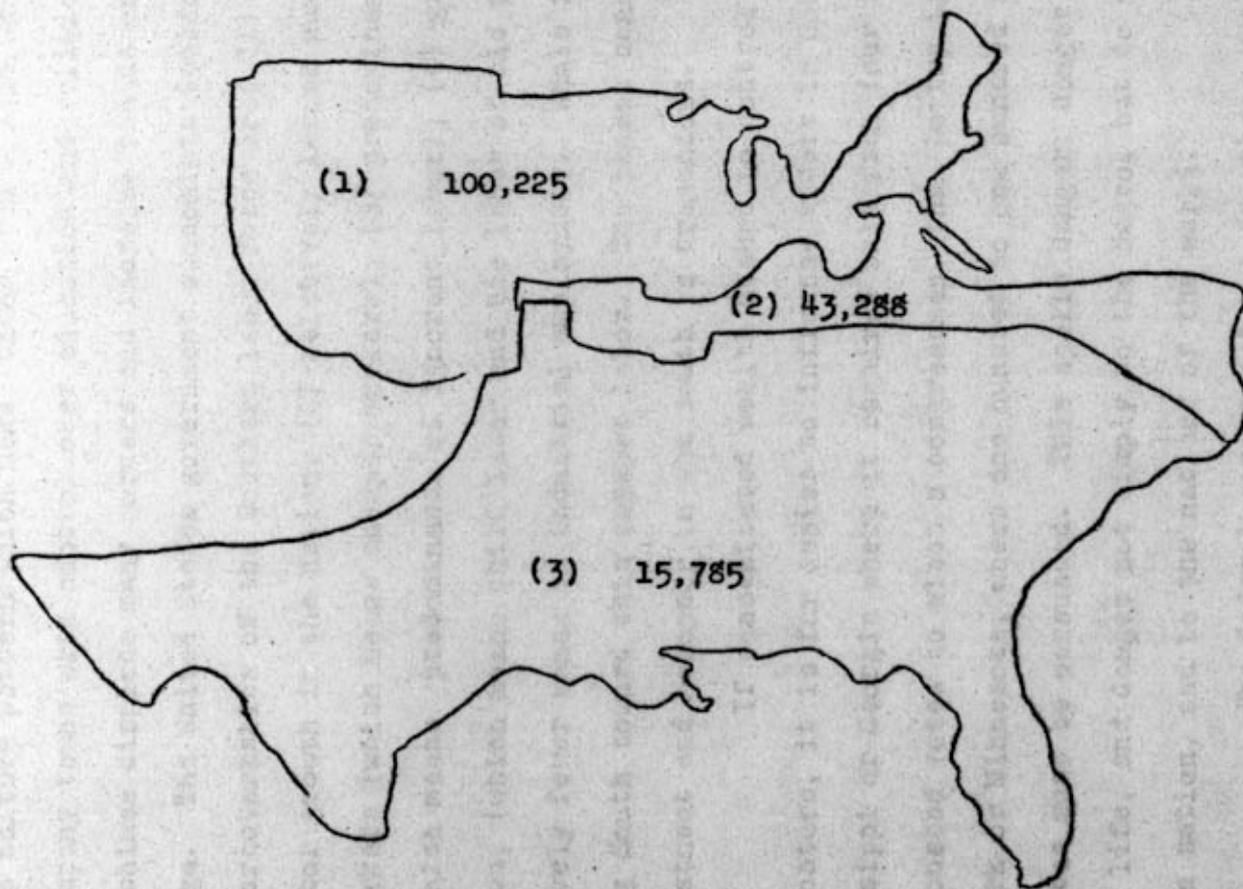
According to the political power which each actual voter exercised in 1946, the Southern South rated as 6.6, the Border States as 2.3 and the rest of the country as about 1. Illustrated, this is the result on the map, p. 17A.

When the two main political parties in the United States become unacceptable to the mass of voters, it is practically impossible to replace either of them by a third party movement because of the rotten borough system based on disfranchised voters.

Not only this but who is interested in this disfranchisement and who gains power by it? It must be remembered that the South has the largest percentage of ignorance, of poverty, of disease, in the nation. At the same time, and partly on account of this, it is the place where the labor movement has made the least progress; there are fewer unions and the unions are less effectively organized than in the North. Besides this, the fiercest and most successful fight against democracy in industry is centering in the South, in just that region where medieval caste conditions based mainly on color, and partly on poverty and ignorance, are more prevalent and most successful. And just because labor is so completely deprived of political and industrial power, investors

Distorted map showing the relative political power of three parts of the nation:

1. The North and West where in 1946 each congressman was elected with an average of 100,225 votes cast in the election.
2. The Border States (Delaware, Maryland, Virginia, North Carolina, Kentucky, Tennessee, Arkansas and Oklahoma) with an average of 43,288 votes elected a congressman.
3. The Southern South (South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana and Texas) with an average of 15,785 votes elected a congressman.



and monopolists are today being attracted there in greater number and with more intensive organization than anywhere else in the United States.

Southern climate has made labor cheaper in the past. Slavery influenced and still influences the conditions under which Southern labor works. There is in the South a reservoir of labor, more laborers than jobs, and competing groups eager for the jobs. Industry encourages the culture patterns which make these groups hate and fear each other. Company towns with control over education and religion are common. Machines displace many workers and increase the demand for jobs at any wage. The United States government economists declare that the dominant characteristics of the Southern labor force are: (1) greater potential labor growth in the nation; (2) relatively larger number of non-white workers (which means cheaper workers); (3) predominance of rural workers (which means predominance of ignorant labor); (4) greater working year span, (which means child labor and the labor of old people); (5) relatively fewer women in industrial employment. Whole industries are moving South toward this cheaper labor. The recent concentration of investment and monopoly in the South is tremendous.

If concentrated wealth wished to control congressmen or senators, it is far easier to influence voters in South Carolina, Mississippi or Georgia where it requires only from four thousand to sixteen thousand votes to elect a congressman, than to try this in Illinois, New York or Minnesota, where one hundred to one hundred and fifty thousand votes must be persuaded. This spells danger: danger to the American way of life, and danger not simply to the Negro, but to white folk all over the nation, and to the nations of the world.

The federal government has for these reasons continually cast its influence with imperial aggression throughout the world and

withdrawn their sympathy from the colored peoples and from the small nations. It has become through private investment a part of the imperialistic block which is controlling the colonies of the world. When we tried to join the allies in the First World War, our efforts were seriously interfered with by the assumed necessity of extending caste legislation into our armed forces. It was often alleged that American troops in France showed more animosity against Negro troops than against the Germans. During the Second World War, there was, in the Orient, in Great Britain, and on the battlefields of France and Italy, the same interference with military efficiency by the necessity of segregating and wherever possible subordinating the Negro personnel of the American army.

Now and then a strong political leader has been able to force back the power of monopoly and waste, and make some start toward preservation of natural resources and their restoration to the mass of the people. But such effort has never been able to last long. Threatened collapse and disaster gave the late President Roosevelt a chance to develop a New Deal of socialist planning for more just distribution of income under scientific guidance. But reaction intervened, and it was a reaction based on a South aptly called our "Number One Economic Problem": a region of poor, ignorant and diseased people black and white, with exaggerated political power in the hands of a few resting on disfranchisement of voters, control of wealth and income, not simply by the South but by the investing North.

This paradox and contradiction enters into our actions, thoughts and plans. After the First World War, we were alienated from the proposed League of Nations because of sympathy for imperialism and because of race antipathy to Japan and because we objected to the com-

pulsory protection of minorities in Europe, which might lead to similar demands upon the United States. We joined Great Britain in determined refusal to recognize equality of races and nations; our tendency was toward isolation until we saw a chance to make inflated profits from the want which came upon the world. This effort of America to make profit out of the disaster in Europe was one of the causes of the depression of the thirties.

As the Second World War loomed the federal government despite the feelings of the mass of people, followed the captains of industry into attitudes of sympathy toward both fascism in Italy and nazism in Germany. When the utter unreasonableness of fascist demands forced the United States in self-defense to enter the war, then at last the real feelings of the people were loosed and we again found ourselves in the forefront of democratic progress.

But today the paradox again looms after the Second World War. We have recrudescence of race hate and caste restrictions in the United States and of these dangerous tendencies not simply for the United States itself but for all nations. When will nations learn that their enemies are quite as often within their own country as without? It is not Russia that threatens the United States so much as Mississippi; not Stalin and Molotov but Bilbo and Rankin; internal injustice done to one's brothers is far more dangerous than the aggression of strangers from abroad.

Finally it must be stressed that the discrimination of which we complain is not simply discrimination against poverty and ignorance which the world by long custom is used to see: the discrimination practiced in the United States is practiced against American Negroes in spite of wealth, training and character. One of the contributors of this statement happens to be a white man but the other three and the

editor himself are subject to "Jim-Crow" laws, to denial of the right to vote, to unequal chance to earn a living; of the right to enter many places of public entertainment supported by their taxes. In other words our complaint is mainly against a discrimination based mainly on color of skin, and it is this that we denounce as not only indefensible but barbaric.

It may be quite properly asked at this point, to whom a petition and statement such as this should be addressed? Many persons say that this represents a domestic question which is purely a matter of internal concern; and that therefore it should be addressed to the people and government of the United States and the various states.

It must not be thought that this procedure has not already been taken. From the very beginning of this nation, in the late eighteenth century, and even before, in the colonies, decade by decade and indeed year by year, the Negroes of the United States have appealed for redress of grievances, and have given facts and figures to support their contention.

It must also be admitted that this continuous hammering upon the gates of opportunity in the United States has had effect, and that because of this, and with the help of his white fellow-citizens the American Negro has emerged from slavery and attained emancipation from chattel slavery, considerable economic independence, social security and advance in culture.

But manifestly this is not enough; no large group of a nation can lag behind the average culture of that nation, as the American Negro still does, without suffering not only itself but becoming a menace to the nation.

In addition to this, in its international relations, the

United States owes something to the world; to the United Nations of which it is a part, and to the ideals which it professes to advocate. Especially is this true since the United Nations has made its headquarters in New York. The United States is in honor bound not only to protect its own people and its own interests, but to guard and respect the various peoples of the world who are its guests and allies. Because of caste custom and legislation along the color line, the United States is today in danger of encroaching upon the rights and privileges of its fellow nations. Most people of the world are more or less colored in skin; their presence at the meetings of the United Nations as participants and as visitors, renders them always liable to insult and to discrimination; because they may be mistaken for Americans of Negro descent.

Not very long ago the nephew of the ruler of a neighboring American state, was killed by policemen in Florida, because he was mistaken for a Negro and thought to be demanding rights which a Negro in Florida is not legally permitted to demand. Again and more recently in Illinois, the personal physician of Mahatma Gandhi, one of the great men of the world and an ardent supporter of the United Nations, was with his friends, refused food in a restaurant, again because they were mistaken for Negroes. In a third case, a great insurance society in the United States in its development of a residential area which would serve for housing the employees of the United Nations, is insisting and reserving the right to discriminate against the persons received as residents for reasons of race and color.

All these are but passing incidents; but they show clearly that a discrimination practiced in the United States against her own citizens and to a large extent a contravention of her own laws, cannot

be persisted in, without infringing upon the rights of the peoples of the world and especially upon the ideals and the work of the United Nations.

This question then, which is without doubt primarily an internal and national question, becomes inevitably an international question and will in the future become more and more international, as the nations draw together. In this great attempt to find common ground and to maintain peace, it is therefore, fitting and proper that the thirteen million American citizens of Negro descent should appeal to the United Nations and ask that organization in the proper way to take cognizance of a situation which deprives this group of their rights as men and citizens, and by so doing makes the functioning of the United Nations more difficult, if not in many cases impossible.

The United Nations surely will not forget that the population of this group makes it in size one of the considerable nations of the world. We number as many as the inhabitants of the Argentine or Czechoslovakia, or the whole of Scandinavia including Sweden, Norway and Denmark. We are very nearly the size of Egypt, Rumania and Yugoslavia. We are larger than Canada, Saudi Arabia, Ethiopia, Hungary or the Netherlands. We have twice as many persons as Australia or Switzerland, and more than the whole Union of South Africa. We have more people than Portugal or Peru; twice as many as Greece and nearly as many as Turkey. We have more people by far than Belgium and half as many as Spain. In sheer numbers then we are a group which has a right to be heard; and while we rejoice that other smaller nations can stand and make their wants known in the United Nations we maintain equally that our voice should not be suppressed or ignored.

We are not to be regarded as completely ignorant, poverty-stricken, criminal or diseased people. In education our illiteracy is less than most of the peoples of Asia and South America, and less than many of the peoples of Europe. We are property holders, our health is improving rapidly and our crime rate is less than our social history and present disadvantages would justify. The census of 1940 showed that of American Negroes 25 years or over, one-fifth have had 7 to 8 years of training in grade schools; 4 per cent have finished a 4 year high school course and nearly 2 per cent are college graduates.

It is for this reason that American Negroes are appealing to the United Nations and for the purposes of this appeal, they have naturally turned toward the National Association for the Advancement of Colored People. This Association is not the only organization of American Negroes; there are other and worthy organizations. Some of these have already made similar appeal and others doubtless will in the future. But probably no organization has a better right to express the wishes of this vast group of people than the National Association for the Advancement of Colored People.

The National Association for the Advancement of Colored People, incorporated in 1910, is the oldest and largest organization among American Negroes, designed to fight for their political, civil and social rights. It has grown from a small body of interested persons into an organization which had enrolled at the close of 1946, four hundred fifty-two thousand two hundred eighty-nine members, in one thousand four hundred seventeen branches. At present it has over

a half million members throughout the United States. The Board of Directors of this organization, composed of leading colored and white citizens of the United States, has ordered this statement to be made and presented to the Commission on Human Rights of the Economic and Social Council of the United Nations and to the General Assembly of the United Nations.

Chapter II

THE DENIAL OF LEGAL RIGHTS OF AMERICAN
NEGROES FROM 1787 TO 1914

by Earl B. Dickerson

In any community the positive law will define the legal rights of its citizens; but the enjoyment of these defined legal rights and the security they confer will depend entirely on the existing sanctions that prevent their violation by elements in the community because of race or color of the persons involved.

It is a sad commentary on American constitutional jurisprudence that because of the absence of effective sanctions there exists a pitiable chasm between the doctrinal idealism of constitutional guarantees and the practical realization of constitutional protection. And in no phase of American life is this paradox more patently illustrated than in the status of American Negroes. Any discussion of the substantive legal rights of American Negroes would be fatuous indeed if it failed to consider the factors that have contributed to the insecurity of this large segment of the American population and the techniques that have been used to put the Negro outside the scope of full American citizenship.

A word may be inserted here for the benefit of persons unacquainted with the system of United States law.

The States under the Federal system are units, indispensable units in the formation of a nation; but they are not Governments independent of the nation. The powers of the National Government are such as are granted to it by the Constitution of the United States. These

are Express powers, couched in most cases in broad language, and conferred on Congress. Many of these powers granted to Congress are not exclusive. States in such matters may exercise power also, provided State action does not conflict with the superior powers of the National Government in the same field.

Although all powers of the National Government must be found within the terms of the Constitution, this by no means implies that all powers must be expressly granted by that document. The Constitution grants a number of important powers in broad terms to Congress and to other departments of the National Government; and it further empowers Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

For more than a century the United States Supreme Court has been engaged in determining the line between National and State power, and this is a continuing duty. It is impossible to draw any definite or permanent line between National and State functions. The broad and flexible powers of the federal government are capable of further expansion as new needs develop with economic, social and engineering changes. Also along with the increase in National powers and in the activities of the National Government, has come too a similar increase in the functions performed by the State Government. With the increased complexity of modern life, the functions taken over by the nation while extensive, are small as compared with the new activities of State Government.

James Bryce once wrote of the United States citizen: "The

State, or local authority constituted by State statutes, registers his birth, appoints his guardian, pays for his schooling, gives him a share in the estate of his father deceased, licenses him when he enters a trade (if it be one needing a license), marries him, divorces him, entertains civil actions against him, declares him a bankrupt, hangs him for murder. The police that guard his home, the local boards which look after the poor, control highways, impose water rates, manage schools - all these derive their legal powers from his State alone."

On the other hand the powers of the federal government, have greatly increased since this was written, especially since the World Wars. The government exercises large powers today over trade and industry, income and prices, employment and relief, civil and political rights and social planning. These powers are great and increasing.

There are four principal methods used in depriving an American Negro citizen of the rights guaranteed him by the literal language of the organic law of the land -- the American Constitution.

First, there are the statutory enactments that nullify constitutional guarantees. In this category will fall the state laws prohibiting marriage between white and colored persons, ⁽¹⁾ and the laws ⁽²⁾ discriminating against Negroes in the selection of jurors.

- (1) For a complete list of the statutes see Mangum, The Legal Status of the Negro, Chapel Hill: The University of North Carolina Press (1940), pp. 238-239.
Compare Face v. Alabama, 106 U. S. 583, 1 S. Ct. 637 (1882).
- (2) Strauder v. West Virginia, 100 U.S. 303, 25 L. Ed. 664 (1880); Neal v. Delaware, 103 U.S. 370, 26 L. Ed. 567 (1881); Norris v. Alabama, 294 U.S. 587, 55 S. Ct. 579 (1933).

Second, there are the acts and conspiracies of private individuals which contravene legal rights of American Negro citizens. One example of this method is the restrictive race covenant among white property owners which prevents Negro citizens from acquiring adequate housing facilities; ⁽³⁾ another example is private action under color of law. ⁽⁴⁾ This method is commonly manifested also, in job discrimination against Negroes in certain industries, ⁽⁵⁾ and in the converse situation of enforced labor which results in the form of slavery known as peonage. ⁽⁶⁾

Third, actual mob violence. A popular manifestation of this method is found in the peculiar American institution called "lynching". ⁽⁷⁾ Mob violence has also been used in a variety of instances as a means of preventing Negro citizens from exercising their rights under the law. ⁽⁸⁾

- (3) Corrigan v. Buckley, 271 U.S. 323, 46 S. Ct. 521 (1926);
May v. Burgess, 147 F (2d) 869 (1945), cert. denied 325 U.S. 868 (1945). Compare Buchanan v. Warley, 245 U.S. 60, 38 S. Ct. 16 (1917).
- (4) Ex parte Virginia, 100 U.S. 339, 25 L. Ed. 676 (1880).
Screws v. United States, 325 U.S. 91, 65 S. Ct. 1031 (1945).
- (5) Hodges v. United States, 203 U.S. 1, 27 S. Ct. 6 (1906).
Steele v. L. & N.R.R. Co., 323 U.S. 192, 65 S. Ct. 226 (1944).
- (6) Bailey v. Alabama, 219 U.S. 219, 31 S. Ct. 145 (1911);
Clyatt v. United States, 197 U.S. 207, 25 S. Ct. 429 (1905);
United States v. Reynolds, 235 U.S. 133, 35 S. Ct. 86 (1914).
- (7) United States v. Shipp, 203 U.S. 563, 27 S. Ct. 165 (1906);
Riggins v. United States, 199 U.S. 547, 26 S. Ct. 147 (1905).
- (8) Ex parte Yarborough, 110 U.S. 651, 4 S. Ct. 152 (1884);
United States v. Cruikshank, 92 U.S. 542, 23 L. Ed. 588 (1876).

Finally, there are the decisions of the state courts and of the Supreme Court of the United States which have restricted the rights of American Negroes under the state and federal constitutions. (9) The most notable of these are the decisions of the Supreme Court under the 13th, 14th and 15th Amendments. (10) To the extent that the utilization of one of these techniques has been successful, the legal rights of American Negroes have been proscribed and limited. And to the extent that the American courts have failed to see the elements of injustice in their decisions where the rights of colored citizens are involved, the step was taken in the creation of a second-rate citizenship in American society. It is to the cases presented to the American courts, therefore, that we must turn in order to understand properly the process through which the legal status of the American Negro has evolved.

First, a resort must be made to social and political history. During the period from 1787 and 1865 the Supreme Court decided very few cases concerned with the rights of American Negroes. (11) During this same period, however, the state courts decided the bulk of the cases dealing with property rights in slaves, and the right to manumission of slaves based on the testamentary dispositions of their masters. (12)

(9) Draper v. Cambridge, 20 Ind. 268 (1863);

Dred Scott v. Sanford, 60 U.S. 393, 15 L. Ed. 691 (1867).

(10) The Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18 (1883);

United States v. Reese, 92 U.S. 214, 23 L. Ed. 563 (1876);

United States v. Harris, 106 U.S. 629, 1 S. Ct. 601 (1883).

(11) Edward F. Waite, The Negro in the Supreme Court (1946) 30 Minn. Law Rev. 219.

(12) See Helen T. Catterall, Judicial Cases Concerning American Slavery and the Negro. Washington, D.C.; Carnegie Institute of Washington (1937) 5 Vols.

The state courts were also deciding numerous cases defining the legal rights of American Negroes under state laws, (13) These cases reveal that during this span of nearly eighty years, the pattern of race discrimination was possible within the scope of the law and became a part of American thinking both politically and socially despite the obvious contradictions in the professed idealisms of the American way of life.

Perhaps it would be fair to say that the presence of the Negro on the American scene after the formation of the Union was an anomaly in an otherwise free society, and that questions concerning him would present legal problems that would be difficult to resolve. The enslavement of the Negro and the denial of full citizenship to a black man ran counter to all the concepts of equality and individual human worth that had found expression in documents written by Americans -- documents that had stirred the souls of men the world over. The Negro was a source of emotional conflict; to give him justice required more than legal reasoning in the cases presented to the courts. It required moral courage.

The Declaration of Independence adopted July 4, 1776 which heralded the birth of the United States said in the second paragraph: "We hold these truths to be self evident: - That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness."

(13) See Charles S. Mangum, Jr., The Legal Status of the Negro. Chapel Hill: The University of North Carolina Press (1940).

The Constitution of the United States carefully refrains from mentioning the word "slave". Assuming that the stopping of the slave trade would eventually end the slave status, it did provide for the eventual extinction of slavery by setting a time when the slave trade could be stopped. On the other hand property in slaves ("persons held to service or labor") was protected in the case of fugitives.

The Bill of Rights enunciated in the first ten amendments to the Constitution certainly were intended to protect the rights of free Negroes and to some extent even of slaves. These amendments provided for freedom of religion, freedom of speech, and of the press and the right of assembly. They affirmed the right of the people to bear arms, to be secure in their person and property, to have fair trials and not to be deprived of life, liberty or property without due process of law. They insured the right to speedy trial by jury and prohibited excessive cruel and unusual punishment.

It should be remembered that the slavery question was carefully considered in the Convention at Philadelphia in 1787. When the Constitution went into effect in 1789 it contained provisions that clearly show concessions made to the slave-holding interest. For instance, the importation of slaves was allowed to continue until 1808;⁽¹⁴⁾ three-fifths of the slaves were to be counted in determining the apportionment of representatives and direct taxes⁽¹⁵⁾ -- this, even though in the same states that profited from these concessions the slave, of course, was not a citizen.

(14) Article I, Sec. 9, Constitution of the United States.

(15) Article I, Sec. 2, Ibid.

Nowhere in the express provisions of the Constitution is there to be found any distinction between a white citizen and a Negro citizen. And it should be recalled here that there were white citizens and Negro citizens at the time the Constitution was debated and adopted. Citizenship within the meaning of that instrument depended on state citizenship.⁽¹⁶⁾ As a matter of logic, it cannot be denied that if a Negro was not a citizen of a state, he was not a citizen under the Constitution of the United States.⁽¹⁷⁾ But does it follow that he had no rights under the Constitution? This question can be answered only by an examination of basic constitutional doctrines, and an appraisal of the status of the Negro as a freeman at the time the American union was formed together with his status as a slave.

Although all the incidents of slavery under the Roman Law were not followed in America, our system of forced servitude rather resembled that of the Romans than the villinage of the ancient common law.⁽¹⁸⁾ In fact, it has been said that slavery never existed by the common law of England.⁽¹⁹⁾ The slave while in servitude possessed no civil rights. He was an item of property; he was not a person in the judicial sense. But the status of the free Negro differed. He could vote in nine of the thirteen original states.⁽²⁰⁾ He could own property.⁽²¹⁾

(16) Article IV, Sec. 2, Ibid.

(17) It should be admitted that there is a wide area of dispute on this question. But for the views taken here, this conclusion is acceptable.

(18) 58 C.J. 746; Neal v. Farmer, 9 Ga. 555.

(19) Neal v. Farmer, 9 Ga. 555; Sommerset's Case, 20 S.T. 1 (1771).

(20) The American's Guide; A Compendium of State Constitutions. Philadelphia: Hogan and Thompson (1835).

(21) Carter G. Woodson, The Negro in Our History, Washington, D.C.: The Associated Publishers, Inc. (7th Ed. 1941) pp. 246-258.

(22) He bore arms. (23) And he paid taxes. Even in the deep South the free Negro could own and alienate property. And in not one of the state constitutions in force at the time the United States Constitution was adopted was there any express provision denying citizenship to a free Negro. (24)

Now applying these elementary historical facts to the question should there be any doubt that the American Negro possessed rights that were protected by the Constitution? For instance, would the Fifth Amendment have failed to protect a Negro and his property from deprivation without due process of law? Could the federal government deprive the free Negro of his freedom? These questions can be answered affirmatively only by a warping of language, law and history. Undoubtedly, the American Negro possessed validly enforceable rights under the Constitution before the adoption of the thirteenth, fourteenth and fifteenth amendments.

Yet, he progressively became an outcast. During the first four decades of the 19th century -- at a time when the struggle for human freedom was advancing the world over -- the American Negro was being enslaved by the law of his own state. By 1834 the free Negro was specifically excluded from citizenship in every state in the South. The free colored man became a paradox. While he was not a slave because he was free, he was not a citizen because he was black.

It is in this turmoil of ideological conflict that the Dred

(22) George Livermore, "Respecting the Opinions of the Founders of the Republic on the Negroes, As Slaves, As Citizens, As Soldiers". Proceedings of the Massachusetts Historical Society, Boston: (1863).

(23) Carter G. Woodson, op. cit.

(24) The American's Guide: A Compendium of State Constitutions. Philadelphia: Hogan and Thompson (1835).

Scott Case came into prominence. And it is not an exaggeration to say that never in the history of the Supreme Court of the United States has it had before it a case more pregnant with moral issues that permeated the very soul of American life. Potentially, the case touched the vita core of American political and social history. It is not surprising, therefore, that the decision in Dred Scott v. Sanford,⁽²⁵⁾ served to flame the emotional state of public opinion to a point that later broke into a civil war.

This decision is worthy of detailed treatment because it has been said that the majority opinion stated the law as it existed. It is more accurate to say that the decision summarized the American mentality toward the Negro with all its basic immorality, with all its disregard of human values.

Dred Scott, the slave of an army surgeon, a Dr. Emerson, had been taken by his master into Illinois and thence into the Louisiana Territory (now Minnesota), which under the Northwest Territory Ordinance of 1787 and under the Missouri Compromise Act of 1820 was free territory. Later, his master took him back into the slave state of Missouri. In the autumn of 1846, after the death of Dr. Emerson, Scott began suit against the widow of his former master alleging that the trip into Illinois and the Louisiana Territory made him a freeman. In 1850 he obtained a verdict which was appealed to the State Supreme Court where it was held that under the laws of Missouri he resumed his character of slave on his return irrespective of his status while out of the state. Then, in November, 1853 a group of anti-slavery lawyers began a suit in his behalf in the federal court alleging that Sanford,

(25) (1856) 60 U.S. 393

the then owner of Scott to whom a fictitious sale had been arranged in order that diversity of citizenship could give the federal court jurisdiction, had committed an assault on Scott, his wife, and his two minor daughters. Sanford entered a plea to the jurisdiction of the court on the ground that Scott was a Negro, a former slave, and hence not a citizen with the right to bring a suit in the courts of the United States. This plea was found bad on demurrer, and after an agreed statement of facts was submitted, judgment was entered for the defendant; Scott then sued out a writ of error to the Supreme Court. The record presented three questions for determination: first, whether a free black man was a citizen of the United States so as to be competent to sue in the courts of the United States; second, whether a slave carried voluntarily by his master into a free state and returning voluntarily with his master to his home was a free man by virtue of such temporary residence; and third, whether the eighth Section of the Missouri Act of 1820, prohibiting slavery north of latitude of 36' 30", was constitutional.

Although the facts presented some intricate and interesting questions on the conflicts of laws, as well as questions of procedure, the case attracted nationwide attention as a cause celebre between the slave-owning interests and the abolitionists. The decision, though due in the fall of 1856, was postponed until the end of the presidential campaign of that year. In the meantime, the slavery question gathered greater emotional fervor while nine judges, five of them slave-owners, debated the question whether Scott's journey from the slave state of Missouri to the free territory of Louisiana legally worked a transmutation from servitude to liberty.

No one with full appreciation for the weaknesses of human nature could have failed to predict the decision. When the decision was finally rendered it surpassed the worst fears of the anti-slavery elements in the country. The court, speaking through Chief Justice Taney held that Scott had no right to bring an action in the courts of the United States because he was not a citizen. When the federal constitution was adopted Negroes were considered inferior and not fit to associate with members of the white race in any political relationship, and as a narrated historical fact, the "negro has no rights which the white man was bound to respect..."⁽²⁶⁾ The court went on to hold that the Missouri Compromise Act of 1820 was unconstitutional since Congress was without power to prohibit slavery in the territories acquired after the adoption of the Constitution.

Aside from its historical importance which has not been adequately evaluated, the decision in the Dred Scott Case revealed an underlying lack of morality on the part of the highest judges in the land and cast a stigma on the entire American judiciary. It was a resort to specious and erroneous argument in support of slavery and its incidents. Significantly, it can be pointed out that the decision, though never overruled, has never been cited as an authoritative precedent for any substantive point of law.⁽²⁷⁾

After the Dred Scott decision the Supreme Court had two occasions to pass on the "Negro question" before the adoption of the

(26) See 3 Warren, The Supreme Court in United States History, pp.1-41.

(27) Edward F. Waite, The Negro in the Supreme Court (1946)
30 Minn. Law Rev. 219.

Fourteenth Amendment. These were Ableman v. Booth (28) and Ex parte
 (29)
Kentucky v. Dennison.

In the Booth Case there was a conviction under the Fugitive Slave Law, and the Wisconsin Supreme Court ordered the release of Booth on habeas corpus on the ground that the federal act was unconstitutional. A writ of error was issued by the Supreme Court of the United States and later followed by an opinion holding that the statute was constitutional in all its provisions. (30) The Dennison Case was concerned with a Kentucky statute which made it a crime to assist a slave to escape. One Lago was indicted for assisting a slave to escape from Kentucky. He sought refuge in Ohio, and on demand from the State of Kentucky that he be surrendered for trial, the governor of Ohio refused extradition. Kentucky applied to the Supreme Court for a writ of mandamus to force the governor of Ohio to turn the defendant over to prosecution authorities on the theory that the Constitution made it a duty of the governor of Ohio to comply with the demand. Again speaking by Chief Justice Taney, the Supreme Court recognized the duty but held that it was a moral one which could not be enforced by mandamus.

In the meantime, the American Negro was going before the state courts for justice under state law. He was getting decisions which in some cases were humorous and in other poignantly cruel. Yet they reflect the legal status of the American Negro.

Surprisingly enough, the state courts were early called upon to decide what constituted this biologically legal enigma called "the Negro". In South Carolina a court held that the word "Negro" had the

(28) (1859) 62 U.S. 506, 16 L. Ed. 169.

(29) (1861) 65 U.S. 66, 16 L. Ed. 717.

(30) See 3 Warren, op. Cit., pp. 42-79.

fixed meaning of the word "slave".⁽³¹⁾ By sombre legal decisions in the southern states, a Negro was presumed to be a slave; he had the burden of rebutting this presumption.⁽³²⁾ The suffering that this harsh rule of law imposed on industrious Negroes who had purchased their freedom has been the subject of many soul-stirring American slavery novels. But the quandaries of the judicial process became evident when a case was presented in which the person involved did not look like a Negro.⁽³³⁾ In such a case, the court said, that was not basis for the presumption.

In the effort to categorize the various shades of pigmentation to which the Negro is heir, the courts have been forced to solve some rather difficult problems involving the color of human beings. In 1859 a case arose in Ohio under the separate school law of 1853. In that statute the words "white" and "colored" were used in providing separate schools for white and Negro children. The question for the court was whether these words had their popular meaning. The court thought that the words were used in their popular sense, and held that where the children were three-eighths Negro and five-eighths white, but distinctly colored in appearance, they were to be regarded as colored children and not eligible to be admitted to a school for whites.⁽³⁴⁾

As far north as the State of Maine, the courts were concerned with the construction of anti-miscegenation statutes -- laws which have been condemned as legally condoning concubinage and bastardy.⁽³⁵⁾ In

(31) Ex parte Leland, 1 Nott. & McCord 460 (S. C. 1819).

(32) Daniel v. Guy, 19 Ark. 121 (1857).

(33) See Ibid.

(34) Van Camp v. Bd. of Education, 9 Ohio St. 406 (1859).

(35) James Weldon Johnson and Herbert J. Seligman, Legal Aspects of the Negro Problems (1928) 140 Annals 90.

Bailey v. Fiske,⁽³⁶⁾ the court had before it the question whether a person who was approximately one-sixteenth African was a Negro within the meaning of a statute which prohibited intermarriage of whites and Negroes. It was held that the person involved was not a Negro.

One case decided by the Supreme Judicial Court of Massachusetts in 1810 shows that judges will pay due respect to the admixture of Negro and white persons. The case was Inhabitants of Medway v. Inhabitants of Natick,⁽³⁷⁾ where the question was whether a person who was the child of white and mulatto parents was a Negro within the terms of a pre-Civil War statute that prohibited the marriage of white persons with Negroes or mulattoes. Clearly, by ordinary definitions such a person was not a mulatto. But was he a Negro? The court held that the statute did not prohibit the marriage.

And as far south as Louisiana, South Carolina, and Mississippi the court paid judicial notice to the stigma of being black by adopting the rule of law that to call a white man a Negro was actionable slander per se.⁽³⁸⁾ That seems to be the prevailing law today.⁽³⁹⁾

In his efforts to obtain such equal facilities for the education of his children, the Negro met with the unique American rationalization that educational facilities can be separate but equal. In Massachusetts where a Negro could vote, and where he had to pay taxes to support the government, it was held in 1849 that though public schools must be maintained and made accessible to all colored children,

(36) (1852) 34 Me. 77.

(37) (1810) 7 Mass. 88.

(38) Dobard v. Nunez, 6 La. Ann. 294 (1851); Scott v. Peebles, 2 Sm. & M. 546 (Miss. 1844); Eden v. Legare, 1 Bay 171 (S.C. 1791).

(39) See comparatively recent cases allowing recovery in Mangum, op. cit., pp. 18-25.

the fact that they had to travel a greater distance to reach their school than did white children similarly situated was immaterial, providing the distance was not unreasonably longer!⁽⁴⁰⁾ In the southern states, and in the nation's capital, the District of Columbia, separate schools for Negro and white children were provided for by statute.⁽⁴¹⁾ It has been held that these statements do not violate the due process clause of either the Fifth or Fourteenth Amendments.⁽⁴²⁾

Of course it is not possible to present here an exhaustive treatment of the cases, but these few instances show the atmosphere in which the Negro has had to struggle for equality before the law. It is apparent that within the political and legal structure of American life it was possibly to deny him that equality throughout the period from 1787 to 1865. And this denial was possible despite his rights under organic laws of the land. Now turning to the period after the Civil War when the American Negro was made a citizen by constitutional amendment, it will be found that by a narrow construction of federal power he has been deprived of full participation in the democracy to which he was supposedly elevated. For a proper understanding of the factors that contributed to this result, the decisions of the Supreme Court must be analyzed in the context of historical events between 1865 and 1883.

After the Emancipation Proclamation went into effect on January 1, 1863, there followed an intensified period of congressional activity to eradicate slavery and its incidents. First was the adoption and ratification of the Thirteenth Amendment on December 18, 1865; and

(40) Roberts v. City of Boston, 59 Mass. 198 (1849).

(41) See Mangum, op. cit., pp. 78-137.

(42) Ibid.

later the Fourteenth Amendment on July 28, 1868, and the Fifteenth Amendment on March 30, 1870. Second was the enactment of the Civil Rights Enforcement Act of May 31, 1870 and the Civil Rights Act of March 1, 1875.

The war amendments, which were designed to abolish slavery and make the Negro a citizen and voter were as follows:

Article XIII, (1865)

Section 1. "Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted shall exist within the United States, or any place subject to their jurisdiction."

Section 2. "Congress shall have power to enforce this article by appropriate legislation."

Article XIV, (1868)

Section 1. "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 2. "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive or judicial officers of a State, or the members of

the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

Section 5. "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Article XV, (1870)

Section 1. "The rights of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude."

Section 2. "The Congress shall have the power to enforce this article by appropriate legislation."

In substance, the intent of these amendments and these statutes was to eradicate slavery and protect the newly emancipated slaves in the exercise of their rights of citizenship. It is almost impossible to conceive that it was not intended to protect the emancipated slave from all encroachment upon his rights. Yet the Supreme Court soon decided that there was a limit on the power of the federal government to protect the citizenship it created.

This narrow construction of federal power emanates as a doctrine from the Slaughter House Cases ⁽⁴³⁾ long before the question of Negro rights under the war amendments came to the Supreme Court. Briefly stated, the cases stand for the principle that there are privileges and immunities of a citizen of the United States as distinguished from a

(43) (1878) 83 U.S. 36.

citizen of a state. Where the rights involved are state rights, the federal government has no legislative or judicial power to intervene and protect those rights.

As a constitutional law concept, the decision in the Slaughter House Cases is undoubtedly a landmark in Supreme Court History. But there is a legitimate question whether the doctrine has not been misapplied where the rights involved are created by federal law; for instance, citizenship created by constitutional amendment. Despite this broad ground of questionable application, the doctrine has played a decisive part in cases that have limited the sphere of legal protection of the American Negro.

The following chronological summary of the Supreme Court decisions on the legal rights of American Negroes under the war amendments dramatically illustrates the various ways by which the rights of American Negroes were assaulted in the attempt to limit them to a second class citizenship. And that these assaults were successful cannot be denied.

In fact the extraordinary result of these decisions has been to give to corporations the protection and immunity under laws which were certainly meant for the protection of Negroes; and to deprive Negroes of much of the federal protection which was designed to implement their freedom.

Summarizing these decisions*, we may say that seventeen of these cases, ranging from 1879 to 1909, had to do with trial by jury, and turned on the question as to whether Negroes had been kept off of juries because of race. In eleven cases the federal court refused to interfere, in one case because of a technicality of procedure; in the

*Thirty-two cases are digested in the appendix to this chapter.

others because no proof of color or race discrimination was adduced. In the other six cases the federal court interfered because it was clear that Negroes were by state law debarred from service on juries on account of race, which was adjudged illegal under federal law.

Four cases involved race separation in travel. In one case, October, 1895, such separation was declared a "valid exercise of the police power of the state". In three other cases, in 1909 and 1913, segregation even of interstate passengers was declared "reasonable" if the carrier said so; and damages or relief was denied in two cases on technical grounds.

Five civil rights cases were treated as one case by the Supreme Court in 1883. They involved denial of hotel accommodations, of theatre seats and of the admission of a colored woman to the "ladies car" on a Southern railroad. The court declared that under the Fourteenth Amendment, Congress had no power to control or regulate the acts of private individuals in the states; it could only disallow state laws.

Three cases came up, in 1903 and 1915, involving the right of Negroes to vote. In two, test of "equal protection" in the suffrage provisions of a constitution in Alabama, were thrown out as "not presenting a federal question". The third case in 1915 presented the constitutionality of the "Grandfather clause" in a state constitution. This device sought to except whites from the illiteracy and other restrictions on voting, by admitting to the ballot persons whose ancestors had the right of suffrage before Negroes were enfranchised. The court declared this unconstitutional.

Two cases in 1875 and 1906 involved violence and intimidation; in both the court refused to interfere and referred the plaintiffs back

to the state courts.

Two cases in 1899 and 1908 involved discriminations in education. When in a Georgia City, the Board of Education abolished the Colored high school for "Reasons of economy" and kept the White high school running, the court decreed that this was in the discretion of the school authorities; when Berea College in Kentucky was directed by the state to cease admitting colored students because of the state law against co-education of races, the court decided that the corporation as a state creature must obey the law, but did not take up question as to whether the law requiring separate schools for whites and Negroes was valid.

One case in 1889, refused to recognize the will of a colored woman devising property as giving title, because the will was made when Negroes could not own real property in Georgia. In 1909, the court refused to deny a state the right to demand the extradition of an accused prisoner, because the prisoner alleged the impossibility of his receiving a fair trial. In 1882, the court refused relief to a prisoner convicted under the law of Alabama which provided a heavier penalty for adultery between whites and Negroes than between members of the same race.

It would not be fair to criticize these decisions without recognizing that the American Union comprises a dual form of government. The sovereignty of the states and the ideal of untrammelled local government must be admitted. But the conclusion is inescapable that in these cases the Supreme Court has shown a complete lack of realism and failed to grasp the practical fact that the civil rights

of Negroes stem from citizenship created by federal law.

Either this or the political economic forces of the day were powerful enough to induce the court deliberately to nullify legislative action by technical court decree.

The dictum of Mr. Justice Bradley in *The Civil Rights Cases*, supra, that race discrimination is not an incident of slavery is just as realistic as a statement to a slave that his chains are not incident of his servitude. And to tell a Negro who has suffered from mob violence because of state inaction that he must look to the state for protection sounds very much like telling a woman who has been seduced that her future protection lies in the hands of her seducer! Such, in substance, has been the realism of Supreme Court decisions defining the rights of American Negroes. Justice to the Negro has really been sacrificed to the political theory of states rights.

As a result by 1914 the eve of the First World War, the legal status of the American Negro had degenerated to the pattern that existed before the Civil War. In the states where before 1863 he had been considered an item of property, he was denied equal protection of the laws; in these states where he had met some semblance of fairness, an effort was made to guarantee his rights by express enactments.

For instance, in eighteen of the northern and western states civil rights acts were adopted after 1884 to protect Negro citizens from discrimination. ⁽⁴⁵⁾ These laws have suffered the vicissitudes of judicial interpretation, as would be expected of any statute. Their

(45) Mangum, op. cit. pp. 34-77.

effectiveness is in fact a reflection on the race attitudes in the states rather than on the sense of justice in the courts. On the other hand, it is significant that in the southern states where the legal rights of Negroes have met greater abuse, no civil rights statutes have been adopted. (46)

This fact portrays the fallacy inherent in the argument that the legal rights of American Negroes can be entrusted to the states. It is almost idiotic to expect that states where the citizenship of Negroes had to be established by force would later honor that citizenship by law. As a complement to the doctrine that the federal government could not protect civil rights in the states, the Supreme Court developed the doctrine that private action condoned by state inaction was not within the scope of the Fourteenth Amendment. It was in this peculiar quagmire of incapacity and inaction that the American Negro found himself in his search for justice within the framework of American law.

(46) Ibid.

Appendix to Chapter II

Digest of 32 Decisions of the United States Supreme Court on the legal rights of Negroes under the Civil War Amendments, 1875-1915.

October Term, 1875

- (1) U.S. v. Cruikshank, 92 U.S. 542.
 Cruikshank and several other white men broke up by violent means a Negro political meeting in Louisiana. They were arrested under section six of the Enforcement Act of May 30, 1870, tried and convicted in the Circuit Court of the United States for the District of Louisiana. On appeal to the Supreme Court they were acquitted on the ground that the Fourteenth Amendment did not justify such legislation by Congress. The citizen must not look to the Federal Government for protection against the invasion of his rights by the private acts of others. Decision against Federal intervention.

October Term, 1879

- (2) Strauder v. West Virginia, 100 U.S. 303.
 Strauder, a Negro, was indicted, tried, and convicted for the crime of murder in a State court. All Negroes were excluded from the grand and petit juries by West Virginia Statutes of 1872-1873. The defendant contended that this was in conflict with U.S. Revised Statutes, Section 1977. This section embodied portions of the Enforcement Act of 1870 and the Civil Rights Act of 1875. Upon proceedings in the United States Supreme Court the State court was reversed and the West Virginia Act of 1872-1873 declared unconstitutional. Field and Clifford, JJ., dissented. Decision in favor of Federal intervention.
- (3) Virginia v. Rives, 100 U.S. 313.
 Two Negro men were indicted for the murder of a white man and tried in a State court before a jury composed only of white men. Defendants moved for a modification of the venire so as to allow one-third of the same to be composed of Negroes. This motion was denied. Defendants then petitioned for a removal to the United States Circuit Court under the Civil Rights Act of 1875. This petition was also denied. Thereupon they were tried and convicted. A petition in the United States Circuit Court for the writ of habeas corpus was allowed and the case docketed therein. The Commonwealth of Virginia then petitioned the Supreme Court of the United States for a writ of mandamus to compel the return of the prisoners to the custody of the State. The petition was granted on the ground that

the defendants could not as a matter of right demand a mixed jury, the court declaring that the Fourteenth Amendment is not violated if, when the jury is all white, it cannot be shown that Negroes were excluded solely on the ground of race or color. Decision against Federal intervention.

- (4) Ex parte Virginia, 100 U.S. 339.
 J. D. Coles, Esq., Judge of the County Court of Pittsylvania County, Virginia, was arrested by Federal indictment in the District Court of the United States for the Western District of Virginia for failing to select Negroes as grand and petit jurors to serve in the county courts of the above-mentioned county. This arrest was made under section four of the Civil Rights Act of 1875. Petitions to the Supreme Court of the United States for the writ of habeas corpus were filed by both Coles and the Commonwealth of Virginia. These petitions were denied and the cause remanded to the District Court for trial.

Field and Clifford, JJ., dissented. The merits of the case, that is, as to whether Judge Coles was guilty of discrimination against Negroes in the selection of jurymen, solely on the ground of race or color, were not involved in these proceedings. The decision went only so far as to declare section four of the Civil Rights Act of 1875 constitutional. Decision in favor of Federal intervention.

October Term, 1880

- (5) Neal v. Delaware, 103 U. S. 370.
 The defendant, a Negro was indicted and arraigned for trial in a Delaware State Court for the crime of rape upon a white woman. The Delaware Constitution of 1831, section one, article four, and the Delaware Revised Statutes of 1853, section 109, thereunder enacted, limited the selection of grand and petit jurors to the white race. On the ground of this discrimination the defendant moved to quash the indictment. This motion was denied. The defendant was thereupon tried and convicted and sentenced to be hanged. Upon a writ of error to the Delaware court the United States Supreme Court declared the law under which the juries had been drawn for the trial of the case, to be in violation of the Fourteenth Amendment and ordered the release of the prisoner. Waite, C. J. and Field, J., dissented. Decision in favor of Federal intervention.

October Term, 1882

- (6) Pace v. Alabama, 106 U. S. 583.
 The defendant was tried and convicted in a State court of Alabama under Section 4189 of the Code of Alabama, which provided for a more severe punishment in cases of

fornication and adultery between Negroes and whites than between members of the same race. Upon writ of error, the United States Supreme Court declared that this was not a denial of equal protection of the laws under the Fourteenth Amendment. Decision against Federal intervention.

(7) Bush v. Kentucky, 107 U.S. 110.

The defendant, a Negro, was indicted for murder and arraigned for trial under II Revised Statutes of Kentucky of 1852, p. 75, which excluded Negroes from all jury service. A motion to set aside the panel of petit jurors on the ground of discrimination was overruled. Petition for removal to the United States Circuit Court was also denied. The defendant was thereupon tried, convicted, and sentenced to death. Upon writ of error, the United States Supreme Court declared the indictment void, as the law under which it was found violated the equal protection clause of the Fourteenth Amendment. Field, J., Waite, C.J., and Gray, J., dissented. Decision in favor of Federal intervention.

October Term, 1883

(8) The Civil Rights Cases, 109 U.S. 3.

These were five separate causes of action, each involving the same Federal question, namely, the constitutionality of sections one and two of the Civil Rights Act of 1875. They were thus treated as one case by the United States Supreme Court. The facts may be briefly summarized as follows:

- I. The denial of hotel accommodations to certain Negroes in the State of Kansas.
- II. The denial of hotel accommodations to a Negro in the State of Missouri.
- III. The denial to a Negro of a seat in the dress circle of Maquire's Theatre in San Francisco.
- IV. The denial to a person (presumably a Negro) the "full enjoyment" of the accommodations of the Grand Opera House in New York City.
- V. The refusal by a conductor on a passenger train to allow a Negro woman to travel in the "ladies car" on a train of the Memphis and Charleston Railroad Company.

These acts of discrimination by private persons were severally set up as violations of sections one and two of the Civil Rights Act, which, by its terms, protected the Negro from the invasion of his newly given rights by the acts of private individuals as well as by action of the States. The primary question in the case was the constitutionality of this act of Congress. A further interpretation of the Thirteenth Amendment was also involved. In

making the decision the court but elaborated the doctrine foreshadowed in the Slaughter House Cases, supra and formulated in United States v. Cruikshank, supra, and in Virginia v. Rives, supra, that Congress had no power under the Fourteenth Amendment to initiate direct and affirmative legislation and thus invade and destroy the police power of the States. It could only enact general laws which would regulate the enforcement of the prohibitions contained in the Amendment when they were violated by the States. It is powerless to establish a Federal Code regulating or controlling the acts of private persons in the States. Harlan, J., dissented. Decision against Federal intervention.

October Term, 1889

- (9) Beatty v. Benton, 135 U. S. 244.
In 1854, a Negro named Carrie transferred by deed a lot in Augusta, Georgia, to a white man. Under a statute of 1818-1819, Negroes could not hold real property in Georgia. Litigation over this property began in 1879 in the State courts, the outcome of which was the declaration that the deed of Carrie was void by virtue of said antebellum statute. The aggrieved party attempted to set up the Federal question that this was in contravention of the equal protection clause of the Fourteenth Amendment. Upon writ of error the United States Supreme Court decided that no Federal question was presented and dismissed the writ. Decision against Federal intervention.

October Term, 1894

- (10) Andrews v. Swartz, 156 U. S. 272.
Anderson, a Negro, was indicted, tried and convicted in a New Jersey State Court for murder, and sentenced to death. He then petitioned the United States Circuit Court for a writ of habeas corpus on the ground that Negroes had been excluded from the grand and petit juries which dealt with his case. The Circuit Court denied the petition. On appeal the Supreme Court declared that the petitioner had used the wrong method of procedure, since the regular trial of a State court cannot be reviewed by habeas corpus proceedings. Decision against Federal intervention.

October Term, 1895

- (11) Gibson v. Mississippi, 162 U. S. 565.
The defendant, a Negro, was indicted for murder and arraigned in a State Court. He petitioned for the removal of the cause to the Federal Court on the ground that Negroes were excluded from the grand and petit juries. The petition was denied and the defendant forth-

with tried and convicted. The ruling of the State court was upheld by the United States Supreme Court on writ of error. No proof was offered of discrimination against Negroes "solely on the ground of race or color". Decision against Federal intervention.

- (12) Charley Smith v. Mississippi, 162 U.S. 592.
The defendant, a Negro, was indicted for murder and arraigned in a State court for trial. He moved to quash the indictment on the ground that Negroes were excluded from the grand and petit juries. No proof of discrimination was offered. The motion was overruled and the defendant tried and convicted. Upon writ of error the United States Supreme Court affirmed the decision. Decision against Federal intervention.
- (13) Murray v. Louisiana, 167 U.S. 101.
The defendant, a Negro, was indicted, tried, and convicted of murder by white juries. The same procedure was had as in the foregoing case. Decision against Federal intervention.
- (14) Plessy v. Ferguson, 163 U. S. 537.
Plessy, a person of African descent, was arrested, tried and convicted in the Criminal District Court for the Parish of New Orleans for violating the Louisiana Statute of 1890 (No. 111, p. 152), which provided that Negroes and white persons should travel in separate compartments on the passenger trains in that State. Upon proceedings had in the United States Supreme Court by way of prohibition and certiorari to test the constitutionality of said statute it was held to be a valid exercise of the police power of the State, and therefore not in violation of the equal protection clause of the Fourteenth Amendment, Harlan, J., dissented. Decision against Federal intervention.

October Term, 1897

- (15) Williams v. Mississippi, 170 U. S. 213.
The defendant, a Negro, was indicted for the crime of murder, and arraigned before juries composed entirely of white men. A motion to quash the indictment on the ground of race discrimination was overruled. A petition for removal to the United States Circuit Court for the same alleged reason was denied. No proof of such discrimination was offered. The defendant was thereupon tried, convicted, and sentenced to death. Upon writ of error the United States Supreme Court affirmed the decision. Decision against Federal intervention.

October Term, 1899

- (16) Cummings v. Board of Education, 175 U.S. 528.
The Ware High School of Richmond County, Georgia, a public institution for Negroes only, was suspended "for

economic reasons", while the high school for whites in the same county was continued in operation. Cummings, a Negro taxpayer, complained of discrimination against the Negroes as being in violation of the "privileges and immunities" and the "equal protection" clauses of the Fourteenth Amendment. The trial did not show any abuse of discretion allowed by law to the county Board of Education. The constitutionality of all laws providing separate accommodations for whites and blacks in the public schools of the States was attacked in the argument of counsel, but the question was not presented in the record. Upon writ of error the United States Supreme Court affirmed the decision of the Supreme Court of Georgia upholding the action of the county Board of Education. Decision against Federal intervention.

(17) Carter v. Texas, 177 U. S. 442.

The defendant, a Negro, was indicted and arraigned in a State court for trial for the crime of murder. He moved to quash the indictment on the ground that Negroes were excluded from the grand jury on account of their race or color. He offered to introduce proof in support of this motion. The court refused to allow the introduction of proof and overruled the motion. The defendant was forthwith tried and convicted. Upon writ of error the United States Supreme Court reversed the decision of the State Court and remanded the case on the ground that the trial court erred in refusing to receive proof in support of said motion. Decision in favor of Federal intervention.

October Term, 1902

(18) Tarrance v. Florida, 188 U.S. 519.

The defendant, a Negro, was indicted and arraigned for trial for the crime of murder. The juries were composed entirely of white men. He moved to quash the indictment on the ground of racial discrimination. No proof was offered in support of the motion. He was forthwith tried and convicted. Upon writ of error the United States Supreme Court affirmed the decision of the State court. Decision against Federal intervention.

(19) Brownfield v. South Carolina, 189 U.S. 426.

The defendant, a Negro, was indicted for the crime of murder before a grand jury composed entirely of white men. He moved to quash the indictment because of alleged exclusion of Negroes therefrom on account of their race or color. The motion further set upon that the Negroes constituted four-fifths of the population of the county. No proof of discrimination was offered. The defendant was tried and convicted and the proceedings of the State court were affirmed, upon writ of error, by the United States Supreme Court. Decision against Federal intervention.

- (20) Giles v. Harris, 189 U.S. 475.
 Giles, a Negro, instituted proceedings to test the constitutionality of the suffrage clauses of the Constitution of Alabama in 1901. The interpretation of the Fifteenth Amendment was the paramount issue, although the "equal protection" clause of the Fourteenth Amendment was involved. An adverse decision was given in the State courts. The defendant prosecuted a writ of error to the Supreme Court of Alabama, which was dismissed for want of jurisdiction by the United States Supreme Court. The record did not present a Federal question. Brewer, Brown, and Harlan, JJ., dissented. Decision against Federal intervention.

October Term, 1903

- (21) Rogers v. Alabama, 192 U.S. 226.
 The defendant, a Negro, was indicted and arraigned for the crime of murder. The juries were composed entirely of white men. He moved to quash the indictment on the ground that Negroes were excluded from the juries on account of their race or color. The motion was stricken from the files for prolixity and the defendant tried and convicted. Upon writ of error the United States Supreme Court decided that the motion was relevant, properly presented a Federal question, and though perhaps including some superfluous matter, should not have been stricken from the files on the ground of local practice. Proof should have been allowed to have been introduced under the motion. The State court was reversed and the cause remanded. Decision in favor of Federal intervention.
- (22) Giles v. Teasley, 193 U.S. 146.
 This was a second attempt by Giles, a Negro, to test the constitutionality of the suffrage clauses of the Constitution of Alabama of 1901. The Fifteenth Amendment, as before, was predominantly involved, the Fourteenth being of only secondary importance. The case was decided adversely in the State Courts. Upon writ of error the United States Supreme Court dismissed the proceedings on the ground that the record did not present a Federal question. The pleadings of the plaintiff were inconsistent, one allegation neutralizing the other. Harlan, J., dissented. Decision against Federal intervention.

October Term, 1905

- (23) Martin v. Texas, 200 U.S. 316.
 The defendant, a Negro, was indicted for the crime of murder and arraigned for trial. He moved to quash the indictment on the ground that all Negroes had been excluded from the grand and petit juries because of race or color. No proof of discrimination was offered. The motion was overruled and the defendant tried, convicted,

and sentenced to death. The United States Supreme Court, upon writ of error, reiterated its former opinions that the defendant could not, as a matter of right, demand a mixed jury. Decision against Federal intervention.

October Term, 1906

- (24) Hodges v. United States, 203 U.S. 81.
 Hodges and several other white men were indicted by a grand jury in the District Court of the United States for the Eastern District of Arkansas on the charge of threatening and intimidating eight Negro laborers in a certain lumber yard. The indictment was found under U. S. Revised Statutes Sections 1977-1999, 5508 and 5510, which embodied portions of the Civil Rights Act of 1866, the Enforcement Act of 1870, the Ku Klux Act of 1871, and the Civil Rights Act of 1875. The interpretation of all three of the War Amendments was involved, the Thirteenth being predominant. The defendants demurred to the indictment as presenting no Federal question. This was overruled and the defendants forthwith tried and convicted. Upon writ of error the Supreme Court reversed the District Court and remanded the cause with instructions to sustain the demurrer. The alleged offense having been committed by private persons was not within the jurisdiction of a Federal court. Harlan and Day, JJ., dissented. Decision against Federal intervention.

October Term, 1908

- (25) Berea College v. Kentucky, 211 U. S. 45.
 Berea College, a Kentucky corporation, was indicted under section one of the Acts of Kentucky of 1904, Chap. 85, which provided that no person or corporation should operate any school or college in which persons of the white and the Negro races were both received as pupils. The facts were undisputed, Berea College being such a mixed school. The only point in the case was the constitutionality of the above-mentioned law under the Fourteenth Amendment. The trial in the State court resulted in a conviction and fine. Upon being brought to the United States Supreme Court by writ of error, the case turned upon the point that the defendant was a corporation and not a person, and hence being a creature of the State was subject to its control in this particular. The question as to the power of the State to enforce the separation of the races in schools per se was not decided. Only that portion of the Act which referred to the restrictions on corporations was declared unconstitutional. The Supreme Court -- like other forces -- follows the line of the least resistance. If a case be disposed of on a lesser point, the greater will not be decided. One cannot but doubt the logic and ultimate justice of such a rule. Harlan, J., dissented. Decision against Federal intervention.

- (26) Thomas v. Texas, 212 U.S. 278.

The defendant, a Negro, was indicted and arraigned on the charge of murder. He moved to quash the indictment on the ground that all Negroes had been excluded from the grand and petit juries. No proof of discrimination was offered. The motion was overruled and the defendant tried, convicted, and sentenced to death. Upon writ of error the United States Supreme Court affirmed the decision of the State Court on the ground aforementioned against discrimination will not be presumed. Decision against Federal intervention.

October Term, 1909

- (27) Marbles v. Creecy, 215 U.S. 63.

A requisition was issued by the Governor of Mississippi to the Governor of Missouri for the return of Marbles, a Negro, who was charged with the crime of assault with intent to murder. He had fled to the State of Missouri. Upon being arrested in the latter State, by virtue of said requisition, he petitioned for a writ of habeas corpus in the United States Circuit Court, setting up the alleged fact that it was not possible that he could receive a fair trial should he be returned to the State of Mississippi, on account of his race or color. No proof was offered that such a state of affairs would come to pass. The petition was denied by the Circuit Court. Upon appeal to the United States Supreme Court the decision was affirmed and the prisoner ordered to be surrendered. Decision against Federal intervention.

- (28) Franklin v. South Carolina, 218 U.S. 161.

Pink Franklin, a Negro, shot and killed one Valentine, a constable, who was attempting to arrest him for the violation of a certain South Carolina statute. He was indicted for murder, tried, convicted, and sentenced to death. No Negroes were on the juries. At the trial a motion was made to quash the indictment on this ground. No statement of race discrimination was made and no proof of such discrimination offered. Upon writ of error the Supreme Court of the United States affirmed the judgment of the State Court. Decision against Federal intervention. (44)

October Term, 1909

- (29) Chiles v. C. & O. Ry. Co., 218 U.S. 71, 30 S. Ct. 677 (1910).

The plaintiff in error, a Negro, had a first-class ticket from Washington, D. C. to Lexington, Kentucky. He changed cars at Ashland, Kentucky, and there went into a car reserved for white persons exclusively.

- (44) Extracted from: Charles Wallace Collins, The Fourteenth Amendment and the States, Boston: Little Brown & Company, (1912) pp. 48-52.

Pursuant to a regulation of the railway company he was required to remove into a compartment in another car set apart for colored passengers. This he did under protest, only when a policeman had been summoned to eject him. He sued for damages, basing his claims on his rights as an interstate passenger. It was held that in the absence of Congressional legislation the carrier could make reasonable regulations for the conduct of its business. As to what was "reasonable" it was said that this "cannot depend upon a passenger being state or interstate." Decision against Federal intervention.

October Term, 1913

- (30) Butts v. Merchants and Miners Transportation Co., 230 U. S. 126, 33 S. Ct. 964 (1913).

A Negro woman, holding a first class ticket on a coast-wise vessel from Boston to Norfolk and return, sued under Sections 1 and 2 of the Civil Rights Act of 1875. She asked for damages, alleging deprivation on account of color, of the privileges accorded other first class passengers who were white. The unanimous court recognized the Civil Rights Cases, supra, as authoritatively declaring the applicable law, on the ground that the terms of the Act in question, it being a criminal statute, were not separable. The act is invalid in this instance as well as when applied to the states. Decision against Federal intervention.

- (31) McCabe v. A. T. & S. F. R. Co., 235 U. S. 151, 35 S. Ct. 69 (1914).

Petition for injunctive relief by five Negroes who brought suit in behalf of other Negroes in Oklahoma alleging that under a state statute public carriers were authorized to provide separate cars for whites with diners and sleepers and none for Negro passengers. Relief was denied on the grounds that the petition did not state a cause for relief since the petitioners did not allege they had ever travelled on the trains in question. Decision against Federal intervention.

October Term, 1915

- (32) Guinn v. United States, 238 U.S. 347, 35 S. Ct. 926 (1915).

A 1910 amendment to the Oklahoma constitution exempted from a literacy test for voters every person "who was, on January 1st, 1866, or any time prior thereto, entitled to vote under any form of government", or was a "lineal descendant of such person". It was apparent that the purpose of the constitutional amendment was to prevent Negroes who were disfranchised in 1866 from voting since they could not qualify to the exception. The Supreme Court brushed aside the device as contrary to the 15th Amendment. Decision in favor of Federal intervention.

Chapter III

The Legal Status of Americans of Negro Descent

Since World War I

by Milton R. Konvitz

This chapter will not deal with the inequalities that exist despite the law. It will be concerned with the inequalities that exist because of the law; the inequalities that are legal, that are sanctioned by the United States Supreme Court and by the laws of legislatures. We shall also consider to what extent inequalities have been declared against the law.

I. The Negro and the Supreme Court1. The Negro's right to live where he pleases.

There are many municipalities where a Negro cannot buy land; there are large sections in nearly every city and town where he cannot buy or rent a house or shop. Have owners the legal right to refuse to sell or rent property to a Negro solely because of his color or race?

Although (in the case of Buchanan v. Warley) the Supreme Court in 1917 held that a municipality may not by ordinance segregate the Negro from the white residents, the constitutional restraint thus placed on a government agency is not imposed on individual owners. In another case (Corrigan v. Buckley) which came before the Court in 1926 and involved a covenant prohibiting the sale for twenty-one years to any Negro, the Court held that under the Constitution the Negro has no protection against the action of an individual owner. Individual owners may therefore enter into contracts respecting the control and disposition of their property with the purpose of excluding the Negro from its use and enjoyment.

The more recent decision of the court in Hansberry v. Lee has been hailed as a great victory for the Negro. Actually it was nothing of the kind. In that case it appeared that 500 Chicago landowners had made an agreement stipulating that for a specified period no part of their lands should be sold or leased to Negroes. The defendant was one of the owners; petitioners were Negroes who had acquired and were occupying a portion of the land. Petitioners claimed that the owners' agreement by its own terms had required the signature of 95 per cent of the owners and that the required percentage of owners had not signed. Defendant claimed that 95 per cent of the owners had signed, as had been determined in an earlier Illinois suit. To this answer petitioners replied that they were not bound by the Illinois decision, since they had not been parties to that suit. A lower federal court had found as a fact that only 54 per cent had signed but held that petitioners were none the less bound by the Illinois decision. The Supreme Court held simply that petitioners were not bound by the Illinois decision, since they had not been parties in the suit before the state court. Nothing in the decision or in the opinion by Mr. Justice Stone may in any way be construed as changing the law laid down in 1926.

Under the law as it stands today, then, while the government may not enforce racial segregation, private agreements barring Negroes from neighborhoods or homes will be enforced by the courts. It has been argued often that contractual segregation should also be declared unconstitutional. The court had an opportunity in Hansberry v. Lee to adopt this position, thereby outlawing segregation howsoever instituted, but the court avoided the issue altogether by deciding the case on an incidental point.

2. The Negro's right to an education

As early as 1899 the Supreme Court, in Cumming v. Board of Education, upheld segregation in schools. But the leading case is Berea College v. Kentucky, decided in 1908.

In 1904 the Kentucky legislature passed an act prohibiting any corporation or individual from maintaining an educational institution for both races. It did permit a school to maintain separate branches for the two races, provided they were at least 25 miles apart. The act was aimed directly at Berea College, established fifty years before and opened to Negro pupils after the Civil War. After the act was passed the college authorities reluctantly transferred their Negro pupils to Negro colleges. The college authorities undertook to test the constitutionality of the act. The Supreme Court held the act constitutional. Berea College was an incorporated institution, operating under a charter; a charter, being the legislative grant, may be amended by the legislature; the purpose of the act of 1904 was to amend the charter of the corporation; therefore, the act was constitutional.

Mr. Justice Harlan dissented and took pains to ridicule the reasoning of his associates. The obvious purpose of the legislature, he said, was not simply to prohibit mixed teaching by corporations but by anyone; the act did not purport to amend charters. The court, he said, should directly decide whether the act is constitutional insofar as it makes it a crime to operate a private school for both white and Negro pupils. He thought the act was contrary to the Fourteenth Amendment. Why not forbid white and Negro children from coming together in Sunday School or church? The right not to be interfered with in one's

religion is no more sacred than the right to impart and receive instruction not harmful to the public. "Have we become so inoculated with prejudice of race that an American government, professedly based on the principles of freedom, and charged with the protection of all citizens alike, can make distinctions between citizens in the matter of their voluntary meeting for innocent purposes simply because of their respective races?"

The institution involved was a private school. A private school claimed the right to teach both white and Negro students; the law intervened to deny that right; the Supreme Court upheld the law. It is a case where the law compelled segregation.

In 1936 the court considered segregation in a public university. In Gaines v. Canada, petitioner, a Missouri citizen and a graduate of Lincoln University (for Negroes), wanted to study law at the University of Missouri and qualified for admission but was rejected. A state act provided that, pending the full development of Lincoln University, the board of curators might send a student to the university of an adjacent state to study any subjects provided for at the University of Missouri but not taught at Lincoln, the board to pay reasonable tuition fees. The curators offered to send the Negro petitioner to a law school in an adjacent state but he insisted on admission to the University of Missouri School of Law. The state court, construing the state constitution, held it mandatory to segregate Negro students. The Supreme Court decided in favor of the petitioner and Chief Justice Hughes wrote, "We are of the opinion that the ruling was error, and that petitioner was entitled to be admitted to the law school of the state university in the absence of other and proper provision for his

legal training within the state."

The court did not hold that the Negro student must be admitted to the University of Missouri School of Law as a white student would be admitted. It held only that either he must be admitted or the state must provide other proper facilities within the state. The Negro won the right not to be sent out of the state for his education; he was not accorded the right to an education in a public institution regardless of his color.

3. The Negro's right to vote

The poll-tax has been universally condemned as an undemocratic obstacle to a free election. Yet in the case of Breedlove v. Suttles, decided by the Supreme Court in 1937, the court upheld the Georgia poll-tax law, saying, "Payment as a prerequisite is not required for the purpose of denying or abridging the privilege of voting." To make payment of the tax a prerequisite to voting is not, held the court, to infringe the Fourteenth Amendment; it "is a familiar and reasonable regulation long enforced in many states and for more than a century in Georgia." The court approved the poll-tax law as not only constitutional but as a reasonable piece of legislation.

The poll-tax is a bar to voting in final elections. As to the primary, the chief bar has been the pure-white party rule. In southern states nomination in the Democratic Party primary election is equivalent to final election. In southern states the Democratic Party conducted primary elections from which Negroes were rigorously excluded. Repeatedly the Democratic Party attempted to show in cases brought to the Supreme Court that the Party was a private organization from which

could be excluded any group not wanted by the Party, and that the primary conducted by the Party was a private affair. In 1945, in Smith v. Allwright, the court declared that the Democratic Party of Texas could not exclude Negroes from voting in the Party's primary election.

4. The Negro's right to public facilities

Just as some state laws compel segregation in schools, colleges and universities, so some state laws compel segregation in public conveyances. Such laws, insofar as they do not apply to interstate traffic are constitutional. The Supreme Court has so ruled time and again. In another part of this chapter will be listed the states which require segregation -- Jim Crowism -- in railway transportation. In these states failure by the railway companies to enforce the terms of the laws is a misdemeanor, and a passenger or conductor who violates the law is guilty of a crime. Some states have Jim Crow laws which apply also to street cars. In some, compulsory segregation is extended to cover all forms of public transportation.

In 1896, in Plessy v. Ferguson, the court considered a Louisiana act which required equal but separate accommodations and provided a penalty for passengers who sit in a car or compartment assigned to the other race. The petitioner, an octoroon, in whom "Negro blood" was not discernible, sat in a white car and was arrested. The court held the Louisiana act constitutional; it was a reasonable exercise of the state's police power. It was argued that segregation implies inferiority. To this the court replied that this is true solely because the Negro chooses to put that construction upon it.

Mr. Justice Harlan dissented, pointing out that the Thirteenth Amendment not only ended slavery but forbade the imposition of anything constituting a badge of servitude; that the Fourteenth Amendment gives Negroes the right to be exempt from "unfriendly legislation", "legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race." To the argument that there was no discrimination because the law of separation applies to both races alike, Harlan replied that obviously the purpose of the act was not to exclude the white from the Negro cars but to exclude the Negro from the white cars. He maintained that if a white man and a Negro want to occupy the same public conveyance on a public highway it is their right to do so, and no government can prevent them without infringement of the personal liberty of each. Why, asked Harlan, may not the principle of the decision apply to sidewalks, to a separation of Protestants and Catholics? "What," he asked, "can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens?" The act declares Negroes to be criminals if they ride in a white man's coach. Negroes, said Harlan, should never cease objecting to such a law. If evils will result from commingling, greater evils will result from the infringement of civil rights. "The thin disguise of 'equal accommodations' ... will not mislead anyone, nor atone for the wrong done this day."

It was not until 1946, in the Irene Morgan case, that the court held unconstitutional a state Jim Crow law. But the Virginia law involved in that case was held unconstitutional only because it attempted to impose Jim Crow regulations on interstate passengers. It is significant that the basis for the decision is not equal protection of the law, or due process of the law, but the exclusive right of Congress to regulate interstate commerce. Jim Crowism in intrastate traffic is still constitutional.

5. The Negro's right to join a labor union

In several recent cases the Supreme Court has recognized the right of Negro workers freely to join labor unions without discrimination because of their race or color. In the Steele and Tunstall cases the court held that since the Railway Labor Act authorizes a union, chosen by a majority of the workers, to represent the entire craft, the union selected as the bargaining unit must represent all workers without discrimination because of race or color. In the Railway Mail Association case the court held that a state may by legislation declare the right to join a labor union without discrimination because of race, color, creed or national origin, a civil right and protect this right by criminal sanctions.

6. Summary

The Negro has been successful before the Supreme Court in cases involving procedure in criminal trials, the treatment of persons suspected of the commission of crimes, the right to be indicted or tried by a jury from which members of one's own race are not systematically excluded. But these cases have not involved the rights of Negroes as such: the decisions of the court have simply extended to

the Negro the constitutional right of all citizens to trials conducted according to "due process". In cases involving the rights of Negroes as Negroes--to live where they please, to be free from segregation in schools and universities, to vote without the poll-tax restrictions, to ride in intrastate commerce in public conveyances without subjection to Jim Crowism--in these cases the Negro has been unsuccessful, even when, as in recent years, the Supreme Court has consisted of a liberal majority.

II. Protection of Civil Rights by Federal Law

Recently Tom Clark, United States Attorney General, speaking of federal action in cases involving mob violence against Negroes, has said: "Federal action in most of these cases hangs upon a very thin thread of law. It is like trying to fight a modern atomic war with a Civil War musket...The time has come when Congress may have to pass legislation to insure to all citizens the guarantees under the Constitution." And Theron L. Caudle, Assistant Attorney General and head of the Criminal Division of the Department of Justice, has recently said: "...we hope to point out to Congress the inadequacy and defects of present federal statutes. Legislation is needed. We have no desire to assume jurisdiction over local affairs nor to interfere with local criminal administration, but where the community is lax in meeting its obligation to afford just and equal protection of the laws to its every individual member, that individual has--and should have--the right to look to his Federal Government for protection of himself and his neighbors. Our democracy suffers a grievous, if not fatal, blow when the processes of law and order are broken down by mob action be-

cause a few in the community lack the will to accept its obligation to keep these processes intact when the Federal Government is powerless."

The legal impotence of the federal government to protect an individual in the enjoyment of fundamental rights can be quickly demonstrated.

Following the Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution were adopted, which outlawed slavery, conferred citizenship on the Negro, and provided that no person shall be deprived of life, liberty or property without due process of law. Congress also adopted five statutes which attempted to implement the constitutional guarantees. Before long, however, the Supreme Court held that the Constitution protects only rights which stem from federal, as distinguished from state, citizenship, and that for the protection of civil rights the citizen must look to his state. Furthermore, it was held that Congress may not enact statutes which will define and protect civil rights against invasion by an individual, as distinguished from a public official. These decisions took the heart out of the Congressional legislation; before long most of civil rights acts were repealed by Congress. There are left only two important acts, and these are sharply limited in scope.

One of the statutes is section 51 of the Criminal Code, which provides that if several persons conspire to injure or threaten a citizen in the exercise of any right or privilege secured to him by the Constitution or laws of the United States, they shall be guilty of a crime. As construed by the Supreme Court, this act protects a citizen (aliens are not covered by this act) in the exercise of only

very few rights. It does not generally protect him in the enjoyment of life, liberty, or property, mentioned in the Fourteenth Amendment. These are not rights federally secured against invasion by private persons but only against invasion by the states. The act affords no protection against lynch mobs. What rights are federally secured, and thus protected against invasion by a conspiracy of two or more private persons? The cases have enumerated the following: protection in the execution and enforcement of federal judicial decrees, protection as a witness in a federal court, access to federal courts, the right to vote for federal officers, the right to run for federal offices, and cognate rights.

The other statute is section 52 of the Criminal Code, which, until 1940, was used in only two reported cases. Its usefulness may be measured in part by this fact. The act provides that, whoever, under color of state law, wilfully subjects any inhabitant to the deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains or penalties, on account of his alienage, color or race shall be guilty of a crime. This act is directed only against state and local officers; it is not directed against non-official action. If a state or local officer, acting in an official capacity, deprives a person, because he is an alien or a Negro, of his life, liberty or property without due process of law, of his freedom of speech, or press, or assembly, or other constitutional right, his action, because it constitutes in effect state action, prohibited by the Fourteenth Amendment, is a violation of the statute. Only states may do this.

The effectiveness of this statute was considerably weakened

by the decision of the Supreme Court in 1945 in the Scrows case, in which it was held that the deprivation of rights, under section 52, must be wilful; otherwise the officer's action does not come within the prohibition of the statute.

Again, mob violence is not covered by this act, unless a state or local officer is shown to be a part of the mob, and he acts as an officer wilfully to deprive a person of a federally-secured right.

The extent to which the effectiveness of this act has been weakened by the Scrows case may be seen from the following statement made by the head of the Criminal Division of the Department of Justice: "The uncertainty caused by the court's interpretation of the statute (in the Scrows case) has placed great obstacles in the way of the District Attorney and he can no longer undertake a prosecution for violation of this section with any degree of confidence, no matter how heinous is the offensive conduct charged, for the very reason that the government must carry the burden of proving that the act was committed solely for the purpose of denying the victim of a federal right."

In the light of the foregoing analysis of the scope of sections 51 and 52, it is easy to agree with the head of the Criminal Division of the Department of Justice when he says that "sections 51 and 52 are indeed imperfect statutory authority upon which to ground a consistent and vigorous program for the protection of the rights of all."

III. State Statutes Prohibiting Discriminations

As we have seen, the Supreme Court has held that Congress has no power to define and protect civil rights. Only states may do this. A citizen must look to his state for the recognition of civil rights. The only thing he may demand is that the state shall not discriminate

against him in the definition and protection of civil rights on account of his race or color. But the great limitation on this principle of non-discriminatory state action is to be found in the decisions of the Supreme Court that segregation is not discrimination.

Following the decision in 1883 that civil rights are matters for the state governments, and not for Congress, state legislatures adopted civil rights acts. There are now eighteen states which have such acts, of varying scope and effectiveness. These eighteen states are: California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Washington, and Wisconsin.

The courts almost uniformly have construed these acts narrowly, because, they say, the acts are in derogation of the common law and infringe private property rights. Frequent legislative amendment is required to overcome the adverse decisions of courts.

In California the person aggrieved has only the right of civil suit; in nine states provision is made for both civil and criminal penalties; seven states provide only for criminal sanctions; in New Jersey the person aggrieved sues for a money judgment, but the award is paid to the state. Only in New Jersey, New York, and Illinois are public officials charged with the duty of enforcement of civil rights acts.

The statutes generally provide that there shall be no discrimination against persons, because of their race or color, in public conveyances, schools, places of public accommodation (as hotels, restaurants) and places of public amusement. The degrees of specificity in the statutes vary considerably: the Illinois act mentions depart-

ment stores, clothing stores, hat stores, shoe stores; the New York act mentions beauty parlors; the Michigan act mentions escalators; while at the other extreme is the Washington act, which does not at all itemize or define places of public accommodation, resort or amusement.

There is no civil rights act for the District of Columbia. On the contrary, laws of Congress impose Jim Crow restrictions on the Negro citizens of the District. A District of Columbia civil rights bill has been before Congress for several years.

New York, New Jersey, Connecticut and Massachusetts have recently adopted acts against discrimination in private employment. About 20 other state legislatures are considering, or have considered, the subject without, however, enacting legislation. These acts create a new civil right: freedom from discrimination in private employment.

IV. State statutes Compelling or allowing Segregation or Discrimination

Since civil rights pertain to the jurisdiction of the individual states, some states, as we have seen, have adopted acts to define the scope of civil rights and to afford a measure of protection in their enjoyment. On the other hand, twenty states have adopted acts compelling segregation in various relations or activities. Ten states, by inaction, have left the matter to private discretion.

To illustrate the character of the constitutions and legislation in states compelling race discrimination, we will take the legislation of the state of Mississippi, a former slave state and a state where legal caste has perhaps been carried to the greatest extreme:

From the Constitution of the State of Mississippi
Adopted November 1, 1890, A.D.:

Article 3, Bill of Rights, Section 8

All persons, resident in this state, citizens of the United States are hereby declared citizens of the state of Mississippi.

Article 8, Education, Section 207

Separate schools shall be maintained for children of the white and colored races.

Article 10, The Penitentiary and Prisons, Section 225

It (the legislature) may provide for ... the separation of the white and black convicts as far as practicable, and for religious worship for the convicts.

Article 14, General Provisions, Section 263

The marriage of a white person with a Negro or mulatto, or person who shall have one-eighth or more of Negro blood, shall be unlawful and void.

From the Mississippi Code of 1930 of the Public Statute Laws of
the State of Mississippi
(Published by authority of the Legislature by
the Code Commission with Supplement for 1933):

Chapter 20, Section 1103

Races -- Social equality, marriages between -- advocacy of punished.

Any persons, firm or corporation who shall be guilty of printing, publishing, or circulating printed, typewritten or written matter urging or presenting for public acceptance, or general information, arguments or suggestions in favor of social equality, or of inter-marriage, between whites and Negroes, shall be guilty of a misdemeanor and subject to a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both fine and imprisonment in the discretion of the court.

Chapter 20, Section 1115

Railroads -- not providing separate cars, --

If any person or corporation operating a railroad shall fail to provide two or more passenger cars for each passenger train, or to divide the

passenger cars by a partition to secure separate accommodations for the white and colored races, as provided by law, or if any railroad passenger conductor shall fail to assign each passenger to the car or compartment of the car used for the race to which the passenger belongs, he or it shall be guilty of a misdemeanor, and, on conviction shall be fined not less than twenty dollars nor more than five hundred dollars.

Legislation similar to that of Mississippi is in force in Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida, Louisiana, Arkansas, Oklahoma, and Texas. Similar but less stringent legislation is in force in Delaware, Maryland, West Virginia, Kentucky, Tennessee, and Missouri. In Delaware, West Virginia, and Missouri separation in travel is not required by statute. Eight northern states (California, Colorado, Idaho, Indiana, Nebraska, Nevada, Oregon and Utah) forbid intermarriage, and some states permit separate schools. In the majority of northern states caste based on race and color is not required and is in many states expressly forbidden by law. Nevertheless even in these states public opinion and custom often enforce discrimination.

In twenty states segregation of pupils in schools is mandatory or expressly permitted. In three states the statutes require separate schools even for the deaf, dumb and blind. In six states the statutes call for separate schools for the blind. Sixteen states require segregation in juvenile delinquent and reform schools; in nine states separate trade and agricultural schools are required. Three states require separate school libraries. Florida stipulates that textbooks used by Negro pupils shall be stored separately. Separate colleges are mandatory in twelve states. Separate teacher-training schools are required in fourteen states. In several states Negro pupils may be taught only by a Negro teacher and white pupils only by a

white teacher; one of these states provides that only white persons born in the United States, whose parents could speak English and who themselves have spoken English since childhood, may teach white pupils.

In fourteen states the law requires separate railroad facilities. Three states stipulate that separate sleeping compartments and bedding are to be used by Negro train passengers. Separate waiting rooms are required in eight states. Separation in buses is required in eleven states; ten states have the same requirement affecting street-car transportation. Three states provide for separation on steamboats.

Two states require separation of the races at circuses and tent shows. Three states require separation in parks, playgrounds and on beaches. Three states require separation in billiard and pool rooms. Arkansas requires separation at race tracks. In Tennessee and Virginia separation at theatres and public halls is required.

There are laws which require separation of the races in hospitals. In eleven states even mental defectives must be separated by race. In Alabama a female white nurse may not take care of a Negro male patient.

Separation is required by eleven states in penal and correctional institutions. Separate bathing facilities in such institutions are required by laws in Alabama and Tennessee. Separate tables in such institutions are required by a statute of Arkansas, and separate beds by statutes in two states.

There are laws which require separation of the races in a multitude of relations -- too many to be mentioned here. Several examples will make clear the scope of the Jim Crowism imposed by law: Oklahoma requires separate telephone booths for Negroes; a Texas statute prohibits whites and Negroes from engaging together in boxing

matches; Arkansas requires a separation of the races in voting places; in Georgia a Negro minister may marry only Negro couples; in South Carolina Negroes and whites may not work together in the same room in cotton textile factories, nor may they use the same doors of entrance and exit at the same time.

If a state does not have an act calling for segregation with respect to a specific matter, it is not to be assumed that with respect to that matter there is no segregation. Many of the southern and border states do not have laws requiring segregation in theatres and other places of public amusement; yet the races do not mingle there, and the Negro cannot compel admission because the states have no civil rights acts.

As Myrdal has pointed out, these Jim Crow laws effectively tighten and freeze segregation and discrimination. Before this Jim Crow legislation was enacted there was a tendency on the part of white people to treat Negroes somewhat differently, depending upon class and education. This tendency was broken by the laws which applied to all Negroes. The legislation thus solidified the caste line and minimized the importance of class differences in the Negro group.

Congress has refused to pass laws to declare the poll tax illegal; to make lynching more effectively subject to federal law; to make discrimination in private employment in interstate commerce a crime to define and guarantee civil rights in the District of Columbia. The Supreme Court has failed to declare Jim Crowism in intrastate commerce unconstitutional; to outlaw segregation in schools as a denial of due process or equal protection of the laws; to outlaw the restrictive covenant in the sale or rental of property; to declare the poll tax an unconstitutional tax on a federally guaranteed right or privilege.

The Supreme Court has placed the Negro at the mercy of the individual states; they alone have the power to define and guarantee civil rights. The Negro is a citizen of the United States, yet the thread that ties him to the federal government, when it is a question of protecting his life, liberty or property, is so thin that the government is compelled to admit its impotence.

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Chapter IV

The Present Legal and Social Status of the American Negro

by William R. Ming, Jr.

The present legal and social status of the Negro in the United States can be best described in terms of the appalling contrast between the breadth of the rights which are guaranteed by law to every person and those few which Negroes, generally, are permitted to enjoy. Frequently it is said that the Negro has been relegated to "second class citizenship". That, however, is an overly simplified description of the plight of a minority when the political and social institutions of their country fail miserably to protect their lives, liberties or property.

Written sources of law, whether they be constitutions or statutes, state or federal, or opinions of courts, or regulations or orders of administrative bodies furnish clues to, but do not reflect, the real status of Negroes. Rather, it is the laws in operation which determine that status and it cannot be seriously questioned that the political institutions fall far short of achieving the ideals which the laws express.

Examined together the body of laws of the United States are consistent with "The American Creed". That credo has been expressed in a variety of ways but the most succinct, perhaps, is that found in the phrase graven over the entrance to the Supreme Court of the United States. There "Equal Justice Under Law" is boldly proclaimed. The same idea is expressed in the description of the government of the United States as "one of laws, and not of men" and in a host of other platitudes. The classical proclamation of this ideal, of course, is found in the Declaration of Independence and the Constitution of the

United States . More nearly contemporary, but equally idealistic, is the justly celebrated statement of the "Four Freedoms".

Significantly, this creed authorizes no distinctions based on race, color, or previous condition of servitude. Yet discriminations based solely on race are the rule in all parts of the country. Nevertheless, so integral a part of the national consciousness is this creed that those, like the Negroes, most sinned against in its name, embrace it, and those, like the dominant majority, who deviate most from it in their political and social conduct feel obligated to explain their actions and to justify them in reference to that creed.

To explain this paradox would require a thorough analysis of the history and political and social foundations of the United States. It would be necessary to measure the psychological reactions produced in its people by the environments from which they came, and the one in which they live, and to consider a host of other factors which appear to effect political and social groups generally. The basis, however, does not alter the fact. In the eyes of the organic law Negroes are the equals of all other persons and, legally, each individual Negro is the equal of each non-Negro similarly situated. In few situations, however, have the laws and the mores of any community been so far apart.

The legal status of Negroes in the United States actually was determined by the 13th, 14th and 15th Amendments soon after the Civil War. Essentially, once slavery had been outlawed and the effects of the Dred Scott decision abolished, the relative legal status of the Negro was fixed and it was fixed in accordance with the ethical precepts of "The American Creed".

True, there have been a number of major decisions by the Supreme Court of the United States since that time which have defined

that status in particular situations. But, the necessity for such judicial determinations is, itself, a measure of the status of Negroes since in the main, the cases involved action by political instrumentalities, not individual persons; designed to deny fundamental rights to an oppressed minority. Moreover, the facts of these cases serve to depict the actual place of the Negro in the community in which he lives.

For example, after twice invalidating the efforts of the Texas Legislature to bar Negroes from the Democratic primary elections in that state, ⁽¹⁾ the power of the State Democratic Convention to achieve the same result was upheld in Grovey v. Townsend. ⁽²⁾ That anachronistic rule was short-lived. Led by the N.A.A.C.P., a determined group of Texas Negroes demonstrated that in a "one party" system the "white primary" made a mockery of votes by Negroes in any general election. As a result, the Supreme Court overruled the Grovey case and opened the primary polls to Negroes in Smith v. Allwright. ⁽³⁾ Although limited by its terms to Texas the judgment in that case really affected the whole South since the "white primary" was the pride of many states. ⁽⁴⁾ But in an effort to evade the law both South Carolina and Georgia have repealed all state laws applying to primaries. Negroes are thus excluded from a voice in selection of state and federal officers in those states

(1) Nixon v. Herndon, 273 U.S. 536 (1927).
Nixon v. Condon, 286 U.S. 73 (1932).

(2) 295 U.S. 45 (1935).

(3) 321 U.S. 649 (1944).

(4) Lane v. Wilson, 307 U.S. 268 (1939) was equally significant, though less broad in immediate effect. There, the Supreme Court held invalid an Oklahoma registration statute passed after the "Grandfather Clause" had been knocked out which allowed only a 12 day period for the registration of all persons formerly barred from the polls. The statute contained no reference to race but it permanently disfranchised those not registered within the 12 days and only Negroes had been previously banned!

by the "Democratic Party". Since these primaries are actually determinative of the election a suit has been brought recently attacking the legality of excluding Negroes under the South Carolina scheme.

The rights of Negroes accused of crimes, to freedom from duress and to a fair trial likewise have been judicially recognized, at least in the highest court, on numerous occasions. Perhaps the most celebrated of these cases was the "Scottsboro Case".⁽⁵⁾ There, failure of an Alabama trial court to provide counsel for nine young, illiterate Negroes charged with the rape of two white women of questionable virtue was held to make the conviction invalid. A second conviction was set aside because of the systematic exclusion of Negroes from both grand and trial juries.⁽⁶⁾ In the latter case the Court relied on a long line of precedents and applied a rule generally followed though hedged about with numerous technicalities.⁽⁷⁾

After a false start,⁽⁸⁾ the Supreme Court recognized that the trial of a Negro might be only a form, a face-saving substitute for a lynch mob.⁽⁹⁾ In Moore v. Dempsey the court reviewed the trial of several Negroes sentenced to death for the alleged murder of a white man during race riots in Elaine, Arkansas. It was found that the entire judicial machinery which had conducted and reviewed the trial was so

(5) Powell v. Alabama, 287 U.S. 45 (1932).

(6) Norris v. Alabama, 294 U.S. 587 (1935).

(7) See e.g. Strauder v. West Virginia, 100 U.S. 303 (1880); Ex parte Virginia, 100 U.S. 339 (1880); Hale v. Kentucky, 303 U.S. 613 (1938); and Pierre v. Louisiana, 305 U.S. (1939). For a complete and authoritative discussion of the problem see Jefferson, "Race Discrimination in Jury Service", 19 Boston Univ. Law Rev. 413 (1939).

(8) See Frank v. Mangum, 237 U.S. 309 (1915) upholding the conviction for murder of a Jew in Georgia in a trial held with a barely restrained mob demanding the prisoner's life. Holmes and Hughes JJ., dissented.

(9) 261 U.S. 86 (1928).

dominated by mob violence that there had been no trial worthy of the name.

Similarly, judicial disapproval has been expressed when convictions were shown to have been based on confessions literally beaten out of Negro suspects. But it should be noticed that in every such case the torturers were officers of the state, deputy sheriffs and the like. Moreover, that fact was relied on to justify sustaining convictions so obtained. Nevertheless, in Brown v. Mississippi⁽¹⁰⁾ the Supreme Court was impelled by the horrors of the record before it to observe that:

Because a state may dispense with a jury trial, it does not follow that it may substitute trial by ordeal. The rack and torture chamber may not be substituted for the witness stand.

Although that decision determined and applied the law of the land, the real status of Negroes is aptly demonstrated by the fact that the deputies had boasted in open court of beating the helpless Negroes until they confessed to a crime that over evidence made plain they could not have committed.

An equally illuminating demonstration of this calloused disregard for human rights which frequently characterizes the relationship between Negroes and those who administer the laws is found in Chambers v. Florida.⁽¹¹⁾ In that case, also peace officers boasted in open court of tying Negro suspects to trees and flogging them with chains until mumbled admissions of crimes of which they had no knowledge stopped their captors short of murder in the guise of law enforcement.

(10) 297 U.S. 278 (1936).

(11) 309 U.S. 227 (1940).

But even more shocking than such conduct by state officers is the fact that it usually goes unpunished. ⁽¹²⁾ Moreover, this immunity for those who commit violent crimes against Negroes is not limited to "guardians of the law". That even private persons enjoy it serves to illustrate the real place of the Negro in the community.

The spectacle of the unwillingness of law enforcement officers to seek out, much less prosecute or punish, members of lynch mobs is a ghastly, but familiar, demonstration of the failure of the law to protect Negroes. Of equal significance is the apparent inability, or worse, of some officers to hold their Negro prisoners against blood-thirsty lynch mobs. And, on occasion, this sanction of violence as a means of "keeping Negroes in their place" results in tolerance of murder in its most aggravated form.

Such a case occurred in Conroe, Texas in 1941. Bob White, a Negro, had been accused of rape of a white woman. Twice, trial courts had found him guilty but each conviction had been set aside for insufficiency of the evidence. As the Court adjourned for lunch on the first day of the third trial the deputies guarding him withdrew. At once, the husband of the alleged victim approached the prisoner and shot and killed him in full view of the judge, jury and spectators. The husband was immediately arraigned and tried for murder. Next day

(12) See Screws v. United States, 325 U.S. 91 (1945), for an extended discussion of the power of the federal government to punish such conduct by state officers even when the state does not do so. In that case a Georgia sheriff and two deputies, after having purported to arrest a Negro for theft of a tire, beat him to death in the court house square. The three "peace" officers were indicted for, and convicted of, violation of a federal statute prohibiting deprivation of constitutional rights. The conviction was reversed by a divided court with four justices holding that the trial judge had erred in not instructing the jury that the petitioners were guilty only if they intended to deprive the deceased of his constitutional rights. These justices dissented on the ground that this was not "state action" within the meaning of the 14th Amendment on which the federal statute is based because the action of the officers was clearly violative of state law. Only Mr. Justice Murphy thought the conviction ought to be confirmed.

he was acquitted and the prosecutor congratulated him!

Although the reported decisions of courts are a fruitful source of material they represent only a tiny fraction of the cases which demonstrate that the threat of unrestrained and unprovoked violence is ever-present. Some of the newspaper files tell a portion of the story but no source material contains it all. ⁽¹³⁾ Moreover, even the Negro weeklies which will report the beating of a Negro cannot be expected to find much news value in governmental non-action in case after case. ⁽¹⁴⁾

The terrorization of Negroes in the United States by lynching ⁽¹⁵⁾

(13) See Vol. I, American Dilemma, Myrdal, Harper, 1942, pp. 558-569.

(14) An exceptional case may be that of Isaac Woodard, a Negro veteran of World War II. In February, 1946 he was blinded by an unprovoked beating at the hands of a South Carolina peace officer. State officials took no action at all but the Department of Justice announced that it would seek an indictment.

(15) A lynching is the killing of an accused or suspected person by a mob without trial or before judicial sentence. Statistics of lynching have been kept with some accuracy since 1882 and are as follows:

<u>Year</u>	<u>Total*</u>	<u>Year</u>	<u>Total</u>	<u>Year</u>	<u>Total</u>
1882	114	1904	79	1925	18
1883	134	1905	60	1926	29
1884	211	1906	64	1927	16
1885	184	1907	59	1928	10
1886	138	1908	92	1929	12
1887	122	1909	75	1930	23
1888	142	1910	80	1931	11
1889	176	1911	72	1932	8
1890	128	1912	86	1933	26
1891	195	1913	85	1934	16
1892	235	1914	69	1935	24
1893	200	1915	99	1936	10
1894	197	1916	65	1937	8
1895	180	1917	52	1938	7
1896	131	1918	63	1939	4
1897	165	1919	79	1940	5
1898	127	1920	57	1941	5
1899	107	1921	58	1942	5
1900	115	1922	54	1943	3
1901	135	1923	26	1944	4
1902	97	1924	16	1945	1
1903	104			1946	7

*the figures 1882-1903, include whites

has long been an international scandal. Practically no person in the United States has ever been punished for participation in a lynching. (16) This apathy of the executive arm of the government is matched by that of the legislative in this connection. Almost continuously since 1921 a fight has been waged to secure passage of a federal anti-lynch law. But the refusal of the Senate of the United States to amend its archaic rules or to invoke cloture has permitted a small group of determined Southern Senators to "talk to death" each such measure presented.

There can be no quarrel with the basic doctrine enunciated by the Supreme Court of the United States in the cases involving the civil liberties of Negroes. But it must be remembered always that in only a few of the situations in which those rights are denied do the victims find redress in that tribunal. For the vast majority of Negroes, it is the constable, and the deputy sheriff or local judges who are the arbiters of civil rights and the cases cited are descriptive of the law at that level.

But even the higher sources of law are not consistent so far as the Negro is concerned. In part, this is due to the fact that within the territorial limits of the United States laws are made by forty-nine separate political sovereignties and innumerable subdivisions thereof. Notwithstanding the fact that the states and the federal government are not completely independent one from the other under the terms of the Constitution of the United States, differences in their laws are a continuous source of both practical and logical difficulties.

(16) Early in 1947 a mob of white taxi drivers in a South Carolina town lynched a Negro accused of murder of a white taxi driver. The mob was alleged to have consisted of 31 persons. Of these 26 were identified and apprehended; included in this number was the person alleged to have riddled the victim with a shotgun blast. Prosecution had not been undertaken two months after the lynching. Eventually all the accused were acquitted.

The effect of the federal form of government on the status of Negroes must be considered in light of the historical, economic, social and political differences between various parts of the country. For example, the independence of state law and the technicalities of the rules as to unrepealed, although obsolete legislation, has led to efforts to enforce the "Black Codes" of the "Ante-bellum South" under contemporary conditions. Similarly, local conditions, customs and activities have produced strange laws patterned after those of the slavery period such as the curfews for Negroes which are in effect in many southern urban communities.

The classic example, of course, is the "Jim Crow" law which compels segregation of Negroes in, or their exclusion from, all such places of public accommodation as restaurants, hotels, theaters, buses, railroad cars, etc. Such statutes are in effect in all of the states in the south.⁽¹⁷⁾ With these, however, must be contrasted the "Civil Rights Acts" of many of the northern and western states⁽¹⁸⁾ which prohibit segregation of Negroes in, or their exclusion from, public places.

The "Jim Crow" statutes are enforced by criminal penalties, while violation of some of the "Civil Rights" laws are punishable by criminal sanctions, some by civil penalties, and some by either or both. It should be noted, however, that while the South rigorously enforces its proscription, enforcement of the "Civil Rights Acts" is a hit or miss affair. This fact, too, is demonstrative of the hiatus between the actual legal status of Negroes and that described in the law books.

(17) Alabama, Arkansas Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

(18) Arizona, California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Washington and Wisconsin.

Both groups of laws have been upheld as within the police power of the several states. ⁽¹⁹⁾ The Supreme Court, however, has recently recognized that enforcement of a state's segregation law against a Negro travelling interstate by bus imposes a burden on interstate commerce in contravention of the negative implication of the "commerce clause" of the federal Constitution. ⁽²⁰⁾

So anomalous is the power to compel public separation of persons according to color in a nation which proclaims "Equal Justice Under Law" that the proponents of segregation have been at great pains to justify it. Thus, to achieve the necessary rationalization with the "American Creed" the concept of "separate but equal" has been developed. Put another way, in an effort to reconcile constitutional limitations and social aims the American courts have developed the proposition that even though certain rights must be accorded to all persons, those rights may be provided for persons of different races, i.e. Negroes and non-Negroes, in separate places. On that basis the law can equably contemplate separate rail cars for Negroes and whites, although carriers by law must serve all who apply, approve separate schools for Negroes and non-Negroes, though public education must be afforded to all who seek it and in some states all must accept it, and so on.

This legal segregation is probably the key to the enigma of the status of the Negro in the United States. In reliance upon it the

(19) See "Disabilities Affecting Negroes as to Carrier Accommodations, Property and Judicial Proceedings", same author, VIII Journal of Negro Education, 406 et seq., 1939 for a discussion of the statutes, the cases and their administration.

(20) Morgan v. Virginia, 328 U.S. 373 (1946), 66 S. Ct. 1050 (1946). Subsequently, both rail and bus carriers have continued segregation allegedly pursuant to the carrier's regulations as distinguished from state laws. Numerous suits testing the legality of the practice are pending in various courts. Significantly, no carrier has purported to enforce such a regulation in any state save one having a "Jim Crow" law in effect.

grossest forms of denial of basic human rights can be justified or ignored if the majority believes them desirable. Once the basic premise is accepted the requirements of even the "American Creed" can be said to have been met without alteration or improvement in the place assigned to Negroes in the United States.

The operation of the premise, with its basic fallacies, is readily observable in any state or local community. Fundamental rights and privileges can be afforded, or denied, to the persons who make up that community depending on the race of that particular person. Moreover, individual differences or distinctions are immaterial. In this case the law sanctions definition of an individual's rights and duties in terms of the racial group with which he is identified.

Examples of how the rule works are readily at hand. Contrast the crowded, dirty, freezing in winter, and sweltering in summer, "Jim Crow" cars of the southern railroads with the accommodations afforded white persons paying no more than equal fares. Or, consider the one-room schools, often unheated, poorly furnished and frequently equally poorly taught, to which most rural Negroes go for their education as another illustration. Equally illuminating is a comparison of the budgets for white and Negro schools. (21) Or, wait with a Negro soldier on a three day pass while successive busses admit only a few Negroes at a time as his leave runs out. The fact is that the law permits facilities to be separate but it does not succeed in making them equal.

Yet the law is clear; Negroes are entitled to equal rights. (22) In Missouri ex rel. Gaines v. Canada the Supreme Court ruled that the existence of a separate school system, which did not include a law school for Negroes, did not excuse the state from providing a legal ed-

(21) See Myrdal, op. cit. pp. 337-344.

(22) 305 U.S. 337 (1938).

ucation for any of its Negro citizens who might apply, but Gaines was not ordered admitted to the state university law school. The equal protection of the law required by the 14th Amendment, was deemed satisfied by establishment of a new and separate law school for Negroes. (23) So too in Mitchell v. United States (24) refusal of a carrier to furnish Pullman accommodations to a Negro because no separate car was available for him was held to violate the Interstate Commerce Act. It is common knowledge, however, that the efforts to evade the effect of that ruling range from flat refusals to sell space to assignment of drawing rooms, etc., to Negro passengers at berth rates to prevent their presence in open cars with whites.

Some measure of the stubborn resistance to the legal requirement may be found in the history of the effort to equalize the salaries of Negro and white teachers. In Alston v. School Board of City of Norfolk, (25) the court ruled that discrimination in salaries paid to teachers of equal qualifications was violative of constitutional limitations. Nevertheless, a long series of suits in other states, and sometimes in several counties in the same state, were still necessary. (26)

So it goes, with the law clear as to the rights of Negroes and the facts equally clear that these rights are regularly denied. As might be expected, the proponents of segregation ignore the facts and

(23) During the last decade one border state realistically refused to increase the expense of maintenance of a dual school system by extension to the professional school level. Instead, the court ordered the Negro applicant admitted to the law school of the state university. See Pearson, et al v. Murray, 169 Md. 478, 182 A. 592. But North Carolina followed the lead of Missouri, and Louisiana and Texas are apparently planning to do so.

(24) 313 U.S. 80 (1941).

(25) 112 F. (2d) 992 (4th C.C., 1940).

(26) See "Teachers' Salaries in Black and White", Legal Defense and Educational Fund, Inc. (1942), for the story of this campaign, still being waged.

argue vehemently the logic of it. Probably no place, however, is the fundamental fallacy and the circuitry of their reasoning so aptly demonstrated as in the defense of the statutes which prohibit marriage between Negroes and whites. And it is here that the "separate but equal" argument reaches its fullest flowering. How, says the South, can it be other than equal when not only are Negroes forbidden to marry whites but whites are likewise forbidden to marry Negroes!

The political and legal system of the United States appears to be unable or unwilling to cope with this hiatus between the theoretical and actual status of the Negro. In fact, the relation between the political and legal institutions themselves and the Negroes serves further to demonstrate the place of the Negro in the United States. For example, it is well settled, not now seriously questioned, that exclusion of Negroes from grand or trial jury invalidates any indictment or verdict directed against a Negro. Nevertheless, with the degree of uniformity dependent upon the caprices of local law enforcement officers, Negroes generally do not sit on juries considering charges against other Negroes. Sometimes the result is accomplished by flatly excluding Negroes from the jury lists without regard to the qualifications of the Negroes in the community. Equally effective, however, is the use of the peremptory challenge and the challenge for cause with the rulings being made by a judge frequently anxious to secure a "lily-white" jury. In those same courts, inevitably, the length of sentences imposed upon malefactors of different races are as diversified as the statutes limiting punishments will permit with Negroes generally receiving the maximum punishment which may be imposed. Skeptics as to the validity of a generalization of such breadth need only examine the

records of the local criminal courts in any part of the country.

These refusals to follow the doctrine of equality of all men are typical. Moreover, similar discriminations are practiced in every nook and cranny of the complex American civilization and while geographical location may affect the severity and uniformity of the practices, in no area are Negroes free from them. (27)

Such discriminations follow inevitably when a minority group is excluded from participation in the selection of the persons chosen to govern in a republic. Even in a "government of laws and not of men" the law alone is not a sufficient control to prevent excesses by government officials who, in fact, represent only the majority group. It may be regarded as a political truism that where elected officials are subject to no control at the polls their conduct in office too often is dictated by individual and group prejudices and not by legal requirements.

It is notorious that in the South, where the majority of Negroes still live, they are practically disfranchised. That this is contrary to the law goes without argument. No stronger statement of the desired social end can be made than that contained in the 15th Amendment to the Constitution which provides that no person shall be denied the right to vote by any state on account of race, color, or previous condition of servitude. Pursuant thereto the Supreme Court of the United States has declared invalid the "grandfather clause", the "white primary", and other ingenious as well as sophisticated devices aimed at providing the cloak of legality for prohibiting Negroes from

(27) See Myrdal, op. cit. p. 526, et seq.

(28) exercising the right to vote. But terrorism, economic as well as physical, is more potent deterrent to voting by Negroes than state laws as Bilbo's 1946 campaign serves to demonstrate, and by one device or another Negroes are denied the right to vote.

In the North there is a higher degree of participation by Negroes in the selection of government officers and this fact is reflected in the relationships between these officers and Negroes. But even there the exclusion of Negroes from holding office serves to prevent their actually sharing in the decisions and operation of the political institutions. This is true with respect to state and local governments as well as the national government.

A mere handful of representatives of black ghettos in northern cities make up the total of Negroes holding public office. It should go without saying that in the South where Negroes are denied the right to vote the holding of offices by Negroes ended with the withdrawal of the Union Army from the South. The general level of ability of elected officials of the United States, particularly at the local level, belies any justification for this result based on comparative merits. This is particularly true in the South where a comparison between the Negro teachers and businessmen in any community and the law enforcement officials in the same place serves to show that all citizens lose when race, not ability, is the criterion for selection of public officials.

But this discrimination is not limited to elected officials. Even in the Federal Government appointments to public office are as few

(28) See Guinn v. United States, 238 U.S. 347 (1915), and Lane v. Wilson, supra. The "poll tax", however, is not regarded as falling beneath this ban, Breedlove v. Suttles, 302 U.S. 277 (1937). Likewise, Congress has refused to pass Federal legislation to prohibit this pernicious device for disfranchising the poor, white and black alike.

as elections thereto. Negroes presently serve only as "Recorder of Deeds of the District of Columbia" and "Governor of the Virgin Islands". In the main, the only state and local official positions to which Negroes are appointed are those in the segregated school systems, and even then in most communities the top administrative jobs are closed to Negroes. In addition, there are a few local elected or appointed judge and prosecutors. But these few officers of government represent the total of Negroes among the host of persons responsible for the conduct of our vast political institutions. It is small wonder that under these circumstances Negroes fail to achieve the equality in their relationship with the government which the law guarantees them.

Other aspects of the relationship between the body and politic and the Negro display the same lack of equality of treatment. One of the most outstanding demonstrations of the real status of Negroes in the United States came when the Army of the United States was mobilized. Inevitably, for total war, 10% of the population of the country was an important factor in building an Army. The Selective Training and Service Act of 1940, true to the "American Creed" prohibited discrimination in selection or training based on race, creed or color. Five years later, however, when the Army began to demobilize, even the War Department recognized that its policy of segregation of Negro troops in separate units with the inevitable accompanying discriminations had prevented the most effective utilization of nearly 10% of its troops. With a few minor exceptions these units were of the service type. They were important in terms of overall Army operations but in an Army where a premium was placed on specialization and technical training it was only accidental if these segregated units provided the means of utilization of the services and skills of any given Negro soldier or

officer. The resultant and inevitable waste in man-power, to say nothing of the effect on the mal-utilized individuals and others around them was a high price to pay to satisfy emotional prejudices. It is characteristic, however, of the status of Negroes, that so practical a consideration is rarely given any weight.

Equally significant in determining the legal and social status of Negroes is a consideration of the areas in which neither the laws nor the political institutions even purport to protect this minority. As a simple illustration one may take the problem of the restrictions on the areas in which Negroes may live. In practically every city and town, both North and South, where any real number of Negroes lives, they are herded together in one or more congested areas. No walls surround them but the limitations on their expansion are just as real. What is more, in most cases, individual Negroes cannot escape from these ghettos, save to move to another, no matter what their individual economic status may be.

No federal or local statute compels this result. In fact, the Supreme Court has construed the 14th Amendment as prohibiting local ordinances requiring residential segregation of Negroes and whites. (29)

Terrorism and violence, of course, have been used as a means of enforcing residential segregation. (30) The most effective and most often used device for this purpose, however, is the so-called, "restrictive covenant" by means of which private persons agree not to sell their property to, or permit its use by, Negroes. Such limitations are frequently contained in the deeds executed by the sub-dividers of residen-

(29) Buchanan v. Warley, 245 U.S. 60 (1917).

(30) See, for example, "The President's Conference on Home Building and Home Ownership, Report of Committee on Negro Housing," p. 46 (1932).

tial land or mutually agreed to by groups of property owners living in the same area.

So long as the signers of these agreements comply with their terms, neither the law nor the courts have any concern with them since, save for condemnation for public purposes, owners may dispose of their property to whom they choose or refuse to sell to anyone if they like. But changes in economic circumstances frequently dictate shifts in social attitudes. Property owners once anxious to keep Negroes "out of the block" change their minds when some Negro makes a substantial offer for the property particularly when the offer is above that of any white prospect. Frequently, at that point, adjacent property owners seek the aid of the courts to enforce their private rule of residential segregation and the injunction has proved a potent means of achieving that end.

It is anomalous, but true, that in most states the courts, at the request of private persons, will use all of their judicial power to keep Negroes out of residential areas when the state legislature or the city council could not do so.

(31) See e.g. Koehler v. Rowland, 275 Mo. 573, 205 S.W. 217 (1918); Chandler v. Ziegler, 88 Colo. 1, 291 Pac. 822 (1930); Cornish v. O'Donoghue, 30 F (2d) 983 (1929). Some states have refused to enforce agreements not to sell the land but even those jurisdictions uphold restrictions on use by Negroes. See e.g. Lettau v. Ellis, 122 Cal. App. 115, 295 Pac. 95 (1931). The Supreme Court avoided decision on this question in Hansberry v. Lee, 311 U.S. 32 (1940) by ruling that petitioner had been denied his "day in court" when an Illinois court asked to enforce such a covenant refused to hear evidence on its invalidity because the same covenant had been upheld earlier in Burke v. Kleiman, 271 Ill. App. 519, 189 N.E.372 (1934). In that case there had been a stipulation as to the facts and no attack on the validity of the covenant. Instead the defendants merely sought to show that circumstances (race of the occupants of the surrounding area) had so changed as to make specific performance of the covenant inequitable. Following the decision in the Hansberry case the covenant was set aside on the ground that it had not been executed by the requisite number of property owners in the area.

The announced justification for segregation by judicial fiat is that it is not the state which dictates that result but the private persons who enter into the covenant. ⁽³²⁾ Any court so holding, however, ignores the fact that it is the power of the state exercised by the court which accomplishes the segregation and it is well settled that the limitations of the 14th Amendment apply to courts as well as to the legislative and executive arms of government. ⁽³³⁾

In any event, the law does not even purport to prevent private persons from compelling Negroes to live in overcrowded slums despite the resulting disease, death and crime for which the whole community must pay. The problem has become increasingly aggravated by the present housing shortage, but even in the field of public housing the law either ignores, or assists in maintaining, residential segregation.

The most important area in which the law furnishes no protection for Negroes is in that of economic activity. And it is, perhaps in this failing for which the government must be most criticized since the economic adversity of most Negroes has prevented them in large measure from securing for themselves the education and protection which the state has obligated itself to provide, but has refused to furnish. Moreover, it is now apparent that the Emancipation Proclamation and the 13th, 14th, and 15th Amendments were not sufficient to overcome the handicap of 250 years of chattel slavery in the economic struggle which characterizes an industrial civilization. Governmental non-action in this area, however, is partly determinative of the present legal and social status of the Negro.

(32) See Corrigan v. Buckley, 271 U.S. 323 (1926).

(33) Ex parte Virginia, 100 U.S. 339 (1880).

The economic history of Negroes in the United States is well-known and well documented. (34) They were first imported as slaves to furnish agricultural labor and the great bulk of Negroes still fill that same role nearly a century after emancipation. The general trend in the United States toward urbanization starting at the turn of the century, however, affected Negroes as well as whites. The migration of several million Negroes to the cities of the North during and after the first World War added that number to the industrial and services labor pool and reduced by that number the Negroes available for agricultural labor. In addition, and perhaps more important, for the children of those migrants job opportunities were limited to industry, the service trades, and their white collar adjuncts. And it is in these occupations in which discriminations against Negroes are regularly practiced.

Save for a small number of skilled craftsmen, chiefly in the building trades, the great bulk of Negroes before 1929 were unskilled, or at best semi-skilled, workers. In industry they earned their livelihood in the back-breaking, man-killing, jobs which go to unskilled laborers particularly in heavy industry. The foundries, the steel mills and the packing plants were all, literally consumers of Negro labor. The service trades, too afforded some opportunities for unskilled workers and the traditional domestic service furnished an avenue of employment particularly for Negro women. But there were few Negroes in industry in skilled jobs, and practically none in the offices. Since pay was usually commensurate with skill Negro industrial workers found themselves tied to the lowest paid, dirtiest and most menial jobs.

(34) See Myrdal, *op. cit.*, Part IV, and source materials there cited for a complete discussion of the present economic status of the Negro.

Innumerable explanations have been offered to account for the low place of Negroes in industry. Whatever the explanation or justification, whether it be lack of previous training and formal education, or objections of white workers, or simply racial prejudices or a combination of all these it is significant that, in the main, on the job training and promotions were generally denied Negro workers even when employment was forthcoming.

The years of depression after 1929 served to accentuate the marginal character of the Negro's place in industry. The phrase "last hired, first fired" was the bitterly euphemistic, but accurate, description colloquially given to that status. The advent of World War II, however, produced a considerable change. But this very change and the means by which it was accomplished demonstrate the economic discriminations practiced against Negroes and the governmental ineptitude in dealing with them.

In the early days of defense activities which preceded Pearl Harbor the rapid hiring of large numbers of industrial workers served only to increase the proportionate percentage of Negroes on public and private relief rolls since only white workers were hired. Urgent pleas and demands by interested Negroes and white persons, groups and organizations, served only to publicize the discriminatory refusal of employers to hire Negro workers. Finally in 1941 the threat of a march by Negroes on the Capitol resulted in creation by executive order of the President a committee to prevent government agencies and government contractors from engaging in other than fair employment practices. (35)

These were roughly defined as refusal to hire, or upgrade, any person

(35) Executive Order 8802, 6. F. R. 3109 (1941).

because of race, color, religion, nationality or sex or to discriminate in wages paid for equal work on any such basis.

This Fair Employment Practices Committee had no power to impose sanctions nor could it seek the aid of the courts for enforcement either of the executive order generally or any committee orders in particular cases. The Fair Employment Practices Committee did have power, however, to hear and investigate complaints of discrimination and those investigations furnished entire confirmation of the discriminations regularly practiced against Negroes by employers.

The justifications offered for such discriminations were varied. One of the most frequent reasons offered was that white workers would not work side by side with Negro workers even in the North. That this was generally untrue was easily demonstrated but, in any event, it probably marks the greatest length most employers ever went in fixing personnel policies on the basis of the emotions of their employees.

As the labor supply grew tighter and tighter, however, and the demand for war goods grew greater and greater even Negroes were hired as industry strove to meet the demands of a great war machine. But even the compulsion of a war economy never served to eliminate all the discriminations. In many areas and in many plants not even the discrimination in hiring was terminated and in only a few plants could Negro workers expect working conditions, including pay and opportunities for advancement, commensurate with those of white workers of no greater skill and experience.

Shackled by its lack of power the Fair Employment Practices Committee struggled to carry out its presidential directive but not even

so far as the federal government as an employer was concerned did its efforts meet with more than slight success. In any event, with no statutory authority for its activities, the Fair Employment Practices Committee barely survived V-E day. By the simple device of refusing further appropriation to the committee, the Congress, in June, 1945, eliminated even this minor threat to continued discrimination against Negro workers.

As early as 1943 determined efforts had been made to secure passage of a federal statute to outlaw discriminatory employment practices. Both major parties endorsed the idea in their 1944 platforms but the 79th Congress was barely lukewarm in its reaction to the proposal.

Some opponents of the measure sought to justify their position on the ground that government should not dictate to employers as to whom they should hire. Others argued that white workers had no such protection. But such critics entirely overlooked the fact that Negro workers share all the problems of white workers and, in addition, must vie with the discriminations practiced against them solely because of their race. It is this latter group of burdens which a Fair Employment Practices Committee would help them share. Put another way, such a measure would serve to equalize Negro and white workers in their efforts to secure a livelihood. It would not prefer one group over the other but would rather serve to eliminate the preferences based solely on race.

There can be no doubt that this is a proper field for governmental action. Comparable measures regulating the relationship between employers and employees, such as the Wagner Act, are too well-known to require extended discussion. In fact, some of these very measures in strengthening the position of organized labor have resulted in creating

opportunities for discrimination against Negro workers.

This refusal of the government to furnish protection for Negro workers is consistent, however, with the pattern of the legal and social status of Negroes. The basic law never authorizes differences based on race; in fact it generally forbids such discriminations but the political institutions, the courts, the legislatures and the executive arm fall far short of achieving that end. As a result, Negroes are denied the right to work, prevented from securing education, their basic civil rights to protection of life and property are ignored, and they are excluded from participation in their government, all in violation of the plain requirements of the organic law.

Under all these circumstances the legal and social status of Negroes in the United States can be best described as that of a minority whose physical presence is tolerated and whose rights receive lip-service, but who rarely secure the protection the Constitution and laws of the United States guarantee to all within its jurisdiction.

(36) See Steele v. Louisville & N.R. Co., 323 U.S. 192 (1944), and Tunstall v. Brotherhood of Locomotive, etc., 323 U.S. 210 (1944), holding that a labor organization acting by authority of the Railway Labor Act as the exclusive bargaining agent of a craft or class of railway employees was under a duty to represent all the employees in the craft without discrimination as to race. In both of these cases the unions excluded Negroes from membership and had entered into contracts with employers discriminating against Negro members of the craft. In view of the unions' position as exclusive bargaining agents Negro employees would have been without redress but for judicial intervention on their behalf. See In the Matter of Bethlehem-Alameda Shipyard, Inc., 53 N.L.R.B. 99, 1015-17 (1943) for a discussion of the effect of exclusion of Negroes from membership by a union in determination of the appropriate unit for choice of collective bargaining representative under the Wagner Act.

These cases serve to illustrate that Negroes suffer from discriminations in this field at the hands of unions as well as at those of employers. When the former act with the aid of government sanctions the need for governmental protection for the minority becomes all the more apparent.

Chapter V

Patterns of Discrimination
in Fundamental Human Rights

by Leslie S. Perry

There is general agreement that the "fundamental human rights" which the United Nations are pledged to promote for all peoples "without distinction as to race," include Education, Employment, Housing and Health. ⁽¹⁾ The Negro in the United States is the victim of wide deprivation of each of these rights.

EDUCATION

Those who would continue to exploit the Negro, politically and economically have first tried to keep his mind in shackles. They have done so by denying him equal access to the educational facilities which this nation has and makes available to all white citizens who choose to use them.

In thirty-one states of the United States the Negro has the same legal rights to public education as do other citizens. Here, it is generally poverty, and discrimination due to the personal bias of school officials and teachers, that hinders Negro education. And in a few states there exists more or less voluntary segregation, as for instance in the southern parts of Illinois, Indiana, and Ohio, which border closely upon the South. The situation in such parts of these states resembles that which obtains in the South. However, less than one-fourth of the total colored population reside in these thirty-one states.

The great majority of Negroes are concentrated in the southern section of the United States, consisting of seventeen states, and

(1) "Statement of Essential Human Rights" by a committee appointed by the American Law Institute, The Annals of the American Academy of Political and Social Science January, 1946, pp. 22-24.

the District of Columbia. All southern states require by law separate schools for Negro and white children. The states deepest south not only have the largest colored populations, but there also is found color prejudice and discrimination in its bitterest and most rampant forms.

The attitude of most public officials in the deep south, and of a large part of the general population, toward education and training for Negroes is reflected in an incident which occurred early in 1944 in New Iberia, Louisiana, a town of 14,000 persons. A group of its patriotic Negro citizens asked local officials to apply to the United States Office of Education for authority and funds to set up a welding school for colored trainees. As part of a vocational training program to remedy the acute shortage of skilled production workers in the United States, this agency was then administering a fund of more than \$59,000,000 annually and had in 1942 established a welding school in New Iberia but only white students had been allowed to enroll. Town officials refused to cooperate in applying for training in welding for Negroes.

Thereupon, the Negro leaders negotiated directly with federal officials in Washington with the result that on May 7, 1944 a school was finally opened. Ten days later the four Negroes who had been active in securing the school, a teacher, a physician, a dentist, and a retired businessman, were individually accosted by policemen, driven in automobiles to lonely spots on the outskirts of town, brutally beaten and told that if they were ever found in New Iberia again they would be killed. This forced exodus left the community without a Negro physician and as a consequence the only hospital in the area which would accept Negro patients had to close.

Nine million Negroes, more than three-fourths of the colored

population of the United States, lives in southern states. The New Iberia incident is by no means an isolated occurrence. In one form or another it recurs throughout the deep South whenever Negroes seek to improve themselves.

Often discrimination takes the form of white retaliation against white public officials who seek to administer the laws fairly. Many white school authorities want to give the Negro a fair chance, but they encounter great difficulty because of the prevailing public opinion. A superintendent of education who tries to allocate public funds without discrimination because of color; who publicly favors or encourages the acquisition of schoolhouses for colored children of a size and quality and location comparable to those for white children, runs the risk of either losing his job or having his administrative power and prestige curtailed.

The legal segregation of Negro pupils is an open invitation to abuse. White officials, interested largely in keeping Negroes in a semi-slave status, determine who shall teach them, what and how they shall learn, where and how long they shall receive training. Segregation is the vehicle for unrestrained and undisguised white domination. But it is more than that.

Segregation is also a device upon which unscrupulous public officials avidly seize to divert state and even federal funds from Negro schools to white schools. Since states normally appropriate school funds to each county on the basis of the number of children of school age in the county, a large Negro school population in a county means a larger state appropriation. But no official in the deep south ever permits Negro children either as much as their proportionate share no matter how

small a part of the school population they constitute or as much as one-half of the funds no matter how greatly they outnumber white children. The result is that the larger the proportion of Negro children in a county, the smaller is the per capita expenditure on their education and the greater the expenditure for the white children. A survey of conditions in 7 southern states in 1930-1931 disclosed that in counties where Negro children constituted less than one-eighth of the school population the expenditure level per pupil in white schools was less than twice as high as that per pupil in Negro schools. However, in counties where three-fourths of the children were Negro, the expenditure was 13 times higher for white than for Negro pupils.

(2)

The main figures in the tabulation are as follows:

Race	Number of Counties	Median Expenditure for Teachers' Salaries in Counties With Specified Proportion of Negroes in the School Population, Aged 5-19: 1930-1931							
		0 - 12.4%	12.5- 24.9%	25.0- 37.4%	37.5- 49.9%	50.0- 62.4%	62.5- 74.9%	75.0- 87.4%	87.5- 99.9%
Negro Schools	521	\$8.62	\$5.28	\$5.56	\$4.46	\$3.05	\$2.85	\$2.12	(only 1 county)
White Schools	526	14.31	16.87	21.25	21.25	22.58	26.25	28.50	

Elementary and Secondary Schools

Over the years it has been the common and notorious practice for white superintendents and other appointing officials in the public schools of the deep south to deliberately select, when there is more than one applicant for a teaching position, the least competent and most subservient one. Most white male officials when entering Negro school buildings keep their hats on, address the teacher by her first name in the presence of the student body and show other marked insults. The text books in general used in Negro schools are those which have been

(2) Horace Mann Bond, The Education of the Negro in the American Social Order (1934), pp.240-241.

written for white children and generally contain versions of history, science, literature and other subjects which malign the Negro. ⁽³⁾ Indeed, it is a rare thing for a Negro school to receive a free text book which has not already been worn and defaced from previous use in white schools.

In general appearance school structures assigned to Negroes, especially in the small towns and rural sections of the deep south, are delapidated one and two-teacher frame shacks lacking indoor toilet facilities. ⁽⁴⁾ To Negro teachers fall all janitorial tasks such as firing the stove, scrubbing the floor and equipment, making repairs.

The value of public school property per Negro child in ten southern states has been found to be scarcely one-fifth of the corresponding figure for white. ⁽⁵⁾ This is true even though as much as one-third of the total value of Negro school property was in buildings partly financed by one large philanthropist. ⁽⁶⁾ Moreover, Negro schools are uniformly kept open for a shorter period than white schools. The average term for Negroes has been estimated to be 13 per cent shorter than for whites. ⁽⁷⁾

In terms of dollars and cents, discrimination against colored children is graphically illustrated by studies of the United States Office of Education. For the year 1943-44 current expenditures per white pupil in average daily attendance in Mississippi was 499 per cent greater than those for the Negro children of that state.

(3) W.E.B. DuBois, Black Reconstruction, 1935 p. 711.

(4) In Louisiana 65 per cent of all Negro public schools are one teacher and another 27 per cent are two or three-teacher schools. Charles S. Johnson, The Negro Public Schools, Louisiana Educational Survey (1942); p. 43.

(5) Doxey Wilkerson, Special Problems of Negro Education, (1938), p.33.

(6) Idem. p. 33.

(7) Idem. p. 9.

The following table covering expenditures in 11 states shows a small part of the price millions of children in the United States pay because their skins are black or brown.

Current expense per pupil in average (8)
daily attendance, Negro schools in 11 States

State	Current expense per pupil in average daily attendance, Negro schools in 11 States		Per cent cost per white pupil is greater than per Negro pupil 1943-44
	White	Negro	
Total	85.61	40.56	111
Alabama	70.20	25.65	174
Arkansas	61.03	25.81	136
Florida	95.96	47.44	102
Georgia	73.79	23.63	212
Louisiana	121.32	40.25	201
Maryland	115.52	90.82	27
Miss.	71.65	11.96	499
N. C.	71.60	50.07	43
S. C.	82.43	26.89	207
Texas	92.69	63.12	47
Virginia		(data not available)	

School Bus Discrimination

Part of the differential in school expenditures for Negro pupils and white pupils is accounted for by the discrimination which the former suffers in the matter of free school bus transportation. In rural districts it is not unusual to find elementary schools from 3 to 10 miles apart. In such circumstances, every state provides free transportation in buses operated at public expense. These are seldom available for Negro children. Their parents are therefore faced with the alternative of hiring private transportation, or having children of tender age walk miles in all sorts of weather or keeping them home altogether. Current figures for state monies spent in bus transportation are not immediately available. One source, however, estimates that in 15 southern states and the District of Columbia the total expenditure

(8) Source: Statistics of Education of Negroes, 1941-42 and 1943-44. U.S. Office of Education.

amounts to thirty-two million dollars annually. At any rate, one investigator found that in 1935-36, although Negroes constituted 34 per cent of the rural farm population of school age in 10 southern states, they received only 3 per cent of the total expenditures for transportation.⁽⁹⁾

Underpaid Negro Teachers

The bulk of the Negro-white differential, however, results from the fact that Negro teachers are victims of brazen and systematic salary gouges.

The democratic principle, "equal pay for equal work", has been a dead letter in the teaching profession as far as Negro teachers are concerned. Their pupil load, on an average, is one-fourth heavier than that of white. They hold identical state teaching licenses. Yet, Negro teachers in southern public schools, except where the courts have intervened, are uniformly paid less than white.

Again the United States Office of Education throws some light on the character and extent of this type of discrimination. In Mississippi the average salary paid white teachers was \$1,107 per year. The Negro teacher received \$342 or 224 per cent less.

(9) Gunnar Myrdal, American Dilemma, (1944) p. 947.

Average salary per member of instructional (10) staff 1943-44 in 11 states		
State	Average salary per member of instruc- tional staff 1943-44	Per cent white instructional salaries is greater than Negro instructional salaries
	White	Negro
Total	\$1,354	\$ 892
Alabama	1,158	661
Arkansas	924	555
Florida	1,530	970
Georgia	1,123	515
Louisiana	1,683	828
Maryland	2,025	2,002
Miss.	1,107	342
N. C.	1,380	1,249
S. C.	1,203	615
Texas	1,395	946
Virginia	1,364	1,129

During the year 1943-44 there were 66,553 Negro teachers in (11) the south. Through salary discrimination alone every year they lose approximately 25 million dollars.

Discrimination in Higher Education

There are approximately 1,700 public and private colleges and universities in the United States of which 118 are Negro institutions. One hundred and fourteen of these colored schools are located in the south and matriculate 85 per cent of all of the colored undergraduates from that section. In 1938 the income for all purposes of 96 colleges for Negroes was \$14,679,712. (12) This is less than the annual (13) income of Harvard University alone. Only 1/5 of the Negro colleges

- (10) Statistics of Education of Negroes, 1941-42 and 1943-44. U.S. Office of Education.
- (11) Source: Statistics of State School Systems, 1943-44. U.S. Office of Education, p.71.
- (12) National Survey of Higher Education, Martin D. Jenkins, The Journal of Negro Education, 1942, p. 383.
- (13) Harvard University during the year 1943-44 had endowments which alone amounted to \$160 million; Yale endowments amounted to \$113 million.

of the United States were accredited even by regional associations. The Association of American Universities has accredited only 3 Negro institutions as compared with 91 white colleges in southern states.

Instruction at the graduate, technical and professional level at Negro institutions is practically non-existent. Six public and private institutions offer work leading to a master's degree. None offer work leading to a doctorate.

There are only two medical schools in the south for Negroes, both private institutions, as compared with thirty-one for whites. They supply four-fifths of all Negro physicians and dentists. The opportunities for legal training of Negroes in the south are similarly limited. There are only three law schools for Negroes in the south as compared with thirty-three for whites. Howard University is the only institution in the south at which a Negro can study engineering whereas there are thirty-four for whites.

Expenditures for education for Negroes in seventeen southern states is summed up by Dr. Mordecai W. Johnson, President of Howard University, as follows:

"In states which maintains the segregated system of education there are about \$137,000,000 annually spent on higher education. Of this sum \$126,541,795 (including \$86,000,000 of public funds) is spent on institutions for white youth only; from these institutions Negroes are rigidly excluded. Only \$10,500,000 touches Negroes in any way; in fact, as far as state supported schools are concerned, less than \$5,000,000 directly touches Negroes. In these states there are about seventeen institutions undertaking to do higher education of the college grade....:

"The amount of money spent on higher education by the state and federal government for Negroes within these states is less than the budget of the University of Louisiana (in fact only sixty-five per cent of the budget), which is maintained for a little over 1,000,000 people in Louisiana.

"That is one index; but the most serious index is this: that this little money is spread over so wide an area and in such a way that in no one of these states is there anything approaching a first-class state university opportunity available to Negroes."⁽¹⁴⁾

Literacy opens the door to the accumulated knowledge of mankind and is essential to the acquisition, or conservation, of the rights and liberties of a free people. Unfettered educational opportunity is essential to the health and well-being of all persons living in a complex industrial society. The Negro in North America has been allowed to enjoy only the barest minimum regarded appropriate to his half-slave, half-free status. In a country where education counts for everything, ten per cent of all Negroes twenty-five years old and over have received no schooling as compared with 1.3 per cent whites; 82.7 have had no formal schooling or have not completed more than eight years of elementary training as against 53.1 per cent whites.⁽¹⁵⁾

(14) Hearings before the Subcommittee of the Committee on Appropriations House of Representatives, 80th Congress, February 24, 1947, p.145.

(15) Derived from "Characteristics of Population" Part I, United States Summary, 1943, Bureau of the Census, pp. 40-41.

EMPLOYMENT

The United States has almost unlimited natural resources. It has surpassed every nation of the world in technical skill and production. Its laboratories and plants brought forth a new age -- the atomic age. But this same America traffics heavily in feudalism. Nowhere is this more apparent than in the treatment of the Negro worker. In a society where the push of a button or the turn of a switch moves mountains, color-mad America insists that the chief asset of the Negro is, and must remain, a strong back and a humble mien. Color-mad America demands that black workers remain beyond the pale of decent wages, job satisfaction and economic security.

In 1940, the year of the last federal decennial census, the total number of Negroes gainfully employed in the United States amounted to 4,479,068 men and women.⁽¹⁶⁾ Of these the vast majority, 64 per cent, were unskilled workers. Less than 3 per cent were "skilled and foremen" and only 2.6 were professional persons.⁽¹⁷⁾ The rest were largely semi-skilled workers, farm tenants and the like. With only slight modifications resulting from abnormally high employment opportunities which obtained for all workers during the war, the foregoing distribution obtains today.

The labor of the Negro has not always been confined to unskilled tasks. Contrary to popular notions, he has had long industrial experience in the United States. As a slave, the Negro blacksmith, carpenter and mason performed a large part of the skilled work of the period.

(16) The total Negro labor force including those on public emergency work was 5,389,191. Comparative Occupation Statistics for the U.S. Alba M. Edwards, U. S. Bureau of the Census, (1943), p. 189.

(17) Ibid.

Indeed, one writer declares that in 1865, ninety-five per cent of all industrial labor in southern states was performed by colored persons. (18) After his emancipation from legal slavery, however, most of those who previously utilized the slave as a skilled worker refused to pay for his labor as a free man. Trade unions fearing competition with white workmen raised bars against him. This combination of white employer and white worker quickly shunted the Negro workingman and woman into unskilled occupations. Since 1865 the overwhelming majority of urban Negro men, irrespective of their skill, education or aptitude, have been forced to eke out an uncertain livelihood as bootblacks, porters, barbers, janitors, waiters and domestic servants. Rural Negro men were farm laborers. Colored women, rural and urban alike, found only jobs involving such drudgery as cooks, washerwomen, maids or charwomen. Collectively these occupations became known throughout the United States as "Negro jobs".

During, and immediately following World War I, colored workmen managed to get a slight foothold in industrial employment. After 1918 they held an increasingly large percentage of unskilled and semi-skilled jobs in slaughtering and meat packing plants, blast furnaces and rolling mills, coal mining, automobile manufacturing, and railroad work. These were tasks white workers did not want because they were heavy, hot and dirty. By 1930 one-half of all laborers in the meat slaughtering industry were Negroes; they accounted for 16 per cent of all laborers in blast furnaces and steel rolling mills. Intense speed, monotony, long hours, noise, overstrain--all of the ravages that the modern industrial process vents on its workers were heaped on the Negro

(18) Thomas Nelson Page, The Negro, the Southerner's Problem (1904)p.127

laborer. A white employee might work in blast furnaces but seniority would eventually enable him to shift to another department or job classification. But for the Negro, there was no such relief. Management had decreed him "unpromotable"; only severance from the payroll or death could release him from that hellish heat and servitude.

The Great Depression

It was a rainy night in the autumn of 1931. A train slowed as it approached the water tower outside of a small Mississippi town. The glare of an open fire door on the engine of the train silhouetted the figure of a man with a shovel in his hands. A shot rang out from the country side; there was a short, agonized groan. The Negro locomotive fireman toppled over in the engine cabin mortally wounded.

Twenty-one Negro firemen were killed, wounded or shot at in Louisiana, Mississippi and Tennessee between 1931 and 1934. ⁽¹⁹⁾ These murderous attacks were made because there was widespread unemployment in the railroad industry and white men wanted the jobs held by Negroes. In general, the aversion to working as elevator boys, porters, common laborers--"Negro jobs"--which white men exhibited during better days quickly vanished during the depression. In every section of the country conquest was made of these jobs. In the few instances where white employers evidenced an inclination to retain their Negro employees the white community, employed and unemployed alike, threatened boycotts and other economic reprisals to gain their ends. The modest occupational gains made by the Negro industrial worker during the 1920's was quickly swept away. Their proportion in manufacturing declined from 7.3 per cent in 1930 to 5.1 per cent in 1940. In fact it even dropped below

(19) H.R. Cayton & G.S. Mitchell, Black Workers and New Unions (1939)
p. 15.

the figure for 1910 which was 6.2 per cent. (20)

Further evidence of the deadly effect of the depression on Negro employment is shown by conditions in Chicago, which in many respects is a typical industrial city. There Negroes in 1940 constituted 7.1 per cent of the population. But as recently as November, 1940 the colored worker made up 46.6 per cent of the recipients of public relief. (21) In Cincinnati, Ohio, as in every city in the United States, chronological figures of unemployment show that the rate at which Negroes were able to secure employment and leave the relief rolls lagged well behind that of whites.

(22)

Unemployment in Cincinnati
by per cent of
Employables in each Race

	1933	1934	1935	1936	1937	1938	1939
Colored	54.3	53.4	51.0	49.5	36.0	52.7	45.3
White	28.0	21.9	17.8	17.5	8.0	16.4	12.8

War Employment

In 1941, just before the entry of the United States as a belligerent into World War II, discrimination against Negro workers had reached such proportions and was so flagrant that it threatened to become an international scandal. In June of that year the President of the United States issued Executive Order 8802 because, as the Chief Executive stated, "Needed workers have been barred from industries engaged in defense production solely because of considerations of race, creed, color or national origin". The Order directed that all new defense contracts provide that the "contractors shall not discriminate

(20) Robert C. Weaver, Negro Labor, (1946) p. 15.

(21) Final Report Fair Employment Practice Committee (U.S. Government Printing Office, 1947) p. 65.

(22) "Monthly Labor Review" U.S. Dept. of Labor, October (1939) Vol. 49, pp. 836-837.

against any worker". Six months later, the United States Employment Service sent inquiries to hundreds of industrialists with large war contracts to determine if they would employ Negroes. Fifty-one per cent of them stated that they did not--and would not--employ Negroes; only half of the remainder stated without equivocation that they would use them as workers. This was in January, 1942. The survey, as reported by Earl Brown and George Leighton in a Public Affairs Pamphlet, "The Negro and the War" was concentrated in regions with considerable Negro labor. It revealed that of 282,243 openings, 144,558 (51 per cent) were barred to Negroes for the sole reason that they were Negroes. (23)

Government agencies often aided in these discriminations. Early in 1943 in Fort Worth, Texas, a holder of a master of arts degree from a famous northern university with fifteen years experience as a teacher was refused applications by local officials in both the Civil Service and United States Employment Offices for any job higher than that of common laborer.

Moreover, in 1943 when one and a half million Negro workers were unemployed or under-employed, Congress was seriously considering enacting legislation to conscript men and women for private employment because of the pressing need for full utilization of all available manpower. (24)

The activities of the President's Committee on Fair Employment Practice created by Executive Order 8802 as amended by Executive Orders 9346 and 9664, helped greatly in reducing employment discrimination.

(23) Wartime Employment of Negroes in the Federal Government President's Committee on Fair Employment Practice, January 12, 1945.

(24) National Compulsory Service Bill, S.666, 1st Session, 78th Congress.

The Lockheed Aircraft Corporation, one of the large airplane manufacturers, employed only 39 Negroes out of a total 48,000 workers late in 1941. FEPC held public hearings on that corporation's personnel practices. In August, 1944 Lockheed employed 3,000 Negroes in nearly 100 occupations. (25)

The wartime employment gains made by Negroes can therefore be attributed directly to the temporary policy of nondiscrimination adopted by the national government as reflected by FEPC. However, both major political parties in Congress refused to appropriate money to carry on this vital work beyond May 30, 1946. Furthermore, for almost four years (26) the Congress has refused to enact a Fair Employment Practice law.

Postwar Employment

The postwar employment outlook for Negro Americans is already taking shape. According to "Labor Market" a publication of the United States Employment Service, there was a 6 per cent decrease in the placement of colored workers by that agency for the month of September, 1946, as contrasted with a 4 per cent gain in the placement of white workers. (27)

The last testament of the Fair Employment Practice Committee anticipated this trend when it warned:

"The wartime employment of Negro, Mexican-American and Jewish workers are being lost through an unchecked revival of discriminatory practices....Nothing short of congressional action to end employment discrimination

(25) Final Report, Fair Employment Practice Committee, June 28, 1946, p. 11.

(26) For debates on this legislation see Congressional Record, 2d Session-79th Congress, January 17, 1946 through February 9, 1946.

(27) U.S. Department of Labor, November, 1946.

can prevent the freezing of American workers into fixed groups, with ability and hard work of no account to those of the 'wrong' race or religion". (28)

Discrimination by Trade Unions

One of the great anomalies of the American scene has been the anti-Negro role many short-sighted trade unions have taken. Today, as for many years past, a large section of organized labor has successfully blocked employment for non-white workers.

Herbert Northrup's authoritative book Organized Labor and the Negro lists the racial practices of various craft unions as follows: (29)

- I. Union which excludes Negroes by provision in ritual:
 - Machinists, International Association of (AFL)
- II. Unions which exclude Negroes by provision in constitution:

- A. AFL Affiliates
 - Airline Pilots' Association
 - Masters, Mates and Pilots, National Organization
 - Railroad Telegraphers, Order of
 - Railway Mail Association
 - Switchmen's Union of North America
 - Wire Weavers' Protective Association American
- B. Unaffiliated Organizations
 - Locomotive Engineers, Brotherhood of
 - Locomotive Firemen and Enginemen, Brotherhood of
 - Railroad Trainmen, Brotherhood of
 - Railroad Yardmasters of America
 - Railroad Yardmasters of North America
 - Railway Conductors, Order of
 - Train Dispatchers' Association, American

- III. Unions which habitually exclude Negroes by tacit consent:

- A. AFL Affiliates
 - Asbestos Workers, Heat and Frost Insulators
 - Electrical Workers, International Brotherhood of
 - Flint Glass Workers' Union, American
 - Granite Cutters' International Association
 - Plumbers and Steamfitters, United Association of Journeymen
 - Seafarers' International Union

(28) Final Report, Committee on Fair Employment Practices, p. VIII.

(29) (1944) pp. 3-5.

- B. Unaffiliated Organizations
Marine Firemen, Oilers, Watertenders, and Wipers'
Association, Pacific Coast
Railroad Shop Crafts, Brotherhood of

IV. Unions which afford Negroes only segregated auxiliary status:

- A. AFL Affiliates
Blacksmiths, Drop Forgers and Helpers, Brotherhood of
Boilermakers, Iron Shipbuilders, Welders and
Helpers, Brotherhood of
Maintenance of Way Employees, Brotherhood of
Railway Carmen of America
Freight Handlers, Express and Station Employees,
Brotherhood of
Rural Letter Carriers, Federation of
Sheet Metal Workers' International Association
- B. Unaffiliated Organizations
Railroad Workers, American Federation of
Rural Letter Carriers' Association

Other craft unions such as the United Brotherhood of Carpenters and Joiners and the Brotherhood of Painters, Decorators, and Paper-hangers both affiliated with the American Federation of Labor, which have no discriminatory rules, nevertheless relegate Negroes to an inferior status in segregated locals. ⁽³⁰⁾ However, machinations by unions against Negro workingmen sunk to an all-time low when in 1941, the Brotherhood of Locomotive Firemen and Enginemen and twenty-one railroad companies entered into an agreement to completely eliminate colored firemen from the industry. Officials of the United States National Mediation Board, an agency of the federal government, played an active part in the hatching of this nefarious scheme.

Collective bargaining has had wide acceptance in the railway field. Negroes, however, are excluded from membership in the "Big Four" railroad unions, the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, the Brotherhood of Locomotive Firemen and Enginemen, and the Brotherhood of Railroad Trainmen, which virtually

(30) Idem, p. 6

dominate the industry. For a number of years these unions, by various devices, had succeeded in limiting the number of Negro firemen. By 1940 the number of Negro firemen in the United States had already declined to 2,356. Of these 2,128 were found in the south. But the union was not satisfied. On February 18, 1941, the Brotherhood of Locomotive Firemen, bent on ousting them completely, consummated an agreement with the Southeastern Carriers Conference, consisting of twenty-one railroads, which provided:

1. "On each railroad party hereto the proportion on non-promotable Negro firemen, and helpers on other than steam power, shall not exceed fifty per cent of each class of service established as such on each individual carrier. This agreement does not sanction the employment of non-promotable men in any seniority district on which non-promotable men are not now employed.
2. "The above percentage shall be reached as follows:
 - "(a) Until such percentage is reached in any seniority district only promotable white men will be hired.
 - "(b) Until such percentage is reached in any seniority district all new runs and all vacancies created by death, dismissal, resignation or disqualification shall be filled by promotable men. A change in the starting time of the same run or job will not be considered as constituting a new run."
(Parenthetical explanation added)

Passing on the infamous Southeastern agreement, Mr. Justice Murphy of the Supreme Court of the United States used the following language: (31)

"The cloak of racism surrounding the actions of the Brotherhood in refusing membership to Negroes and in entering into and enforcing agreements discriminating against them all under the guise of Congressional authority the Railway Labor Act, still remains. No statutory interpretation can erase this ugly example of economic cruelty against colored citizens of the United States. Nothing can destroy the fact that the accident of birth has been used as the basis to abuse individual rights by an organization purporting to act in conformity with its Congressional mandate."
(Parenthetical explanation added)

(31) Steele v. Louisville & Nashville Railroad Co., et al, 323 U.S. 192, 209.

Not all trade unions, of course, discriminate against the Negro. The Constitution of the Congress of Industrial Organizations, a comparative newcomer in the labor field, states that one of the objectives of the organization is to "bring about the effective organization of working men and women of America regardless of race, color, creed or nationality". (Italics ours) While individual CIO locals in various sections of the country may from time to time manifest racial antipathy, it can be generally said that their action does not reflect the CIO national policy. The United Mine Workers, and the International Ladies Garment Workers' Union, both AFL, afford good examples of unions whose racial practices are nondiscriminatory.

Wage Discriminations

The American Negro worker is as efficient as whites. (32) Nevertheless, for the purpose of keeping him economically and socially submerged, in a large number of occupations and industries these workers are paid considerably less than whites receive although the duties of each are in all respects identical. (33)

In 1937 a survey conducted by the United States Department of Labor showed, taking the country as a whole, that the hourly entrance wage for a white common laborer was twenty-six per cent higher than that for a Negro beginner.

(32) See Detroit Bureau of Governmental Research (1928); Pennsylvania Dept. of Public Welfare Survey (1930); J. Tinsley Wells Survey 1930; Alma Herbst Study of meat packing industry in 1932 reproduced in Monthly Labor Review (U. S. Dept. of Labor) Feb., 1935, p.337. Also, Performance of Negro Workers in 300 War Plants, a summary Report of the Industrial Relations Laboratory, National Urban League, (1944)

(33) For salary differentials for Negro and white teachers in public schools see supra, p. 110.

(34)

Average hourly entrance rates of adult male
common laborers in 20 industries, July, 1937

	White	Negro	Mexican and others
	United States	\$0.534	\$0.420
North	.552	.556	.531
South	.434	.345	.339

Building trades furnish the largest amount of industrial employment for colored workers. But in 1935, whether the Negro was a skilled worker, or a semi-skilled or unskilled one, he nevertheless received a wage lower than that of whites in the same category. Strikingly enough, the disparity was greatest at the skilled level. Indeed, the Negro craftsman on an average received about one-half of the wage paid white mechanics.

(35)

Average hourly wage of Negro and white
workers in building trades in 1936

Geographic Div.	Skilled		Semiskilled		Unskilled	
	White	Colored	White	Colored	White	Colored
United States	\$1.156	\$0.791	\$0.714	\$0.575	\$0.572	\$0.431
New England	1.101630	.615	.608	.468
Middle Atlantic	1.229	1.188	.818	.662	.550	.507
E. North Central	1.203	1.101	.773	.768	.628	.569
W. North Central	1.103	.708	.604	(1)	.592	.615
South Atlantic	1.057	.723	.547	.435	.468	.417
E. South Central	.957	.734	.473	.451	.357	.331
W. South Central	.967	.711	.463	.427	.370	.355

(1) "The average hourly rate paid to colored semi-skilled workers in the West North Central region is distorted because of a preponderance of colored workers reported from St. Louis and Kansas City, Mo."

The same general pattern obtained in the fertilizer industry in 1936.

(34) Monthly Labor Review, U.S. Department of Labor, December, 1937, p. 1494

(35) Monthly Labor Review, August, 1937, p. 297.

Average hourly earning in fertilizer industry,
by region, race and skill during spring months
of 1938.

Region and race	Skilled	Semi-skilled	Unskilled
United States			
White	\$0.613	\$0.449	\$0.39
Negro	.398	.319	.268

During the war, the United States War Labor Board had an occasion to pass on a number of cases involving wage discriminations solely on account of race, color and nationality. In the case of the Southport Petroleum Company of Delaware and Oil Workers International Union, Local 409 (Case No. 2898-CS-D), decided June 5, 1943 the War Labor Board abolished the company's classifications of "colored laborer" and "white laborer" and "granted wage increases which place them [Negroes] on a basis of economic parity with the white workers in the same classifications". (parenthetical explanation added)

And again, in the Matter of Miami Copper Company, et al and International Union of Mine Mill & Smelter Workers, Local 586, CIO (Case Nos. 111-716-D, 111-717-D, 111-718-D) decided on September 7, 1944 it abolished wage differentials based on the classification of workers as "Anglo-American males" and "other employees". In doing so it overruled the Nonferrous Metal Commission, a committee acting under government mandate, the majority of which had refused to make this change, asserting:

"The problem of (racial discrimination) with which the Commission is confronted in these cases, is one which is woven into the fabric of the entire community, indeed, the entire Southwest. Unions and employers alike have had a part, and a significant

part, in its creation and continuation. All forms in which contemporary society is organized are in varying degrees affected. Under such circumstances the complete and immediate elimination from the largest industry in the area of all wage rates that may be used to be discriminatory as such, could not fail to have serious repercussions. Moreover, there is the impact on the wage-rate structure of the companies themselves to be considered."

The practice of paying the Negro worker less than whites is general; only in a few relatively isolated cases has this pernicious practice been curbed or corrected.

Discrimination in Federal Employment

The largest single employer in the United States is the federal government itself. In 1938 there were 851,926 persons on its payrolls. In 1945, government employment reached an all-time peak of more than three million. The solid wall of prejudice and discrimination which Negro citizens encountered in commerce and private industry, particularly in clerical, technical and professional positions, caused thousands of colored high school and college graduates to seek placement in civil service. Personnel practices in federal agencies, however closely paralleled those in private employment.

In 1938, jobs in custodial classifications (messengers, laborers, helpers, elevator conductors, charwomen and other forms of maintenance work) constituted less than 3 per cent of civil service jobs. Yet 90 per cent of all Negroes employed by the government in Washington (37) were designated as custodials. The highest paid Negro employee in

(37) Lawrence J.W. Hayes gives the number and classification of jobs held by Negroes as follows: 8,346 or 90% were custodial; 881, or 9.5 were either clerical, administrative, fiscal or clerical-mechanical; 47 or .5 were sub-professional, scientific or professional. The Negro Federal Government Worker, 1933-1938 (1941) p. 104.

the Washington office of the Department of State, for example, was the chauffeur to the Secretary. (38)

In 1940 the Civil Service Classification Act was amended by Congress so as to provide that "there shall be no discrimination against any person on account of race, creed, or color. (39) This provision remained a dead letter until in 1942 and 1943 when personnel expansions necessitated by the exigencies of war, coupled with the acute manpower shortage, forced employers to hire every qualified or qualifiable person regardless of race or color. By 1944 Negroes constituted 12 per cent of all federal workers. Fifty-eight per cent of them were rated as clerical, administrative or fiscal employees and 1.1 per cent were in professional or sub-professional classifications. Most of the jobs they held in the classified service were in agencies such as the War Production Board, Office of Price Administration, War and Navy Departments or other agencies created for the duration of the war, or whose personnel requirements were swollen because of the emergency. But it was in the unclassified service such as Navy shipyards, Army munition depots and the like that the great majority found employment. Surveying federal employment as a whole the President's Committee on Fair Employment Practice concluded; "Negroes have made their gains in that part of federal service which will be most drastically curtailed after the war." (40)

Today, there is strong evidence that government agencies are resuming their practices of wholesale discrimination against Negro workers.

(38) *Ibid.*, p. 76.

(39) U.S. Code, Title 5, Sec. 681 (2)

(40) *Wartime Employment of Negroes in the Federal Government*, President's Committee on Fair Employment Practice, January 12, 1945, pp. 21-22.

The overwhelming majority of Negroes in America live in urban slums or rural slums. They are forced to remain bottled up in these blighted areas by the prejudice of the dominant white community, enforced by courts of law, physical force and violence, and the mechanism of organized government.

Negroes make up 20 per cent of the population of the city of Baltimore but they are crowded into less than 2 per cent of the living space. In Chicago the population density of the Negro district is 90 thousand per square mile (35 thousand is considered the optimum). A single block in Harlem has 3,871 persons. "At a comparable rate of concentration", concluded The Architectural Forum, "the entire United States could be housed in half of New York City."⁽⁴¹⁾

Conditions in Black Belts

In every city in the United States where the Negro constitutes an appreciable part of the population, he has been relegated to the slums and tenements. These blighted areas, which have most of the marks of Old World ghettos, in America are known as "Black Belts". Negro districts are usually neglected by the municipality. Their public streets and highways are usually allowed to remain in a state of disrepair and neglect; city refuse services such as garbage, trash and ash removal are infrequent and indifferent; seldom are there the parks, playgrounds and public centers commonly found in white neighborhoods; laxity and corruption in protective services such as police, health inspectors, licensing officials makes these areas a haven for the criminal element of the whole city.

The overwhelming majority of houses in the Black Belt are

(41) See article "Good Neighbors" January, 1946.

over-age, run-down, rat-infested structures. The housing census of 1940 taken by the United States Bureau of Census showed that 35.1 per cent of all homes occupied by Negroes were in need of major repairs as compared with 16.3 per cent of the units occupied by whites. Almost a third of the urban units occupied by Negroes were without running water as against 4.2 for whites; 13.3 had running water but no private flush toilet as compared with 7.9 per cent for whites. (42) Moreover, these dilapidated houses are greatly overcrowded. In Washington, D.C., it is not uncommon to find a Negro family of seven living in one room. (43) Nationally in 1940, overcrowding in Negro homes was three times greater than that in white homes. Since that time the situation has worsened greatly. All informed observers agree that Negroes pay from 10 to 50 per cent more rent for their quarters than are paid by whites for comparable facilities. (44)

Methods of Confining Negroes to Black Belts

When Negroes have the money to leave their hovels in the

- (42) Hearings before Special Committee on Postwar Economic Policy and Planning, United States Senate, 79th Congress, Part 14 Housing and Redevelopment, Feb. 6, 1945, pp. 2022, 2022A.
- (43) See opinion of Justice Edgerton, *May v. Burgess* (no. 8831) U.S. Court of Appeals, Dist. of Col., (1945) p. 11.
- (44) Horace R. Cayton throws some light on this situation as it obtained in Chicago, back in 1940, even before the war. Mr. Cayton writes: "Larger real estate companies with an eye for business began to break the (restrictive) covenants. They moved Negroes into one or two apartment buildings, immediately raising rents by from 20 to 50 per cent. In 1940, there were many cases of whites and Negroes living in the same buildings the latter paying - for equivalent accommodations rentals much higher than those paid by the whites; in such cases the realtors were urging the white families to leave so that their apartments could be rented to Negroes at a higher rate."
(Parenthetical explanation added) Black Metropolis (1945) p. 185.

Black Belt and seek to rent or buy better dwellings in white neighborhoods they often encounter physical violence. In Washington, D.C., as recently as 1940 a colored woman upon moving into a home which she had purchased in a white neighborhood was subjected to a bombing. In December, 1946 in Chicago an angry mob consisting of thousands of whites tried unsuccessfully to force two Negro war veterans, and their pregnant wives, to vacate their homes in a city owned and operated housing project for veterans.⁽⁴⁵⁾ In Atlanta, Georgia, the Columbians, an organization patterned after Hitler's Storm Troopers, told of plans "to burn the Negro's house or bomb them out" of houses in white settlements.⁽⁴⁶⁾

These attacks are made with legal impunity. During the two-year period, 1944 to 1946, 59 attacks were made on Negro homes and Negro occupants in Chicago. There were 5 instances of shooting, 22 stonings, 3 housewreckings, and nearly 30 arson-bombings. Three persons were killed and many were injured. Not a single culprit was convicted for these crimes.⁽⁴⁷⁾

The opposition to, and discrimination against, Negro tenants and home owners stems principally from three sources: blind race prejudice, false propaganda which charges that Negroes either carelessly or willfully destroy property, and the determination of most local real estate operators and associations to limit at all times the supply of housing for Negroes thereby keeping the prices high. In 1944, the National

(45) As recently as February 15, 1947, four shots were fired, at close range, into their homes, while the detail of 10 police assigned to guard them were unexplainably absent. See Chicago Sun, February 16 to 19, 1947.

(46) Associated Press, December 10, 1946. Subsequently, however, some of the Columbians were prosecuted and convicted in Atlanta and public authorities did act with surprising energy to crush this body.

(47) "American Ghettos", Elmer Gertz, Jewish Affairs, February 7, 1947, p. 10.

Association of Real Estate Boards conducted a survey in 18 large cities to determine the opinion which the best informed real estate men held of Negroes as renters and potential home owners. The questions and the answers of those polled were summarized as follows:

- (1) Does the Negro make a good home buyer and carry through his purchase to completion?...17 of 18 cities reported yes.
- (2) Does he take as good care of property as other tenants of comparable status?...11 of the 18 cities reported yes.
- (3) Do you know of any reason why insurance companies should not purchase mortgages on property occupied by Negroes? ...14 of the 18 cities reported no.
- (4) Do you think there is a good opportunity for realtors in the Negro housing field in your city?...12 of the 18 cities reported yes.

* * * * *

"A majority of cities commented that Negroes maintain neatness and repairs on new property as well as whites, but underscored that relatively few properties in good condition are sold Negroes."⁽⁴⁸⁾

Terroristic practices - as violent as they are - have never succeeded in curbing the Negro's quest for better homes and environment. But where violence has failed, contractual agreements, upheld and enforced by courts of law, have succeeded in confining Negroes to their Black Belts. In nearly every major city in the United States the greater part of the residential area is subject to restrictive covenants limiting use and occupancy to members of the Caucasian race. In Chicago, for example, 80 per cent of the city is reported to be covered by deeds containing such clauses.

(48) New York Herald Tribune, November 19, 1944.

Federal Government Aids Housing Discrimination

The United States Government through the Federal Housing Administration wields great influence in the field of private housing construction. FHA underwrites loans for home financing, establishes building standards and assists in neighborhood and community planning. In executing the latter function FHA has thrown its entire weight and prestige on the side of keeping the Negro bottled up in run-down, segregated neighborhoods.

49

The FHA Underwriting Manual describes the technique to be used in determining whether mortgages are eligible for insurance under the National Housing Act. In rating mortgage risks the Manual lists "Protection from Adverse Influences" as one of the features to be rated in order to determine eligibility of loan. "Where little or no protection is provided from adverse influences, the Valuator must not hesitate to make a reject rating of this feature." (Paragraph 932) "...adverse influence...includes prevention of the infiltration of business and industrial uses, lower class occupancy, and inharmonious racial groups." (Paragraph 935) It observes that "Deed restrictions are apt to prove more effective than a zoning ordinance in providing protection against adverse influences" (Paragraph 935) because if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes." (Paragraph 937) (emphasis ours)

Even greater emphasis is placed upon these considerations in the case of undeveloped or other sparsely developed areas. The Valuator is warned that deed restrictions should include the following

- (49) U.S. Government Printing Office (1938). Since this draft a new Underwriting Manual has been released. It was revised as of January 1947 and appears to have deleted most of the anti-Negro material.

provisions: "Prohibition of the occupancy of properties except by the race for which they are intended." (Paragraph 980 - 3g) ⁽⁵⁰⁾ FHA has also issued Outline of Protective Covenants containing the exact language of proposed racial restrictive covenants as follows:

"No person of any race other than the _____ shall use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant."

Negro citizens are held virtual prisoners in substandard housing all over America today. There is no relief in sight. The 79th Congress had under consideration legislation to establish a long-range housing and urban redevelopment program. However, the Congress wholly refused to include in the measure any provisions to correct existing housing discriminations against colored persons. ⁽⁵¹⁾ This bill did not pass and has been re-introduced into the 80th Congress which shows no present inclination to incorporate into the law provisions to assure that colored Americans will participate equitably and without discrimination even in federally sponsored housing programs.

(50) Idem

(51) See testimony of the NAACP before Senate Banking and Currency Committee on S. 1592, the General Housing Bill, December 12, 1945. Testimony in 80th Congress before the Committee, February 20, 1947 on S. 866, the National Housing Commission Bill.

HEALTH

Uniform discrimination against the Negro by public and private health services makes adequate and proper medical care the exception rather than the rule, even when he has the money to pay for it.

The sickness and death rate of the Negro in the United States is much higher than for white persons. This is not due to an innate susceptibility on his part to any specific disease but is the product of the low economic and social status in which he is kept. (52) Proper medical care is usually beyond his reach. His limited financial means cannot provide nourishing food, rest and clean wholesome surroundings needed for prompt recovery.

The Negro citizen suffers from all of the disabling illness which affect the general population, but it is those diseases most closely allied with poverty -- and its concomitants of inadequate diet, industrial overstrain, overcrowded housing, poor sanitation and ignorance -- that unduly ravage him. Thus the tuberculosis mortality rate for the Negro is more than three times that for the white. (53) Syphilis

(52) D.F. Holland and G. St. J. Perrott, "Health of the Negro" (1938), p. 34, state:

"Low economic status, rather than inherent racial characteristics in the reaction to disease, thus appears to account in large measure for the high disability rate among Negroes. From this fact it follows that the health problems of Negroes are more serious than those of the average white population since they represent a low income group, unleavened, as in the white population, by any considerable number in the higher income range."

(53) Louis I. Dublin "The Health of the Negro" (1943), p. 6.

occurs six times more frequently in Negroes than in whites; pneumonia
(53) twice as often.

Hospitals

Even in cases where the Negro is able to overcome economic difficulties and has sufficient money to pay for medical care he is seriously handicapped in procuring proper health services from public as well as private institutions. There are approximately 110 Negro-owned or operated hospitals in the United States of which about 25 are accredited. (56) For the most part these are small. The overwhelming majority of colored persons must therefore seek care from "white" institutions which, in the south and border states, if they admit Negroes at all, enforce a rigid pattern of segregation designed to isolate the Negro patient from all contact with white ones, and, so far as possible, from contact even with equipment used for white patients. Negro wards in both public and private institutions are usually inferior, over-crowded, poorly serviced by physicians and nurses and often located in the basement. But in rural areas and small towns in the south, where hospital facilities for the general population are especially meager, Negroes

(54) Because of the tendency to draw unfavorable inference regarding the rate of venereal diseases among Negroes, it is desirable to quote an outstanding authority, H.H. Hazen:

"...the problem transcends racial boundaries. Where the Negro syphilis rate is high the rate in the white group as well is likely to be unusually high. One finds, by comparison of these areas with those having lower rates for both Negro and white, that a less vigorous effort has been made to control the disease. Treatment facilities in the areas of high prevalence prove to have been inadequate and largely inaccessible. Likewise, the public is not well informed on the value of early and adequate treatment in arresting the disease and in preventing its spread. And one reaches the conclusion that the most outstanding characteristic of these areas of high prevalence is a low economic status in a large proportion of the population..."

Syphilis in the Negro, Supp. 15 to Venereal Disease Information, U.S. Public Health Service (1942), pp. VII, VIII.

(55) Dublin, Op. cit. p. 6.

(56) Julius Rosenwald Fund "Review of the Two-Year Period 1940-42" (1942) p. 13.

are usually excluded altogether except for emergency treatment in case of accident. Negroes have died because even first aid was denied them. (57)

Although the number of hospital beds needed by a community will vary with the type and prevalence of disease, modern medical authorities set four beds per thousand persons as the minimum requirement for a reasonably well-cared for populace. Some indication of health facilities for Negroes is shown by the number of hospital beds available to them. In Mississippi the Negro population in 1940 was 1,074,578. Yet according to a study made by the Council on Medical Education and Hospitals (58) there were 0.7 beds per thousand Negroes as compared with 2.4 per thousand whites. After a careful survey of hospital facilities for Negroes throughout the United States a responsible organization concluded "in some areas where the population is heavily Negro there are as few as 75 beds set aside for over one million of this group." (59)

Physicians, Dentists and Nurses

In 1940 there were 3,430 Negro physicians and surgeons, 1,611 dentists and 7,192 trained nurses and student nurses in the United States. (60) White physicians numbered 161,551. Stated in other terms there was one physician for every 743 persons in the general population as against one Negro physician for every 3,530 colored persons. These figures are significant in terms of Negro health.

The attitude of white physicians in the south toward Negro patients is often one of indifference bordering on criminal neglect.

(57) Charles S. Johnson "Patterns of Negro Segregation" (1944) p. 51.

(58) Council on Medical Education and Hospitals, "Hospitals and Medical Care in Mississippi", Vol. 112 Journal of the American Medical Association (June 3, 1939) p. 2319.

(59) Julius Rosenwald Fund "Review of the Two-Year Period 1940-42" (1942) p. 14.

(60) U. S. Bureau of the Census.

At the same time, few Negroes in the medical profession practice in the south because of its rigid, obnoxious and degrading practices: the stagnation of being shut-off from the main currents of intellectual and professional contact; the ever-present exposure to insults; and the insecurity of life, limb and property resulting from mob violence. It has been estimated that in certain sections of the deep south there is only one Negro physician to 8,171 Negro residents. ⁽⁶¹⁾ The great majority of Negroes must always therefore put their health and even lives into the hands of physicians belonging to the dominant race.

Moreover, Negro physicians and nurses are usually denied staff and in-patient privileges in non-Negro hospitals in every section of the country. This means that when it becomes necessary for a Negro patient to be hospitalized he is generally cut-off from the sympathetic and understanding care of the family physician. Furthermore, the denial of staff privileges in hospitals to Negro physicians and nurses materially reduces their opportunities for training and specialization.

Sickness and Death

The maternal mortality rate per thousand live births is 3.2 for whites and 7.8 for Negroes. Stated in other terms 2½ times more Negro mothers die in child birth than white mothers. Infant mortality, according to figures from the United States Bureau of Census in 1940, is 69 per cent higher among Negroes than among whites.

The sins of neglect arose to haunt America during the recent war when it sought to corral every able-bodied man between the ages of 18 and 37 for service in the armed forces. For the United States as a whole 47 per cent of all Negro registrants in those age groups physi-

(61) Paul B. Cornely, "Distribution of Negro Physicians in the United States", National Negro Health News, U.S. Public Health Service (1946), p. 1.

cally examined for induction were rejected as "unfit" as compared with 27 per cent for whites. As the following table shows, in the south where the majority of Negroes live, and the health and educational facilities are the poorest, the percentage of rejections is considerably higher than in the north where these services for Negroes are better but still grossly inadequate.

(62)

Percentage of Negro and White Registrants
Rejected after Physical Examination for
Induction into Military Service

	Negro	White
United States	47.0	27.9
North	39.0	26.1
South	49.3	31.8

If a Negro infant manages to survive to the age of one, his average life expectancy is still 17 per cent less than that of the average white infant of the same age.

(63)

Average Future Lifetime in Years at Age 1,
By Race and Sex: United States, 1939-1941

Race	Both sexes	Male	Female
White	66.84	64.98	68.93
Negro	57.15	55.93	58.46

The combined impact of economic and social discriminations in America casts a shadow over the Negro which extends from the maternity bed to a premature grave.

(62) Source: National Headquarters, Selective Service System March 13, 1947. Separate breakdown for western states omitted from table. Estimates for "north" and "south" includes: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Delaware, New Jersey, New York, Pennsylvania, Indiana, Ohio, West Virginia, Illinois, Michigan, Wisconsin, Iowa, Kansas, Nebraska, North Dakota and South Dakota as the north; and District of Columbia, Maryland, Virginia, Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Kentucky, Missouri, Arkansas, Louisiana, Oklahoma and Texas as the south.

(63) Source: U.S. Bureau of Census - "United States Life Tables and Actuarial Tables 1939-1941 (1946) p. 3.

Provisions in international agreements for the protection of human rights or of minorities are a relatively modern concept. For all practical purposes the protection of minorities was first written into an international agreement in the Treaty of Berlin, 1878, which prescribed regulations for the protection of Jews in Romania. But not even the signatories insisted too strongly upon the strict enforcement of these provisions. ⁽¹⁾ Meanwhile, Russia, one of the signatories, and many other nations including the United States continued to treat minorities with little regard for the principles of equality and justice.

This failure to protect by individual treaty the minority within a country undoubtedly made many humanitarians eager to have included provisions in the Covenant of the League of Nations that would guarantee the rights of minorities. But the desire of the Jews, in particular, to have incorporated a clause in favor of religious equality would have made it difficult to exclude a clause, proposed by the Japanese, in favor of racial equality. The adamant opposition of some statesmen to this latter provision resulted in the exclusion of any clause in the Covenant of the League of Nations recognizing human rights or the protection of minorities. ⁽²⁾

But the situation in Central and Eastern Europe was such that some kind of protection for the minorities there had to be devised. Repeating the procedure of the Treaty of Romania of 1878, the victorious Powers imposed treaties upon Poland, Czechoslovakia, Yugoslavia, Romania, Greece, Austria, Bulgaria, Hungary and Turkey which defined the rights

(1) See, for example, William L. Langer, European Alliances and Alignments (New York), 1931, pp. 331-332.

(2) David Hunter Miller, My Diary at the Conference of Paris (New York, 1924-1926), passim.

of minorities. But these treaties took a new step in that they placed the guaranty of these rights under the supervision of the Council of the League of Nations. ⁽³⁾ One cannot fail to be impressed by (1) the contrast between the detailed definition of these rights in these minorities treaties and the absence of such definition in the Covenant of the League of Nations; (2) the obligation imposed upon small and defeated nations to protect their minorities and the failure or refusal of the large and victorious nations to accept these obligations for themselves.

The enforcement of the provisions for the protection of minorities left much to be desired. But the Council of the League of Nations did take one step that should be kept in mind if the machinery for the protection of minorities is to be, at the very minimum, at least as extensive as that which existed after World War I. The Council of the League of Nations voted that any Member of the Council could call the attention of the Council to any infraction or danger of infraction of the minorities provisions. In addition, the Council adopted a resolution on October 22, 1920 as follows: "Evidently this right does not in any way exclude the right of minorities themselves, or even of States not represented on the Council, to call the attention of the League of Nations to any infraction or danger of infraction." ⁽⁴⁾ This right of petition to a principal organ of the international machinery for the maintenance of peace and security must be, at the very least, maintained.

The determination of the drafters of the Charter of the United Nations to universalize the protection of human rights and of

(3) P. de Azcárate, League of Nations and National Minorities An Experiment (Washington, 1945) and Oscar I. Janowsky, Nationalities and National Minorities (New York, 1945). Azcárate is the former Director, Minorities Questions Section of the League of Nations.

(4) League of Nations, Protection of Linguistic, Racial or Religious Minorities by the League of Nations (Geneva, 1931) pp. 7-12.

minorities which had previously rested upon agreements with individual nations is manifest from the language of the charter and the frequency with which the language is repeated. The Preamble states: "We the people of the United Nations determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,..."

Article 1, paragraph 3, employs language that has probably been more frequently quoted than any other expression from the Charter. It states that one of the purposes of the United Nations is "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;..." This last ideal of respect "for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion" is repeated in the identical words three times, namely, in Article 13, paragraph 1 (b), Article 55, and Article 76 (c). Article 62, paragraph 2, uses the same language with the omission of the words "without distinctions as to race, sex, language or religion," but with the inclusion clearly implied. Thus, the Charter in six different places reveals the concern of the drafters that there should be no mistaking their determination to establish the ideal of equal treatment of all men and women in all the lands.

Not only did the Charter, by contrast to the Covenant, contain the unequivocal statements just cited, but the Charter also contains the stipulations by which these ideals are to be achieved. The Charter did not leave it to the individual nations to decide for themselves whether they accepted the obligation to protect human and minor-

ity rights by writing this obligation into a treaty. The Charter, moreover, established the agency by which this protection is to be implemented, namely, the General Assembly (Article 13).

It should be noted that there is placed upon the General Assembly the obligation to initiate studies and make recommendations for the protection of human rights and fundamental freedoms for all. The Economic and Social Council may make or initiate studies and reports to the same end. This distinction is vital since it makes evident that spokesmen for minorities should be able to present petitions to the General Assembly regardless of action taken by the Economic and Social Council or any of its sub-commissions.

Subsequent action by the United Nations also reveals the desire to make effective at the earliest possible date the provisions in the Charter dealing with human and minority rights. The Economic and Social Council, in language almost identical with that of the Preparatory Commission, adopted a resolution of February 16 and 18, 1946 as follows:

"Section A.

"1. The Economic and Social Council, being charged under the Charter with the responsibility of promoting universal respect for and observance of, human right [sic] and fundamental freedoms for all without distinction as to race, sex, language or religion, and requiring advice and assistance to enable it to discharge this responsibility,

Establishes a Commission on Human Rights

"2. The work of the Commission shall be directed toward submitting proposals, recommendations and reports to the Council regarding:

(a) an international bill of rights;

- (b) international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters;
- (c) the protection of minorities;
- (d) the prevention of discrimination on grounds of race, sex, language or religion.

"3. The Commission shall make studies and recommendations and provide information and other services at the request of the Economic and Social Council.

"4. The Commission may propose to the Council any changes in its terms of reference.

"5. The Commission may make recommendations to the Council concerning any subcommission which it considers should be established.

"6. Initially, the Commission shall consist of a nucleus of nine members appointed in their individual capacity for a term of office expiring on 31 March 1947. They are eligible for re-appointment. In addition to exercising the functions enumerated in paragraph [sic] 2,3, and 4, the Commission thus constituted shall make recommendation on the definitive composition of the Commission to the second session of the Council.

"Section B.

"1. The Economic and Social Council, considering that the Commission on Human Rights will require special advice on problems relating to the status of women,

Establishes a Subcommission on the Status of Women

"2. The subcommission shall report proposals, recommendations, and reports to the Commission on Human Rights regarding the status

of women.

"3. The subcommission may submit proposals to the Council, through the Commission on Human Rights, covering its terms of reference."

Paragraph 4 of Section B is mutatis mutandis like paragraph 6 of Section A.
(5)

The Economic and Social Council elaborated and refined its machinery and procedures by a resolution adopted on June 21, 1946 as follows:

"Resolution adopted June 21, 1946.

"The Economic and Social Council, having considered the report of the nuclear Commission on Human Rights of 21 May 1946 (document E/38/ Rev. 1)

Decides as follows:

1. Functions

"The functions of the Commission on Human Rights shall be those set forth in the terms of reference of the Commission, approved by the Economic and Social Council in its resolution of 16 February 1946, with the addition to paragraph 2 of that resolution of a new sub-paragraph (e) as follows:

"(e) any other matter concerning human rights not covered by items (a), (b), (c), and (d).

2. Composition

"(a) The Commission on Human Rights shall consist of one representative from each of eighteen members of the United Nations selected by the Council.

"(b) With a view to securing a balanced representation in the various fields covered by the Commission, the Secretary-

General shall consult with the Governments so selected before the representatives are finally nominated by these governments and confirmed by the Council.

"(c) Except for the initial period, the term of office shall be for three years. For the initial period, one-third of the members shall serve for four years, the term of each member to be determined by lot.

"(d) Retiring members shall be eligible for re-election.

"(e) In the event that a member of the Commission is unable to serve for the full three-year term, the vacancy thus arising shall be filled by a representative designated by the member Government, subject to the provisions of paragraph (b) above.

3. Working Group of Experts

"The Commission is authorized to call in ad hoc working groups of non-governmental experts in specialized fields or individual experts, without further reference to the Council, but with the approval of the President of the Council and the Secretary-General.

4. Documentation

"The Secretary-General is requested to make arrangements for:

"(a) the compilation and publication of a year-book on law and usage relating to human rights, the first edition of which shall include all declarations and bills on human rights now in force in the various countries;

"(b) the collection and publication of information on the activities concerning the human rights of all organs of the United Nations:

"(c) the collection and publication of information con-

cerning human rights arising from trials of war criminals, quislings, and traitors, and in particular from the Nuremberg and Tokyo trials;

"(d) the preparation and publication of a survey of the development of human rights;

"(e) the collection and publication of plans and declarations on human rights by specialized agencies and non-governmental national and international organizations.

5. Information Groups

"Members of the United Nations are invited to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights.

6. Human Rights in International Treaties

"Pending the adoption of an international bill of rights, the general principle shall be accepted that international treaties involving basic human rights, including to the fullest extent practicable treaties of peace, shall conform to the fundamental standards relative to such rights set forth in the Charter.

7. Provisions for Implementation

"Considering that the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the Charter of the United Nations, can only be fulfilled if provisions are made for the implementation of human rights and of an international bill of rights, the Council requests the Commission on Human Rights to submit at an early date suggestions regarding the ways and means for the effective implementation of human rights

and fundamental freedoms, with a view to assisting the Economic and Social Council in working out arrangements for such implementation with other appropriate organs of the United Nations.

8. Sub-Commission on Freedom of Information and of the Press

"(a) The Commission on Human Rights is empowered to establish a Sub-Commission on Freedom of Information and of the Press.

"(b) The function of the Sub-Commission shall be, in the first instance, to examine what rights, obligations, and practices should be included in the concept of freedom of information and report to the Commission on Human Rights on any issues that may arise from such examination.

9. Sub-Commission on Protection of Minorities

"(a) The Commission on Human Rights is empowered to establish a Sub-Commission on the Protection of Minorities.

"(b) Unless the Commission otherwise decides, the function of the Sub-Commission shall be, in the first instance, to examine what provisions should be adopted in the definition of the principles which are to be applied in the field of protection of minorities, and to deal with urgent problems in this field by making recommendations to the Commission.

10. Sub-Commission on the Prevention of Discrimination

"(a) The Commission on Human Rights is empowered to establish a Sub-Commission on the prevention of discrimination on the grounds of race, sex, language or religion.

"(b) Unless the Commission otherwise decides, the function of the Sub-Commission shall be, in the first instance, to examine what provisions should be adopted in the definition of the prin-

principles which are to be applied in the field of the prevention of discrimination, and to deal with urgent problems in this field by making recommendations to the Commission."⁽⁶⁾

The Economic and Social Council also adopted on June 21, 1946, resolutions creating a Temporary Social Commission of eighteen members and giving the Commission on the Status of Women, the status of a full commission with a membership of fifteen.⁽⁷⁾

These resolutions demonstrate that there has been no relaxation in the desire to carry out the evident intent of the drafters of the Charter. The crux of the problem lies in the method of implementation.

The major obstacle in the way of any effective implementation of the evident intent of the drafters of the Charter and of the resolutions of the Economic and Social Council just cited is Article 2, paragraph 7, which provides: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."

Unless the evident determination to protect human and minority rights is to be nullified by this paragraph, the expression "matters which are essentially within the domestic jurisdiction of any state" must be liberally interpreted.

Recent history especially has demonstrated that many questions which could rigidly be classified as "matters which are essentially within the domestic jurisdiction" of a nation fall within the scope of the purpose of the United Nations "to maintain international

(6) Ibid., (July 13, 1946), pp. 520-528.

(7) Loc. cit.

peace and security" (Article 1, paragraph 1). The treatment of Jews in Germany was one of the causes of the Second World War. The treatment of minorities in Poland and other Central and Eastern European countries is one of the principal causes of international friction today. The existence of a pro-Fascist government in Spain is considered by many Members of the United Nations as a threat to international peace and security. Indians in Bombay and Calcutta have proclaimed a boycott in protest against legislation against Indians in the Union of South Africa and India, as a Member of the United Nations, is protesting against the treatment of Indians in the Union.

One could multiply these instances in which questions that are apparently within the domestic jurisdiction of a nation constitute a threat to international peace and security. It is not surprising, then, that M. F. Dehousse, the Belgian delegate to the first session of the Economic and Social Council, stated on January 23, 1946: "...if human rights are systematically denied or violated in one or other part of the world; there can be no doubt that such a situation, with which we are only too well acquainted, will, after a more or less brief period of confusion and anarchy, lead again to war."⁽⁸⁾

We submit that the well-nigh universal violation of the principle of "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" as far as Negroes are concerned comes within the category of the situation outlined by M. Dehousse.

We believe, therefore, that such questions fall within the scope of the last clause of Article 2, paragraph 7, which adds: "But this principle shall not prejudice the application of enforcement measures under Chapter VII." The first Article (39) of this Chapter

(8) Ibid, p. 9.

stipulates: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

Not only should Article 2, paragraph 7, be interpreted in such a way as to make possible action under the Charter, but spokesmen for minorities should have the opportunity to present to the General Assembly petitions on behalf of those minorities in order to assure that the attention of the Security Council will be directed promptly to such threats to international peace and security.

As pointed out, p. 140, the Council of the League of Nations adopted on October 22, 1920, a resolution giving minorities the right to call the attention of the League of Nations to any infraction or danger of infraction of the rights guaranteed by the minorities treaties. The Council further voted on October 25, 1920, that it was desirable that the President of the Council and two members appointed by him "should proceed to consider any petition or communication addressed to the League of Nations with regard to an infraction or danger of infraction of the clauses for the protection of minorities. This enquiry should be held as soon as the petition or communication in question had been brought to the notice of the Members of the Council."⁽⁹⁾

We urge that these petitions on behalf of minorities anywhere be receivable by the General Assembly because all Members of the United Nations have the right to speak in the General Assembly. The General Assembly has just voted that there be discussion of the veto. By the same token, we urge that the General Assembly, "the sounding

(9) League of Nations, Protection of Linguistic, Racial or Religious Minorities, pp. 7-12.

board of the conscience of mankind," be given the fullest opportunity to discuss petitions on behalf of minorities. The General Assembly, except insofar as it is limited by Article 12, could then make a recommendation to the Security Council, which, in turn, according to the view presented above could take action in cases where the violation of human or minority rights constitutes a threat to international peace and security.

We note, further, that petitions may be addressed to the Trusteeship Council on behalf of peoples in trust territories. Under the Covenant of the League of Nations this right was not specifically stated but the Council in January, 1923, adopted procedures by which written petitions were receivable by the Permanent Mandates Commission. (10)

Article 87 of the Charter of the United Nations has formalized this right of petition by providing that "The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may...(b) accept petitions and examine them in consultation with the administering authority;..." Moreover, the rules of procedure, drawn up by the Preparatory Commission for consideration by the Trusteeship Council, make possible oral petitions.

It is important to note that Article 87 clearly stipulates that the General Assembly as well as the Trusteeship Council may receive petitions on behalf of peoples in trust territories. It would be highly inconsistent, to say the least, if petitions on behalf of peoples in independent nations could not be received by the General Assembly.

(10) For a discussion of this point, see Quincy Wright, Mandates under the League of Nations (Chicago, 1930), p. 169 ff.

After this manuscript was originally prepared, the General Assembly during the second part of the first session took action which, in the opinion of some observers, gives a liberal interpretation to article 2, paragraph 7 of the Charter.

Reference was made on page 149 of the discriminatory legislation passed by the Union of South Africa against Indians residing in the Union. The Indian delegation to the United Nations formally complained to the United Nations in June, 1946, and the issue was debated in the Sixth (Legal) Committee which began its sessions on November 5, 1946. After considerable discussion it adopted a resolution proposed by the Indian delegation and amended as follows by a joint proposal of the French and Mexican delegations:

The General Assembly,

Having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:

1. STATES that, because of that treatment, friendly relations between the two Member States have been impaired, and unless a satisfactory settlement is reached, these relations are likely to be further impaired;
2. IS OF THE OPINION that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded with the two Governments and the relevant provisions of the Charter;
3. Therefore REQUESTS the two Governments to report at the next session of the General Assembly the measures adopted to this effect.

As was to be expected, Prime Minister Jan Smuts of the Union of South Africa protested that the instant case was a matter essentially within the domestic jurisdiction of the Union and therefore outside the competence of the United Nations. In support of this latter position the delegates of the United States, the United Kingdom and Sweden sub-

mitted a joint amendment to the original Indian motion in which the three nations recommended that the International Court of Justice be requested to give an advisory opinion as to whether the matter was essentially within the domestic jurisdiction of the Union. But the Sixth Committee adopted the French-Mexican amendment by twenty-four votes to nineteen, with six abstentions. The General Assembly also adopted this French-Mexican amendment, by a vote of thirty-two in favor, fifteen (12) against, with seven abstentions.

What now is the real significance of this action? Mr. Wellington Koo, Jr., a member of the Legal Department, United Nations Secretariat, but writing of course in his private capacity has concluded: "Although, legally speaking, there were good grounds for referring the jurisdictional question to the International Court, the Committee, in making its decision, was primarily concerned with those articles of the Charter relating to human rights and fundamental freedoms, rather than with giving an exact definition of the scope of Article 2, paragraph 7. Notwithstanding this primary interest in the political aspects of the question, however, it would seem correct to say that the General Assembly has implicitly recognized that any act in violation of the principles set forth in the Charter is a matter of concern to all the Members of the United Nations and falls within the competence of the General Assembly irrespective of the nature of origin of the situation." (13)

This conclusion would, in the opinion of this writer, be more valid if there had been no treaty between India and the Union of South Africa.

(12) United Nations Documents A/66, Item 31; A/C. 6/40; A/C. 1, 6/3, and 6/20; A/205.

(13) See his "Current Notes" in American Journal of International Law, XLI (July, 1947), 645.

Before determining the extent to which article 2, paragraph 7 will be liberally interpreted, it would be well to have the General Assembly take action on a violation of minority rights in which there is no violation of a treaty. It should be further noted that no decision was made as to whether the further impairment of the relations between India and the Union of South Africa warranted action under article 39 of the Charter, as suggested on pages 149-150.

As this publication goes to press the General Assembly is still attempting to compose the differences between India and the Union of South Africa.

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