INTRODUCTION
by W. E. Burghardt Du Bois

There are in the United States of America, fifteen millions or more of 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 off-spring of white European-Americans as well as of Africans. Similarly, there is an equal and perhaps even larger number of white Americans who also descend from Negroes but who are not counted in the colored group nor subject 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 and sea; 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 rigid and 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 often other business enterprises.

The result has been to make American Negroes to wide extent provincial, introverted, 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 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 a vast hypocrisy. A nation which boldly declared "All men 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 vast 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 has 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-seven years.

In the Constitution of the United States, Negroes are referred to as follows, although the word "slave" was carefully avoided before the thirteenth amendment: Article I (1787) Section 2, apportionment of members of the House of Representatives: "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

"Other persons", means Negro slaves. Article I (1787), Section 9 "The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." "Each person", refers to Negro slaves. Article IV (1787) Section 2, "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered upon claim of the party to whom such service or labor may be due." This refers particularly to fugitive slaves. 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, representat-
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 citi-
zens of the United States, or in any way abridged, except for part-
icipation 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 power to enforce this article by appropriate legislation."
In addition to this there have been federal statutes concerning the status of Negroes and also the states have adopted Constitutions and passed statutes under them.

To illustrate the character of the constitutions and legislation in the states, 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, residents 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 person, 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 intermarriage, 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. 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.

This is the basic legal situation on which Negro citizenship in the United States rests. What has been the result?
One strictly mathematical measurement of caste is lynching; the killing of an accused or suspected person by a mob without trial or before judicial sentence is a lynching. Statistics of lynching have been kept with some accuracy since 1882 and are as follows:

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*the figures 1882-1903, include whites

Lynching is only a part of the picture. The National Association for the Advancement of Colored People with more than a half million members, has asked four scholars under my editorship to present chapters showing in detail the status of American Negroes in the past and today, in law, administration and social condition; and the relation of this situation to the Charter of the United Nations.

Milton R. Konvitz who writes chapter one is a white American of Jewish descent. He is associate professor and director of research, School of Industrial and Labor Relations, Cornell University; he is a member of national legal committee, NAACP; and author of The Constitution and Civil Rights (Columbia University Press 1946), and The Alien and the Asiatic in American Law.
The writer of the second chapter is an American Negro, Earl B. Dickerson of Chicago. Mr. Dickerson has been a practising attorney-at-law in Chicago since 1920 and has served as Assistant Attorney-General of the state; corporation counsel of the city; member of the City Council. He was a member of President Roosevelt's Committee on Fair Employment Practices. He is president of the National Bar Association.

The third chapter is by William R. Ming, Jr. of the federal Office of Price Administration and recently had been made a member of the Institute of Social Scientists and Lawyers of the University of Chicago.

Rayford R. Logan, the writer of the fourth chapter is a Harvard doctor of philosophy and history; 1st Lieutenant in World War I and now professor of history at Howard University. He has written Diplomatic Relations of the United States and Haiti; The Operation of the Mandate System in Africa; and The Negro in the Post-War World. He was editor and contributor to What the Negro Wants.

William R. Ming, Jr., an American Negro, is an attorney-at-law and has been attorney for the Illinois Commerce Commission; Associate Professor at the Howard University School of Law and Chief of the Court Review Price Branch, Office of Price Administration. He served in the army of the United States in the late war and was discharged as Captain, J.A.G.D. At present he is Associate General Counsel, O.P.A. and has recently been appointed Associate Professor, University of Chicago Legal Institute.
A Summary of this Petition
by W. E. Burghardt Du Bois

This petition to the Assembly of the United Nations presents a factual and annotated statement of the Legal Rights of American Negroes under the Constitution of the United States and the various states and under the federal and state statutes and court decisions. It shows not simply that basic law has often been unfair but even that legal rights have been denied. We have traced the legal status of American Negroes since the adoption of the Constitution up to the beginning of the First World War; then we have presented the legal and social status of American Negroes from 1917 to the present; finally we have sought to point out the applicability of the Charter of the United Nations to the situation of this minority, because of the provisions of that Charter with regard to Human Rights and the Rights of Minorities.

It remains to put this legal and factual picture into the frame of international and national development so as to show something of the larger trends of thought and action which has brought us to the present status.

It is all 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 justification. Such excuses were found and men did not inquire too carefully into either
their logic or their 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 arrived as servants, as laborers, as free adventurers. The Southwestern part of the present United States was first traversed by an African Negro explorer. Negroes accompanied early explorers like D'Ayleon and Menendez in the South-eastern 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 laborers in 1619 were wanted for the raising of tobacco which was the money crop for Virginia.

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 British slave traders and because 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 eloquent testimony as to what these revolts meant all over America.
The slaves themselves especially imperiled the whole slave system by running away. It was the fugitive slave more than the revolting slave who 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 the 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 place for free land; for continuous employment and high wage; for freedom of thought and faith. It was here, however, that the 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 English slave-trade in the eighteenth and early nineteenth century.

This new mass of slaves became competitors of white labor and drove them for refuge into the arm of employers, whose interests were founded on slave labor. The doctrine of race in-
Ferocity was used to convince white labor that they had 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 one with the Fugitive slave. The Church influenced by wealth and respectability was predominately on the side of the slave owners and every effort was made to make the degradation of the Negro as a race final, as the Dred Scott decision proved.

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 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 the freedom and higher wage of 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 opposed by profitable industry was determined to control wages and government.

The result was an attempt at reconstruction in which black labor allied with white labor established schools; tried to divide up the land and to 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 paucity, 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 wages 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.

The result was in 1876 that 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. There remained then a block of one hundred and thirty-four electoral votes and votes in Congress which could not be subjected to democratic control or changed in accord with democratic methods. It made party government ineffective since a Third Party could never hope for success with the Bourbon South tied to reaction.

The federal government has 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 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 ex-
tending caste legislation into our armed forces. It was often alleged that American troops in France spent more time trying to keep Negro troops in subordination than in fighting the Germans. During the Second World War, there was, in the East, 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 juster distribution of income under scientific guidance. But here and in each case where reaction intervened, it was a reaction based on a South aptly called our "Number One social 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 compulsory protection of minorities in Europe. 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 unreasonable ness 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 not usually without but within? It is not Russia that threatens the United States but 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.

We appeal then to the United Nations to step to the very edge of their authority in protecting this minority of citizens in the United States, in order that the world may be at peace.

We point out that the recent killing of a nephew of the ruler of a sovereign state by a Florida policeman, who thought that he was an American Negro and could thus be murdered with impunity, illustrates the danger of this situation. The United States has explicitly and clearly refused to defend the rights of its own citizens in a wide field of cases. Consequently in the case of foreigners, especially of those whose skin shows any pigment, there is always the danger
that they will be discriminated against, insulted, assaulted and killed, in this land because when this happens to an American citizen of Negro descent, the United States admits that it exercises only limited jurisdiction. Perhaps it would not be too much to ask the United Nations through the world court to take the protection of such deliberately unprotected citizens under international jurisdiction and control.

We appeal to the world to witness that the attitude of America toward American Negroes is far more dangerous to mankind than the Atom bomb; and far, far more clamorous for attention than disarmament or treaty. To disarm the hidebound minds of men is the only path to peace; and as long as Great Britain and the United States profess democracy with one hand and deny it to millions with the other, they convince none of their sincerity, least of all themselves. Not only that, but they encourage the aggression of smaller nations; so long as the Union of South Africa defends Humanity and lets two million whites enslave ten million colored people, its voice spells hypocrisy. So long as Belgium holds in both economic and intellectual bondage, a territory seventy-five times her own size and larger in population, no one can sympathize with her loss of dividends based on serf labor at twenty-five to fifty cents a day. Seven million "white" Australians cannot yell themselves into championship of democracy for seven hundred million Asians.

Therefore, Peoples of the World, we American Negroes appeal to you; our treatment in America is not merely an internal question of the United States. It is a basic problem of humanity; of democracy; of discrimination because of race and color; and as such it demands your attention and action. No nation is so great that the world can afford to let it continue to be deliberately unjust, cruel and unfair toward its own citizens.
Chapter I

THE NEGRO IN AMERICAN LAW

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 Court

1. 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 the case, Corrigan v. Buckley, which came before the Court in 1926 and involved a covenant in a deed prohibiting for 21 years the sale of the property involved 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 percent of the owners and that the required percentage of owners had not signed. Defendant claimed that 95 percent 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 percent 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 *Cunning v. Board of Education*, upheld segregation in schools. But the leading case is *Berea College v. Kentucky*, decided in 1906.

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 or 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: in so far 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
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with in one's religion is no more sacred than the right to
import and receive instruction not harmful to the public.

"Have we become so inoculated with prejudices of race that an
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The institution involved was a private school. A
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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 for 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 hold 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 Brodlový v. Sutter, 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. Reportedly 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, some state laws compel segregation in public conveyances. Such laws, in so far 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 those 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 octo- roon, 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 of 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 interstate 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 to freely 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 interstate commerce in public conveyances without subject 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 because 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. But 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 protect him in the enjoyment of life, liberty or property, mentioned in the Fourteenth Amendment. These are
The effectiveness of this statute was considerably weakened by the decision of the Supreme Court in 1945 in the Screws 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 Screws 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 Screws case) has (sic) 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 Discrimination

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 1863 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
compensation 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 department stores, clothing stores, hat
stores, shoe stores; the New York act mentions beauty par-
ners; 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, and Massachusetts have recently
adopted acts against discrimination in private employment.
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.

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 four states a Negro may not teach white pupils and a white person may not teach Negro pupils; 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 require 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 required separation at race tracks. In Tennessee and Virginia separation at theatres and public balls 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, nor may they use the same
pay windows or stairways 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 re-
quiring 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 Lyrdal 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 fed-
eral law; to make discrimination in private employment in inter-
state commerce a crime; to define and guarantee civil rights
in the District of Columbia. The Supreme Court has failed to declare M. L. Dowie 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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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.

There are in fact 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
and federal laws providing for racial segregation in public
(1) schools, state laws providing for segregation in public con-
veyances, and race discriminations in the exercise of the
franchise.

(1) Cummings v. County Board of Education, 175 U.S. 538, 20
S. Ct. 197 (1899); Gong Lum v. Rice, 275 U.S. 78, 48
S. Ct. 91 (1927); Gaines v. Canada, Registrar, etc., 305
U.S. 337, 59 S. Ct. 232 (1939); Note, 82 Univ. of Pa.
45, 29 S. Ct. 33 (1908).

State Enactments: Alabama School Code (1927)
Secs. 124, 207; Arkansas Digest Stat., (Crawford & Moses,
1921) Sec. 8915; Delaware Revised Code (1915) Sec. 2296;
Delaware Laws 1921, C. 160, Art. 2, Secs. 23, 34. See also
Delaware Laws 1929, Chap. 222; Georgia Code Annotated
(Mitchie, 1926) Secs. 1551 (8), 1551 (89), 1561 (118);
Kentucky Stat. Annotated (Carroll, Supp. 1934) Sec. 4399-
43; Mississippi Code Annotated (1930) Sec. 6586; Missouri
Revised Stat. (1929) Sec. 9216; North Carolina Code
Annotated (Mitchie, 1931) 5334; Oklahoma Comp. Stat. (1921)
Secs. 10, 567, 10, 574, South Carolina Code (1932) Sec. 5406;
Tennessee Code (Will. Shan. & Harsh, 1932) Sec. 2377,
Supp. (1932) Sec. 2395-9 (high schools); Texas Annotated
Code Annotated (Mitchie, 1930) Sec. 680; West Virginia

Federal Enactments: District of Columbia Code (Supp. 1933)
Title 7, Secs. 249, 252.

(2) L. N. C. & T. Ry Co. v. Mississippi, 133 U.S. 587, 10 S.
Ut. 346 (1890); Plessy v. Ferguson, 163 U.S. 537, 16 S.
Ut. 1138 (1896); Chesapeake & O. Ry. Co. v. Kentucky, 179
U.S. 361, 21 S. Ct. 101 (1900); Compare Chiles v. C. &
O. Ry. Co. 213 U.S. 71, 30 S. Ct. 667 (1910) and Mitchell
v. United States, 313 U.S. 80, 61 S. Ct. 873 (1941) See
McCabe v. A. T. & S. F. R. Co. 235 U.S. 157, 35 S. Ct. 69
(1914).

(3) Williams v. Mississippi, 170 U.S. 213, 18 S. Ct. 583
(1898); But see Guinn v. United States, 238 U.S. 347,
35 S. Ct. 926 (1915); Myers v. Anderson, 238 U.S. 368,
35 S. Ct. 932; Lane v. Wilson, 307 U.S. 268, 59 S. Ct. 872
622 (1935).
In this category also will fall the state laws prohibiting (4) marriage between white and colored persons, and the laws (5) discriminating against Negroes in the selection of jurors.

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; another example is private action under color of law. This method is commonly manifested also, in job discrimination against Negroes in certain industries, and in the converse situation of enforced labor which result in the form of slavery known as (6) peonage.

Third, actual mob violence. A popular manifestation of this method is found in the peculiar American institution called (10) "lynching".


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.

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. The most notable of these are the decisions of the Supreme Court under the 13th, 14th and 15th Amendments. 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) Ex parte Yarborough, 110 U. S. 651, 4 S. Ct. 152 (1884);
    United States v. Cruikshank, 92 U. S. 542, 23 L. Ed. 563
    (1876).

(12) Draper v. Cambridge, 20 Ind. 268 (1863);
    Dred Scott v. Sanford, 19 How. 393, 15 L. Ed. 691 (1867).

(13) The Civil Rights Cases, 109 U. S. 3, 3 S. Ct. 13 (1883);
    United States v. Reese, 92 U. S. 224, 23 L. Ed. 563 (1876);
    United States v. Harris, 105 U. S. 629, 1 S. Ct. 601 (1883).

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. The state courts were also deciding numerous cases defining the legal rights of American Negroes under state law. 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.


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 interests. For instance, the importation of slaves was allowed to continue until 1808; three-fifths of the slaves were to be counted in determining the apportionment of representatives and direct taxes — this, even though in the same states that profited from these concessions the slave, of course, was not a citizen.

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. 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. 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.

(17) Article I, Sec. 9, Constitution of the United States.
(18) Article I, Sec. 2, Ibid.
(19) Article IV, Sec. 2, Ibid.
(20) 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.
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 villienage of the ancient common law. In fact, it has been said that slavery never existed by the common law of England. 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. He could own property. He bore arms. And he paid taxes. Even in the deep South the free Negro could own and alienate property. And in none 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.

Now applying these elementary historical facts to the question, should there by any doubt that the American Negro possessed rights that were protected by the Constitution? For instance, would the Fifth Amendment have protected a Negro and his property from deprivation without due process of law? Could the federal government deprive the free Negro of his freedom?

(21) 58 C. J. 746; Neal v. Farmer, 9 Ga. 555

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


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

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 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 Scott Case came into prominence. And it is not an exaggeration to say that never in the history of the Supreme Court has it had before it a case more pregnant with moral issues permeating the very soul of American life. Potentially, the case touched the vital core of American political and social history. It is not surprising, therefore, that the decision in Dred Scott v. Sanford, (28)

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 (28) (1856) 19 Howard 393.
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 free man. 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 allegeing that Sanford, 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 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 célèbre 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 ..." 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.

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

After the Dred Scott decision the Supreme Court had two occasions to pass on the "Negro question" before the adoption of the Fourteenth Amendment. These were Ableman v. Booth and Ex parte 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. 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

(30) Edward F. Waite, The Negro in the Supreme Court (1946)
30 Minn. Law Rev. 219.
(31) (1859) 21 Howard 506, 16 L. Ed. 169.
(32) (1861) 24 Howard 66, 16 L. Ed. 717.
(33) See 3 Warren, op. Cit. pp. 42-79
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 others 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 fixed meaning of the word "slave". By sombre legal decisions in the southern states, a Negro was presumed to be a slave; he had the burden of rebutting this presumption. The offering 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. In such a case, the court said, there was no basis for the presumption.

(34) Ex parte Leland, 1 Nott. & McCord 460 (S. C. 1819).
(35) Daniel v. Guy, 19 Ark. 121 (1857)
(36) See Ibid.
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.

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. In Bailey v. Fiske, 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, where the question was

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

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

(39) (1852) 34 Me. 77

(40) (1810) 7 Mass. 83
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. That seems to be the prevailing law today.

In his efforts to obtain 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, 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! 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. These statutes

(41) Dobard v. Nunez, 6 La. Ann. 294 (1851); Scott v. Peebles, 2 Sm. & M. 546 (Miss. 1844); Eden v. Letarrre, 1 Bay 171 (8. C. 1791)

(42) See comparatively recent cases allowing recovery in Mangum, op. cit., pp. 13-25

(43) Roberts v. City of Boston, 59 Mass. 193 (1849)

(44) See Mangum, op. cit., pp. 79-137
have been held not to violate the due process clause of either the Fifth or Fourteenth Amendments.

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 possible to deny him that equality throughout the period from 1787 to 1865. And this denial was possible despite his rights under the 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 analysed 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 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. In substance, the effect 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 also intended to protect the emancipated slave from all encroachment upon his rights. Yet the Supreme Court soon decided

(45) Ibid.
that there was a limit on the power of the federal government to protect the citizenship it created.

At the outset it should be admitted that this narrow construction of federal power emanates as a doctrine from the Slaughter House Cases 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 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 in 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.

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 proceeding in the United States Supreme Court the Supreme 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 abovementioned 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
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 jurors 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
The defendant was tried and convicted in a State court of Alabama under section 4139 of the Code of Alabama, which provided for a severer 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.

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. Petitions 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
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:
1. The denial of hotel accommodations to certain Negroes in the State of Kansas.

2. The denial of hotel accommodations to a Negro in the State of Missouri.

3. The denial to a Negro of a seat in the dress circle of Maugure's Theatre in San Francisco.

4. The denial to a person (presumably a Negro) the "full enjoyment" of the accommodations of the Grand Opera House in New York City.

5. 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 ante-bellum 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
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
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 forthwith 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.

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.

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. III, 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

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

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.

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

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.

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 up 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 of 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 Amend-
ment, as before, was predominately involved, the Four-
teenth 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 pro-
ceedings 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 inter-
vention.

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 ex-
cluded 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 interpreta-
tion of all three of the War Amendments was involved,
the Thirteenth being predominant. The defendants de-
murred to the indictment as presenting no Federal ques-
tion. 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 interven-
tion.

October Term, 1908

(25) Berea College v. Kentucky, 211 U. S. 45
Berea College, a Kentucky corporation, was indicted un-
der 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 courts, follows the line of 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 that 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.
Franklin v. South Carolina, 216 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. (47)

October Term, 1909


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. 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

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 coastwise 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 in the states. Decision against Federal intervention.


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 that 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.
Admittedly, it would not be intellectually 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 are to be appreciated. 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. 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 incidents 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 those 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 (48) from discrimination.

(48) Mangum, op. cit. pp. 34-77.
These laws have suffered the vicissitudes of judicial interpretation, as would be expected of any statute. Their 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 ever been adopted.

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 the peculiar quagmire of incapacity and inaction that the American Negro found himself in his search for justice within the framework of American law.

(49) Ibid.
THE PRESENT LEGAL AND SOCIAL STATUS OF THE 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 and 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 creed 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 obliged 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 affect political and social groups generally. The basis, however, does not alter the fact. In the eyes of the organic law Negroes are 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, the power of the State Democratic Convention to achieve the same result was upheld in Grovey v. Townsend. 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. 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.

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."

There, failure of an Alabama trial court to provide counsel for nine young, illiterate Negroes charged with the rape of two white women or 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. 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.

After a false start, the Supreme Court recognized that

the trial of a Negro might be only a form, a face-saving substitute for a lynch mob. 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 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


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 J.J., dissented.

9// 261 U.S. 86 (1928).
convictions so obtained. Nevertheless, in Brown v. Mississippi
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 dis­
regard for human rights which frequently characterizes the relationship
between Negroes and those who administer the law is found in Chambers
v. Florida. In that case, also police 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.

But even more shocking than such conduct by state officers
is the fact that it usually goes unpunished. 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

12/ See Screws v. United States, 325 U.S. 91 (1945), for a extended
discussion of the power of the federal government to punish such con­
duct by state officials 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 "peac" officers were indicted for, and con­
victed 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 in­
stucting the jury that the petitioners were guilty only if they in­
tended to deprive the deceased of his constitutional rights. Those
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
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 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. 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/ An exceptional case may be that of Isaac Woodard, a Negro veteran of World War II. In February 1946 he was bludgeoned by an unprovoked beating at the hands of a South Carolina police officer. State officials took no action at all but the Department of Justice announced that it would seek an indictment.
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 doctrines 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.

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 unreported, 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, 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. With these, however, must be contrasted the "Civil Rights Acts" of many of the northern and western states 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.

Both groups of laws have been upheld as within the police power of the several states. 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

15/ Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.


17/ See "Disabilities Affecting Negroes as to Carrier Accommodations, Property and Judicial Proceedings," same author, VIII Journal of Negro Education, 466 et seq., 1939 for a discussion of the statutes, the cases and their administration.
commerce in contravention of the negative implication of the "commerce clause" of the federal Constitution.

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 equally 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 grossest form of denials 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 promise, with its basic fallacies, is readily observable in any state or local community. Fundamental rights

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.
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. Contrary to 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. 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. 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 education 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

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19/ See Myrdal, op. cit. pp. 337-344.
20/ 305 U.S. 337 (1938).
satisfied by establishment of new and separate law school for Negroes.

So too in *Mitchell v. United States* 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 birth 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*, 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.

So it goes, with the law clear as to the rights of Negroes and the facts equally clear that those rights are regularly denied.

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22/ *313 U.S. 80* (1941).


24/ See "Teachers' Salaries in Black and White", Legal Defense and Educational Fund, Inc. (1942), for the story of this campaign, still being waged.
As might be expected, the proponents of segregation ignore the facts and argue vehemently the logic of it. Probably no place, however, is the fundamental fallacy and the circuity of their reasoning so aptly demonstrated as in the defense of the statutes for 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 otherwise 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, and 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 qualification 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 these 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 examine only 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.

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 exercising the right to vote.

25/ See Myrdal, op. cit. p. 526, et seq.

26/ 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.
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 those 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. That 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 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 judges 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 politics and the Negro display the same lack of equality of treatment. One of the most outstanding demonstrations of the real status of Negro 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 statu
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. The announced justification for segregation by judicial fiat is that it is not the state which dictates that result but the private persons who entered into the covenant. 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.

29/ See e.g. Kohler v. Rowland, 275 Mo. 573, 205 S.W. 217 (1918); Chandler v. Ziegler, 96 Colo. 1, 231 Pac. 622 (1910); Cornish v. O'Donaghue, 30 F. (2d) 983 (1929). Some states have refused to enforce agreements not to sell the land but even these jurisdictions upheld restrictions on use by Negroes. See e.g. Lottan v. Ellis, 122 Ca App. 113, 295 Pac. 95 (1931). The Supreme Court avoided decision on this question in Hansberry v. Lee, 311 U.S. 52 (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. Kloman, 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.


31/ Ex parte Virginia, 100 U.S. 339 (1880).
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 live,
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
white.

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

27/ Buchanan v. Warloy, 245 U.S. 60 (1917).
28/ E.g., for example, "The President's Conference on Home Building
and Home Ownership, Report of Committee on Negro Housing," P.46 (1932)
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.

The economic history of Negroes in the United States is well-known and well documented. 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

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32/ See Myrdal, op. cit., Part IV, and source materials there cited for a complete discussion of the present economic status of the Negro.
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 adjunets. And it is in those 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.

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 inaptitude 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 of a committee to prevent government agencies and government contractors from engaging in other than fair employment practices. These were roughly defined as refusal to hire, or upgrade, any person 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 these investigations furnished entire confirmation of the dis-

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33/ Executive Order 8802, 6. F.R. 3109 (1941).
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
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 practised against them solely because of their race. It is this latter group of burdens which a Fair Employment Practices Committee would help them share. But 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 eroding opportunities for discrimination against Negro workers.

34/ See et al. v. Louisville & N.E. R. Co., 323 U.S. 192 (1944), and Tungstall 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. 999, 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. Then the former act with the aid of governmental sanctions the need for governmental protection for the minority becomes all the more apparent.
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 discrimination but the political institutions, the courts, the legislatures and the executive arm fell 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.
Chapter IV

The Charter of the United Nations

And its Provisions for Human Rights and the Rights of Minorities

And Decisions already Taken under this Charter

By Rayford W. Logan
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. 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.

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 with

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.
Romania of 1878, the victorious Powers imposed treaties upon Poland, Czechoslovakia, Yugoslavia, Romania, Greece, Australia, Bulgaria, Hungary and Turkey which defined the rights 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. 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 and (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 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 infringement or danger of infringement 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." 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 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: "To the peoples 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;..."

3. (cont.) Azezato is the former Director, Minorities Questions Section of the League of Nations.
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 minority 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 towards 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 5 of Section A.

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/33/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 those 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 two years, one-third for three years, and one-third 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 human rights of all organs of the United Nations;

"(c) the collection and publication of information concerning 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 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."

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.

6. Ibid., (July 13, 1946), pp. 520-528
7. Ibid. cit.
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 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 against pending 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."

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

8. Ibid., p. 9
Article (39) of this Chapter 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 above, p. 2, 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."

We urge that those 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 vote. By the same token, we urge that the General Assembly, "the sounding board of the conscience of mankind," be given the fullest opportunity to discuss petitions on behalf of minorities. The General Assembly, except in so far 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, 1933, adopted procedures by which written petitions were receivable by the Permanent Mandates Commission. 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

10. For a discussion of this point, see Quincy Wright, Mandates under the League of Nations (Chicago, 1930), pp. 169 ff.
for consideration by the Trusteehip Council, make possible oral petitions.

It is important to note that Article 87 clearly stipulates that the General Assembly as well as the Trusteehip 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.

This right of petition on behalf of minorities to the General Assembly is all the more necessary in view of the action taken by the Economic and Social Council with respect to Article 71 of the Charter of the United Nations. This Article states: "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned."

Senator Tom Connally, Chairman of the Senate Committee on Foreign Relations and a Delegate to the First Session of the General Assembly, explained on February 16, 1946, to that Session his understanding of what the drafters of the Charter of the United Nations had in mind when they approved Article 71. He declared: "They wanted to make available, they wanted to make available (sic) to the Economic and Social Council
advice and consultation from any kind of organization that was
worthy and had information."

But the General Assembly voted on February 16, 1946
that "The Economic and Social Council should as soon as possible
adopt suitable arrangements enabling the World Federation of
Trade Union and the International Cooperative Alliance as well
as other international non-governmental organizations whose
experience the Economic and Social Council will find necessary
to use to collaborate for purposes of consultation with the
Economic and Social Council."

Thus, no national non-governmental organizations
were approved by the General Assembly for consultation under
Article 71. This defect should be remedied at this second meeting
of the First Session of the General Assembly. But in addition,
for the reasons pointed out above, petitions on behalf of minor-
ities should be receivable by the General Assembly itself.
This receivability by the General Assembly is finally made
absolutely necessary in view of the decision of the Economic
and Social Council on June 21, 1946, that "It should also be
recognized as a basic principle that the arrangements should
not be such as to over-burden the Council or transform it into
a general forum for discussion instead of a body for co-ordination
of policy and action, as is contemplated in the Charter."

Since the Economic and Social Council does not de-
sire to provide an open forum for the discussion of human rights
and the protection of minorities, it is clear that the General
Assembly must not deny this opportunity for free discussion of
an ideal that is clearly enunciated and frequently repeated in
the Charter of the United Nations.

(Cf. cont.)
Since the Economic and Social Council does not desire to provide an open forum for the discussion of human rights and the protection of minorities, it is clear that the General Assembly must not deny this opportunity for free discussion of an ideal that is clearly enunciated and frequently repeated in the Charter of the United Nations.

(Cfz cont.)

12. Ibid., p. 645
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