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NEW JERSEY LAWS AND THE NEGRO

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NEW JERSEY LAWS AND THE NEGRO

I. IMPORTANCE OF THE STUDY

New Jersey is a state in which are found, so far as Negroes are concerned, practices that many people believe to exist only in the southern area of the country. The chief difference between the conditions existing in this Middle Atlantic state and those found in the more Southern ones is that in the latter, theory, as represented by legal enactments, and practice form a far more consistent pattern. The diversity of practices found in New Jersey raises the very pertinent question as to what really constitutes the legal basis for social living here. In certain sections of the State there are mixed schools entirely, while in other areas there are separate schools for Negro and white children. In some public places there are equal accommodations for both races while in others there is either total discrimination against Negroes, or separate provisions are made for them.

The very acuteness of the situation in Southern States has forced the problems existing there upon the attention of Negroes and those members of the white race who believe in a social philosophy which holds that equal opportunities for all persons regardless of religion, race, or color should exist in a country dedicated to the ideals of democratic living. Some of these persons have formed inter-racial commissions. Groups of southern white women have appealed to constituted authorities to blot out lynching. College students of both races meet for mutual discussion.

But in New Jersey where it is generally believed by so many people that problems concerning Negroes have been equitably solved, citizens give little attention to practices which *differ only in minor degrees* from many upon which attention is now focused in Southern States. It is this difference which may make the situation for Negroes in New Jersey very critical. This difference may be contributing toward an *increase* rather than a *decrease* of discriminatory practices.

Fair minded people are concerned about segregation of and discriminations against Negroes for several reasons. In the first place, such practices are unjust because they impose upon the members of this race a badge of inferiority. In the second place, these acts assign them to the category of criminals, mental defectives, and other undesirables. In the third place, these practices result in either a spurious sense of superiority or a feeling of contempt toward Negroes on the part of white people. Such attitudes have a dwarfing effect upon the personalities of those members of the white race who feel the need to express themselves in such manner. Feelings of inferiority and resentment on the one hand and of superiority and contempt on the other provide social milieus which render less possible balanced and well integrated personalities among the members of both groups.

Racial antagonisms also tend toward an isolation of Negroes from many cultural contacts that make for a more abundant life. They deprive individuals of opportunities for training for legitimate occupations. They shut some Negroes out of vocations for which they are prepared. They assign others to living quarters that are breeding places for social, physical, and mental diseases. They send impressionable children to schools that are ill equipped to carry out the functions for which schools are supposed to be established. Such conditions create an ever widening gap between democratic theory and practice.

It is exceedingly important, then, for a State whose group unity and efficiency depend upon the personal and social adaptations of all of its members to give serious attention to any factors that threaten the optimum adjustment of a segment of its citizenry. But persons or groups concerned about problems arising from racial discriminations can plan constructive programs for their amelioration only if they are conversant with the factors surrounding their existence.

In order to gain a knowledge and understanding of these

factors, it is usually necessary for students of social problems to go beyond a survey of present conditions. Social practices frequently have roots that run far back into the history of people. An historical study of the genetic development of institutions and laws lays a foundation for their revision if such is what the demands of present social living require.

It is the purpose of this study to reveal the status of Negroes in New Jersey as defined by the laws concerning them which have been enacted from time to time. It is, of course, understood that statutes do not reveal a total picture of the motives, feelings, or attitudes of one element toward another. Seldom do laws represent the unanimous opinion of the whole population since most legislation is enacted by a majority vote of a small number acting for the whole.

Many laws pertaining to Negroes in New Jersey have resulted from the agitation of strong pressure groups. Others constitute compromises between strong conflicting interests. But the important fact remains that legislative enactments serve as definitions of relationships and rights until they are repealed or superseded by other acts. These laws constitute the framework in terms of which decisions concerning Negroes within the State are made. Consequently a study of these statutes will reveal whether or not changes in relationships between Negro and white elements represent steps toward or away from the ideals of democratic living.

A study of the laws pertaining to Negroes passed by the Colony and State of New Jersey lends itself to four divisions: the period from 1664 to 1776 when New Jersey was a proprietary and then a royal colony; the period from 1776 to 1804 when the fight of the abolitionists gained sufficient momentum to insure the passage of a law providing for the gradual abolition of slavery in the State; the period from 1804 to 1865 which marked a transitional era from the year in which the State provided for the freedom of all Negroes

born after July 4, 1804, to the year when the Federal Government prohibited involuntary servitude in any section of the United States; and the period from 1865 to the present day during which the Negroes of the State have been supposedly entitled to all the rights and privileges of citizenship.

This study, then, proposes to present the details of this chapter of the legal enactments of this country and of interracial relationships between whites and Negroes.

II. EARLY HISTORY

A review of the early history of New Jersey shows that prior to 1664 scattered settlements had been made in New Jersey by the Swedes and the Dutch. The Dutch wrested control of the Swedish settlements from the Swedes but later were forced to yield to the claims of the English. Charles I of England gave to his brother, James, Duke of York, an area of land which included what is now the State of New Jersey. The Duke of York, in turn, made Lord Berkeley and Sir George Carteret proprietors of the new colony.

The Swedes and Dutch continued to live peaceably on their lands because of their willingness to transfer their allegiance from their former sovereigns to the king of England. Scotch, Irish, French Huguenots, Germans, Quakers and settlers from neighboring colonies helped to increase the population of New Jersey.

In 1676, the Quinpartite Deed¹ divided the colony into East Jersey and West Jersey. This agreement set up two distinct provinces, each of which governed itself by different laws. Most of the towns were located in East Jersey while large plantations, owned mainly by Quakers, were found in West Jersey. When, in 1702, as a result of many difficulties, the administration of the two provinces was yielded to Queen Anne, the two Jerseys were united into a single prov-

¹ *New Jersey Archives*, vol. 1, 205-219.

ince once more. There remained, however, the eastern and western divisions of the colony with the legislatures meeting alternately in first the one and then the other of these sections.

The New Englanders who settled in East Jersey brought with them their traditions of theocracy and puritanical codes of morals which were reflected in their laws. The Dutch who settled chiefly in Bergen, Somerset, and Monmouth Counties contributed a major share of the opposition to abolitionists' efforts. In the beginning, the Dutch had resisted the introduction of the slave trade, but the inadequate supply of cheap and plentiful labor finally convinced them that slavery was the most practical solution to a pressing economic problem. Once established, slavery continued to flourish until New Jersey had earned the distinction of having the largest slave population of any northern state with the exception of New York. Great Britain contributed definitely to this growth in the slave population by her persistent opposition to the imposition of import duties which were calculated to restrict the slave trade.²

The Quakers who settled mainly in West Jersey exerted strong influences upon the social practices and laws of New Jersey. Their aversion to slavery stimulated an active campaign in behalf of the education and manumission of Negroes.

It is not known when Negroes first entered New Jersey but their presence is inferred from the first concessions made to prospective settlers.³ These concessions provided that seventy-five acres of land be allowed for each weaker servant or slave included in the household of those who accompanied the first governor to New Jersey.⁴ But Mellick⁵

² Marion M. Thompson Wright, *The Education of Negroes in New Jersey* (New York, 1941), p. 3.

³ The following unsupported statement appears in a local history: "As early as 1628, mention is made of blacks owned as slaves in this colony." William J. Scott, *Passaic and Its Environs* (New York, 1922), p. 179.

⁴ *Laws of New Jersey, 1664*, Leaming and Spicer, pp. 20-22.

⁵ Andrew Mellick, *Story of an Old Farm* (Somerville, 1899), p. 115.

definitely establishes the existence of Negro slavery in New Jersey when he tells of the sixty or seventy slaves that Colonel Richard Morris had about his iron mill and plantation as early as 1676.

In 1675, a law governing slaves bears additional testimony to the presence of Negroes in the colony. Much of the legislation passed for the next one and one-quarter centuries represented attempts to regulate relationships between Negro slaves and the white segment of the population.

III. LAWS PASSED FROM 1675 TO 1776

During the proprietary period, 1664 to 1702, it was East Jersey that passed the laws dealing with Negroes. West Jersey distinguished herself by omitting the word *slave* from her enactments. The laws passed by the eastern division established and protected rights of ownership in those held in bondage; provided for maintenance of slaves; prohibited the sale of strong drink to Negroes and Indians; imposed restrictions upon the handling of guns by slaves; and set up machinery for handling crimes committed by Negroes.

When, in 1702, the two Jerseys united and pledged allegiance to Queen Anne, many significant and far reaching bills resulted. Definite encouragement was given to promotion of the slave trade. When Queen Anne's concern for the salvation of the souls of black men encountered an obstacle in the contention that if Negroes were baptized they would cease to be slaves, her parliament passed a law declaring that the Christianizing of a slave did not change his status. One law deprived free Negroes of the right to own real property. Another placed heavy restrictions upon manumissions. Still another made a jury trial for Negroes no longer mandatory. But interestingly enough, in the midst of these negative enactments, toward the end of Queen Anne's reign there appears the beginning of more positive provisions in the passage of a law aimed at restricting the trade in human beings.

For almost thirty-two years, 1714-1746, there appear to have been few new laws regulating the lives of Negroes. Then came laws pertaining to: the sale of intoxicating liquors; meeting in large assemblies; use of hunting traps weighing more than three and one-half pounds; imposition of duties upon the slave trade; restrictions upon manumissions; and the trials of Negroes accused of crimes.

The Proprietary Period

In 1675 the first law governing slaves was enacted. It imposed a penalty of five pounds and any other damages decreed by the court upon any inhabitant who transported an apprentice, servant, or slave; and a penalty of ten shillings for each day's "entertainment or concealment" upon any person who knowingly harbored or entertained an apprentice or slave that had absented himself from his master's service.⁶ Eight years later, the legislative council ordered that a message be sent to the Indian Sachems concerning a conference with them about their entertainment of Negro servants.⁷

In 1682, another act named the races of men held in bondage when it levied a penalty of five pounds for the first offense and ten pounds for the second offense upon anyone buying an article from a Negro or Indian slave or servant without the permission of the owner. The persons to whom such sales were tendered were to whip the guilty parties. In return for this service, the law required the owner to pay a reward of half a crown.⁸

In this same year, 1682, the lawmakers manifested their solicitude for the welfare of those held in slavery by ordering all masters and mistresses having Negro slaves, or others, to allow them "sufficient accommodation of victuals and clothing."⁹ A law passed in 1685 prohibited the sale of rum

⁶ Leaming and Spicer, *Laws of New Jersey*, 1675, p. 109.

⁷ *Journal of the Governor and Council*, 1683, p. 22.

⁸ Leaming and Spicer, *Laws of New Jersey*, 1682, pp. 254-255.

⁹ *Ibid.*, p. 237.

or strong drink to Negroes or Indians unless there was a "moderate giving to a Negro for necessary support of Nature, or to an Indian in a fainting condition (without selling or taking any reward for the same)."¹⁰

Another cause for action grew out of complaints that inhabitants were injured by slaves having the liberty to carry guns and dogs into the woods to hunt swine. Consequently, in 1694, the lawmakers prohibited slaves from carrying guns, pistols, or dogs into the woods unless accompanied by the owner or by a white man with the consent of the owner. No person was to allow slaves to keep hunting equipment without the owner's mark of identification nor was anyone to lend, give, or hire guns and pistols to slaves.¹¹

This same act forbade any person to harbour a slave in his house for a space of two hours. Anyone finding a slave five miles from the owner's abode without a certificate of permission was to pick up the slave and be rewarded by the owner in proportion to the distance the slave had traveled.¹²

The following year, 1695, brought forth an act which decreed that "when any Negro, Negroes or other slaves, shall be taken into custody for felony or murder or suspicion of either that three justices of the peace of the county where the act is committed, one being of the quorum, shall try said slave or slaves and upon conviction of twelve men of the neighborhood pronounce the sentence appointed for such crimes and sign execution." In the case of crimes involving stealing swine, cattle, turkeys, geese, other poultry or provisions, upon conviction before two justices of the peace, one being a quorum, the owner was to pay the value of the stolen goods within ten days to the injured party. The owner was to pay also for the public whipping of not more than forty stripes of the guilty slaves.¹³

¹⁰ *Ibid.*, 1685, p. 512.

¹¹ *Ibid.*, 1694, pp. 340-342.

¹² *Ibid.* Slaves who had learned to write used to forge their own passes. See *New Jersey Archives*, vol. xxiv, p. 400, and vol. xxv, p. 267.

¹³ *Laws of New Jersey*, 1695, pp. 356-357.

The act cited above is significant in that it sets up special machinery for handling cases involving slaves. Prior to this time, the same general laws and trial procedures governed slaves and freedmen. There is also a distinction in penalties imposed upon slaves and freedmen. Since the slave owned no property which could be levied upon to satisfy judgments, his punishment was usually corporal. Another point in favor of this type of penalty was the fact that incarceration would have deprived the owner of the services of his slave.

The stipulation that the justices of the peace were to act with *twelve lawful men of the neighborhood* prompted Williams,¹⁴ a Negro historian, to declare that this right of trial by jury did much toward elevating the character of the Negro in New Jersey.

As mentioned previously, all of the laws discussed above were passed by East Jersey. Not only did West Jersey omit the word *slave* from its laws¹⁵ but in the fundamental laws which are characterized by the breadth and vision of their Quaker authors declared that:

“In courts of justice for trial of causes, civil or criminal, all inhabitants to come freely into, and attend and hear any such trials, that justice may not be done in a corner, nor in any covert manner; being intended and resolved by the help of the Lord, and by these our concessions and fundamentals, that all and every person or persons inhabiting the said province shall, as far as in us lies be free from oppression and slavery.”¹⁶

Period of Queen Anne's Reign

The years between 1702 and 1714, which marked the reign of Queen Anne, witnessed the development of new tendencies in respect to slavery. Whereas up to 1702, the colonists had recognized slavery as an institution, they had

¹⁴ George Williams, *History of the Negro Race in America, 1619-1880* (New York, 1883), vol. 1, p. 283.

¹⁵ These laws mentioned servants and forbade the selling of rum to Negroes and Indians. See *Laws of New Jersey, 1676*, pp. 283-285.

¹⁶ Samuel Smith, *History of New Jersey* (Burlington, 1765), p. 521.

donè little toward promoting the slave trade. But Queen Anne, in her instructions to Lord Cornbury, asked for an annual accounting of the slaves in the province. She also charged him to take care that payment be duly made and within competent time to the Royal African Company, so that the province might "have a constant and sufficient supply of merchantable Negroes at moderate rates in money or commodities."¹⁷

Queen Anne further instructed Lord Cornbury to secure passage of a law providing the death penalty for the willful killing of Negroes or Indians, and a "fit penalty" for the maiming of them.¹⁸ The Sovereign Lady's solicitude for the salvation of the souls of the slaves was manifested in her request that Lord Cornbury was, with the assistance of the Council and the Assembly, to find out the best means to facilitate and encourage the conversion of Negroes and Indians to the Christian religion.¹⁹ When Her Majesty's Society for the Propagation of the Gospel in Foreign Parts encountered an obstacle to the catechizing of Negroes in the contention that if Negroes were baptized they would cease to be slaves, the Venerable Society followed the recommendation of Elias Neau, catechist to the Negroes and Indians of New York, and sponsored a bill in Parliament "for the more effectual conversion of the Negroes and others in the plantations."²⁰ In 1704, to encourage the Christianizing of Negroes and Indians, New Jersey decreed that baptizing a slave did not set him free as some believed. The legislature declared that this belief was groundless and prejudicial to the inhabitants of the province.²¹

The act passed in 1704 to regulate Negro, Indian and mulatto slaves reenacted earlier legislation, established new regulations or substituted harsher penalties for earlier im-

¹⁷ *Laws of New Jersey*, 1702, p. 640.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, p. 642.

²⁰ S. P. G., *An Account of the Society for the Propagation of the Gospel in Foreign Parts* (London, 1706), p. 61.

²¹ *Laws of New Jersey*, 1704, Bradford, p. 8.

positions. Enactments dealing with the sale of goods stolen from owners; the punishment of slaves found ten miles from home; the infliction of the death penalty upon slaves convicted of felony or murder continued in force. This act decreed forty lashes for Negroes stealing to the value of six pence or above; forty lashes and the burning of a T with a hot iron on the most visible part of the left cheek near the nose for thefts of amounts between five and forty shillings. The constable was to receive five shillings for whippings and ten shilling for burnings. And should any constable have scruples concerning his duty he was to forfeit forty shillings for neglect of such duty. Any Negro convicted of ravishing or attempt at the same was to be castrated. The convict was to remain in the gaol at the expense of the owner until the "execution" was performed.²²

Then came a provision of wide import. It stipulated that "all the children that have been or shall be born in the country of such Negro, Indian or mulatto slaves, as have been formerly, or may hereafter be set at liberty, and all their posterity shall be and are hereby forever afterward rendered incapable of purchasing or inheriting any lands and tenements within this province."²³ An act passed in 1713 provided that no manumitted Negro, Indian or Mulatto slave was to enjoy, hold, or possess any house, houses, lands, tenements, or hereditaments within the province, in his own right in fee simple or fee tail but that the same was to escheat to "Her Majesty, Her Heirs and Successors."²⁴

In a mighty stroke, Queen Anne deprived freed Negroes or their children of the right to hold property with the privileges pertaining thereto. Denial of the right to hold property meant denial of the right to vote or hold office. In 1693 a Burlington County inhabitant had willed twenty acres of land to his Negro boy when he became twenty-four years of

²² *Laws of New Jersey*, 1704, Bradford, p. 8.

²³ *Ibid.*

²⁴ *Ibid.*, 1713.

age.²⁵ These laws nullified such provisions. But interesting indeed is the manner in which these laws were circumvented by one man in Gloucester County who leased land to Negro Quosh for 999 years.²⁶ A resident of Monmouth County bequeathed to his Negro man six pounds and the use of the upland south of Layway Creek which he had given to his son John.²⁷

At the same time that the colonists were imposing these severe limitations upon Negroes, an act of 1713 attempted to counteract the encouragement that Queen Anne had given to promotion of the slave trade by imposing a duty of ten pounds on all slaves imported or brought into the colony from June 1, 1716, for a period of seven years. This did not debar an owner from bringing in a slave from another province.²⁸ It was hoped that such an impost would encourage the importation of white servants for the "better peopling of the country."

Another act of the same year, 1713, revised previous enactments and imposed new restrictions. Slaves were permitted to appear as witnesses at the trials of other slaves. Evidently the jury trial which had evoked such glowing praise from Williams²⁹ was no longer mandatory since this act stated that an owner could demand a jury trial and had the right to challenge jurors.³⁰ For each slave executed, the owner was to receive thirty pounds if a male and twenty pounds if a female.³¹

Corporal punishment superseded castration as a penalty for rape. Interesting also was the fact that the penalty for

²⁵ *New Jersey Archives*, vol. xxiii, p. 14.

²⁶ *Ibid.*, vol. xxxiv, p. 357.

²⁷ *Ibid.*, p. 251.

²⁸ Bradford, *Laws of New Jersey, 1713*, pp. 81-82.

²⁹ *Supra*, p. 164.

³⁰ *Laws of New Jersey, 1713*, p. 29.

³¹ *Ibid.* It was this stipulation that Brissot challenged. See Jean P. Brissot, *New Travels in the United States of America* (London, 1794), vol. i, pp. 235-236. Cf. Wright, *op. cit.*, p. 42.

striking a freeman was to be invoked only if the injured party was a Christian.³²

And then began those obstacles to manumission against which Quakers and abolition societies fought so strenuously during the latter half of this century. The initial law decreed that:

Whereas it is found by Experience, that the free Negroes are an idle sloathful people, and prove very often a charge to the place where they are, Be it therefore enacted . . . That any master or mistress, manumitting and setting at liberty any Negro or Mulatto slave, shall enter into sufficient security unto Her Majesty, Her Heirs and Successors, with two sureties, in the sum of two hundred pounds to pay yearly and every year to such Negro or Mulatto slave during their lives the sum of twenty pounds. And if such Negro or Mulatto slave shall be made free by the will and testament of any person deceased, that then the executives of such persons shall enter into security as above, immediately upon proving the said will and testament, which if refused to be given, the said manumission to be void and of none effect.³³

It was this stipulation that blocked the manumission of many slaves, especially among the Quakers, where the movement against possessing slaves was gathering momentum. Numerous owners were unable to post the bonds required.

The regulations of this act evidently took care of most of the problems concerning Negroes for many years. It seems that no further legislation of this type appeared until the year 1746.

The Pre-Revolutionary Period

A law passed in 1746 revealed that the colonists did not permit the enlistment of slaves without the permission of the owners during the French and Indian Wars.³⁴ That Negroes did fight in the Revolutionary War is evidenced by manumissions granted by appreciative legislatures to the confiscated slaves of those who fought with the British.³⁵

³² *Laws of New Jersey*, 1713, p. 30.

³³ *Ibid.*, p. 32.

³⁴ *Ibid.*, 1746, Allison, p. 35.

³⁵ *Infra.*, p. 19.

In 1751, the legislators passed a law reiterating former restrictions against selling intoxicating liquors to servants, Negroes or mulatto slaves without the permission of their owners.³⁶ Evidently Indians were becoming too scarce to warrant mention of them as in previous instances.

The fear which gripped so many slave owners about this time as a result of actual or rumored Negro plots manifested itself in a section of the law above which prohibited Negro and mulatto slaves from meeting in companies exceeding five or running about at night. This act did not imply that they were not to attend church or "Meeting" or attend "Divine Services" or bury the dead if the owner's consent had been given.³⁷

In 1757, an act prohibiting the use of steel traps weighing more than three and one-half pounds provided for another of those differential penalties. A white person incurred a penalty of five pounds or three months' imprisonment in case of default. In addition he was to reimburse all damages which any person sustained because of the trap. But a constable was to inflict thirty lashes on the bare back of a slave convicted under this law.³⁸

The desire to populate the colony with white servants, who when freed could better integrate themselves into the life of the province, helped to motivate the passage of three laws restricting the importation of Negro slaves between 1762 and 1769, as it had done in 1713. The act of 1762 complaining that "whereas the provinces of New York and Pennsylvania, have each laid duties on the importation of Negroes, and this province being situate between them both, and there being no duty here, exposes this government to many inconveniences, and prevents industrious people from our Mother Country and Foreigners, to settle among us; which calls aloud for a remedy," provided a duty of two pounds for slaves imported into the *eastern division* and six

³⁶ *Ibid.*, 1751, Allison, pp. 191-192.

³⁷ *Ibid.*

³⁸ *Ibid.*, 1757, p. 55.

pounds for those imported into the *western division*. The differential duty reflects the influence of the Philadelphia Yearly Meeting of the Society of Friends which included New Jersey. The Friends were fervently attacking the buying and selling of Negroes.³⁹ To enable those who imported slaves to "contribute some equitable proportion of the public burthens," the Act of 1767 raised the levy to ten pounds for each imported Negro.⁴⁰ The legislature increased the levy to fifteen pounds in 1769. This same act marks a partial victory for the Quakers who had fought continuously for an easing of the restrictions on manumissions in that it would be necessary to post only a bond of two hundred pounds for each freed slave. It also obligated owners to maintain slaves not manumitted according to law, but if an owner became insolvent and incapable of maintaining slaves who were unable to support themselves because of sickness or otherwise, the slave was to be "esteemed of the poor of the colony and entitled to the same relief as white servants are by the laws."⁴¹

Because of the inconvenience attending the trying of Negro slaves in special courts, a law passed in 1768 provided that these trials were to be held in the regular courts. Slaves convicted of capital crimes were now to suffer death without benefit of clergy. This law allowed a little more discretion to the justices in the matter of crimes involving thefts exceeding five pounds, felony, and burglary in that the justices could impose other penalties in lieu of the death penalty.⁴²

These laws concerning Negroes appear harsh but it must be pointed out that such severity was the tenor of the age,

³⁹ *Minutes of the Philadelphia Yearly Meeting*, 1754, pp. 51-53. Cf. Ezra Michener, *A Retrospect of Early Quakerism* (Philadelphia, 1860), pp. 342-345; Wright, *op. cit.*, pp. 13-18.

⁴⁰ *Laws of New Jersey*, 1767, Parker, p. 13.

⁴¹ *Ibid.*, 1769, p. 9. This relief included a ruling that minors who were apprenticed, as was the custom with indigent children, be taught to read and write. Cf. *Laws of New Jersey*, Nevill, 1758, p. 228.

⁴² *Ibid.*, 1768, Parker, p. 37.

especially among those who brought their New England heritage to this colony. For example, the custodians of public conduct restrained free men from drinking in taverns or breaking the "Lord's Day," or "night walking" after nine o'clock. Such offenders were punished by fines, whippings, imprisonment or placement in stocks. The death penalty was provided for children who "smite or curse their parents."

A review of these enactments leads to the generalization that the legislation of this period was characterized by desires to: protect colonists in their rights to the ownership and services of their slaves; provide for the humane treatment of freedmen and slaves; maintain correct morals; preserve life and property; prevent free Negroes from becoming property owners; encourage first and then restrict the importation of Negroes; and to increase the white element of the population.

It will now be interesting to see what the next period brought forth in the form of legislation pertaining to Negroes.

IX. PERIOD OF DEMOCRATIC IDEALISM

During the years immediately preceding and following the Revolutionary War, the citizens of New Jersey were too engrossed with problems centering around the Stamp Act, the Declaratory Act, taxation without representation, Committees of Correspondence, Observation, and Safety, the Continental Congress, the Provincial Congress and the handling of William Franklin, son of Benjamin Franklin and last of the royal governors, to give much attention to Negroes. But such legislation as they did enact contained provisions of wide import for members of this minority group. The Constitution of 1776 laid a basis for Negro suffrage. There were laws which emancipated Negroes who had served in the Revolutionary War. Friends succeeded in establishing the New Jersey Society for Promoting the Abolition of Slavery, an organization that proved a boon to so

many Negroes. Other laws of this period, 1776-1804, restricted the movements of free Negroes; prohibited the removal of slaves from the State; required masters to teach their servants and slaves under the age of twenty-one years to read; abolished the differential treatment of Negroes before the courts; liberalized manumission requirements; codified existing laws dealing with Negroes; and finally provided for the gradual emancipation of slaves.

The period of the Revolutionary War was one of great principles and convictions. Freedom of contract; freedom of ideas; liberty; the possession of inalienable rights dominated the social thinking of the day. So strong was the influence of these concepts that they tended to embrace all people. There were many in New Jersey who realized that slavery was inconsistent with the beliefs of the times; that it was essential for their own well being to refrain from denying liberty to others if they desired it for themselves. Some even felt that to hold a portion of the people in slavery might bring down upon their heads the displeasure of God Himself.

It was during this period that the Friends, under the leadership of Anthony Benezet of Philadelphia and John Woolman of Mount Holly, New Jersey, first purged their own ranks of slavery and then set out to effect its abolition in the other States. In 1776, the Philadelphia Yearly Meeting instructed the local meetings to deny the privilege of membership to those who persisted in holding their fellowmen in bondage. Then they initiated the organization of societies to promote the abolition of slavery.⁴³

Governor Livingston, convinced that the practice was inconsistent with the principles of Christianity and humanity among people who idolized liberty, asked the New Jersey

⁴³ For accounts of this story read: Thomas E. Drake, *Northern Quakers and Slavery* (unpublished Ph.D. dissertation, Yale University, 1933); Michener, *op. cit.*; Nathan Kite, *A Brief Statement of the Rise and Progress of the Testimony of the Religious Society of Friends against Slavery and the Slave Trade* (Philadelphia, 1843); Wright, *op. cit.*, chapters iii-v.

Assembly of 1778 to provide for the manumission of the slaves. The war demands led the assembly to request him to withdraw his request at that time. He did so but advised that he intended to push the matter with all his power until it was effected.

The Constitution of 1776, drawn up in two days after the colony had declared its independence from Great Britain, granted suffrage to all persons worth fifty pounds, proclamation money. Under its provisions Negroes, women, and aliens enjoyed the franchise until a definitive law was passed in 1807 restricting the suffrage to free white male citizens of the state worth fifty pounds proclamation money.⁴⁴

Three acts reflected the temper of the times when appreciative legislatures freed Negroes who had fought in the war after their masters had joined the Tories. An act passed in 1784 freed Peter Williams of Middlesex County who had served the State and the American cause with first the State troops and then the Continental Army from 1780 until the end of the war.⁴⁵ In 1786, the legislature, "desirous of extending the blessings of liberty," freed Negro Prince who "had shewn himself entitled to their favourable notice."⁴⁶ Three years later another act manumitted Negro Cato because he had rendered essential services to the State and the United States when his master joined the enemies of the United States.⁴⁷

A law passed in 1794 emancipated certain Negro slaves who had been the property of the late William Burnet. It appointed guardians for the younger children and provided

⁴⁴ Lucius Elmer, *The Constitution and Government of the Province and State of New Jersey* (Newark, 1872), p. 48; *Women's Suffrage in New Jersey* (Northampton, 1916), Smith College Studies in History, pp. 165-187; Mary Philbrook, "Women's Suffrage in New Jersey prior to 1807," *Proceedings of the New Jersey Historical Society*, vol. lvii, no. 2, pp. 87-97; *Laws of New Jersey*, 1807, p. 14.

⁴⁵ *Laws of New Jersey*, 1784, p. 110.

⁴⁶ *Ibid.*, 1786, p. 368.

⁴⁷ *Ibid.*, 1789, p. 538.

from the estate of the deceased for the adults so they would not become public charges.⁴⁸

During 1786, the legislature enacted a very real piece of anti-slavery legislation when it prohibited the importation into New Jersey of slaves who had been imported into the country since 1776. In this instance the humanitarian took equal rank with the economic motive in the preamble which insisted that "Whereas the principles of justice required that the barbarous custom of bringing the unoffending Africans from their native country and connections into a state of slavery ought to be discountenanced, and as soon as possible prevented; and sound policy also requires, in order to afford ample support to such of the community as depend upon their labor for their daily subsistence, that the importation of slaves into this state from any other state or country whatsoever, ought to be prohibited under certain restrictions."⁴⁹ The act did this and more. It prohibited abuse of slaves. It provided for the manumission of able bodied slaves between the ages of twenty-one and thirty-five without further personal obligation. But manumitted slaves, convicted of felony or any crime or offense above petit larceny, or if convicted more than twice of petit larceny, or other offense equally criminal or injurious to the community, were within one month after being released to move out of the State and remain in exile for life or a term of years determined by the Court. Any such person found in the State after he should have been gone or before the expiration date of his exile was to be sold for the time remaining of the banishment period.⁵⁰

This law also forbade a Negro manumitted in any other State to travel or remain in New Jersey. No Negro manumitted in New Jersey was to go out of his own county where he was freed without a certificate from two justices of the

⁴⁸ *Ibid.*, 1794, p. 894.

⁴⁹ *Ibid.*, 1786, p. 239.

⁵⁰ *Ibid.*, pp. 239-240. In 1801 a law was passed permitting the judge to banish slaves convicted of certain crimes from the state or the United States. Cf. *Laws of New Jersey*, 1801, pp. 77-78.

peace of that county or township, countersigned by the clerk of the county under the seal of the Court.⁵¹

In 1788, a petition from the Quakers effected a revision of this law to the further advantage of the slaves.⁵² This enactment placed additional restrictions upon the slave trade; prohibited the removal from the State of slaves without their consent or that of their guardians; stipulated that all criminal offenses of Negroes, slave or free, were to be "enquired of, adjusted, corrected and punished in like manner" as were the criminal offenses of the other inhabitants of the State; and that every owner of slaves was to cause every slave or servant while under the age of twenty-one to be taught to read, with a penalty of five pounds being imposed for neglecting this duty.⁵³

The Abolition Society

In 1792, the Pennsylvania Society for Promoting the Abolition of Slavery appointed a committee to take measures for the establishment of an abolition society in New Jersey. The committee reported subsequently that it had succeeded in organizing such a society at Burlington.⁵⁴ The New Jersey Society for Promoting the Abolition of Slavery filed with the State legislature numerous petitions pleading for the freeing of the slaves⁵⁵ and did much to secure for the Negroes through the courts the rights granted to them by the laws.⁵⁶ Lucius Elmer⁵⁷ pointed out that Joseph

⁵¹ *Ibid.*, p. 242.

⁵² Minutes *Meeting for Sufferings, Philadelphia Yearly Meeting, 16/10/1788 and 18/12/1788.*

⁵³ *Ibid.*, 1788, pp. 486-488.

⁵⁴ Edward Needles, *An Historical Memoir of the Pennsylvania Society for Promoting the Abolition of Slavery, the Relief of Free Negroes Unlawfully Held in Bondage and for Improving the Condition of the African Race* (Philadelphia, 1848), p. 40.

⁵⁵ Several of these original petitions are on file in the State Library at Trenton, New Jersey.

⁵⁶ The Constitution of the New Jersey Society for Promoting the Abolition of Slavery (Burlington, 1793). The original minutes of this organization are on file in the Quakerana Collection, Haverford College.

⁵⁷ Lucius Elmer, *op. cit.*, pp. 123-124. Lucius Elmer was a justice of the Supreme Court of New Jersey.

Bloomfield, one time governor of the State and representative to the Congress of the United States, was an active member and president of this society which protected Negroes from abuse and aided their manumissions by legal proceedings. Continuing, Elmer said writs of habeas corpus were sued out, and many Negroes claimed as slaves were declared by the Supreme Court of the State to be free. "Indeed," says he, "it appears by a pamphlet published by the Society, that it was held that a mere promise of the master to free his slave, was sufficient."

It appears that such decisions impelled inhabitants of the State to petition the legislature to prevent the liberation of Negroes by the Supreme Court without the intervention of a jury.⁵⁸ Elmer declared that these decisions probably produced the Act of 1798, regulating slavery and prescribing a formal mode of manumission which remained in force until a law in 1804 altered it in part.⁵⁹ The Act of 1798 which codified the laws relating to Negroes was very lengthy and covered all phases of Negro life.⁶⁰

The abolition society which had sought unsuccessfully the upward and downward extension of the ages of manumissions sent to the legislature many petitions urging the abolishing of slavery; tried in the Act of 1798 to effect the gradual abolition of slavery; and finally saw its efforts consummated in a law passed February 15, 1804, providing that the offspring of all slaves born after July 4, 1804, should be free.⁶¹

The persistent up hill fight of the abolitionists finally achieved a signal success. Let us see what the period of transition from partial freedom to complete emancipation held for the colored inhabitants of New Jersey.

V. A PERIOD OF TRANSITION, 1804-1865

The Act of 1804 providing for the gradual emancipation of slavery did not end the problems of those who were con-

⁵⁸ *Votes of the Assembly*, 1791, p. 12; 1792, p. 24; 1793, p. 142.

⁵⁹ Elmer, *op. cit.*, p. 124.

⁶⁰ *Laws of New Jersey*, 1798, pp. 364 ff.

⁶¹ *Ibid.*, 1804, pp. 252-254. Cf. Wright, *op. cit.*, chap. v.

cerned about the welfare of the Negroes. Some citizens sought a repeal of the law itself. Abuses grew out of that section of the Act of 1804 which attempted to provide for abandoned children. A law passed in 1807 sought to abolish Negro suffrage. Other laws were passed in efforts to put teeth into enactments forbidding the removal of slaves from the State. Two laws made free Negroes secure in their property rights. A resolution marked the beginning of official attempts to expatriate emancipated Negroes. A new constitution proved to be reactionary in regard to the idealism of the Revolutionary period. Still other laws manifested an interest in education and the inclusion of Negroes within the framework of settlement laws.

Citizens of Bergen and Morris Counties, unwilling to accept the mandate of the new law of 1804, petitioned the legislature to repeal it. They considered its provisions unconstitutional and burdensome, in that they deprived the petitioners of the protection of property rights in persons and imposed upon the petitioners an excessive tax burden in the requirement that they support the children of slaves who were to be born free. Fortunately the legislature turned deaf ears to these cries.⁶²

The Act of 1804 had provided that the children of slaves born after July 4, 1804, were to be apprenticed to the owners of the mothers until they reached the age of twenty-five years if a male and twenty-one years if a female. If these owners did not wish to avail themselves of the services of such children, they were privileged at the expiration of one year to declare this intention and yield them to the trustees or overseers of the poor. These custodians were to bind out these infants at the expense of the State, the amount not to exceed three dollars per month.⁶³ Abuses of this provision resulted in such large sums of money being withdrawn from the treasury that the legislature amended this part of the

⁶² Petitions from Morris and Bergen Counties, 1806 (on file in the State Library, Trenton). Cf. Wright, *op. cit.*, pp. 61-62.

⁶³ *Laws of New Jersey*, 1804, pp. 252-253.

act in 1806⁶⁴ and 1809⁶⁵ and then finally repealed the provision in 1811.⁶⁶ Another law passed in 1808 made mandatory the advertising in public newspapers, one in the eastern and one in the western part, of the abandoned children so that people would know where to secure such children.⁶⁷

Violations of the law⁶⁸ prohibiting the removal of slaves from the state without either their consent or that of their parents were responsible for legislation designed to put teeth into the earlier law. In 1812 the legislators made it possible for a bond to be required and for a governor or a person administering the government to issue a proclamation for apprehending persons guilty of breaking this law.⁶⁹

Isaac Holmes,⁷⁰ an Englishman, telling of his travels in America, writes that, "In New Jersey, a few years since, it was legal for masters (provided they had the consent of the slaves), to remove them to any other State; and many outrages on humanity were committed under the sanction of this law. At that time, slaves were selling at New Jersey for about three hundred dollars each, which in New Orleans were worth seven or eight hundred dollars; and the traffic of slaves in consequence became considerable.

"Justices of the peace at that time were found base enough, in New Jersey, to attest that slaves had consented to be moved, when in many instances they had never examined them. To prevent the continuance of this traffic, the legislature of New Jersey interfered, and put a stop to these proceedings; and at present any person removing a slave from that State, has to give a bond (in heavy penalty) that he shall be returned."

⁶⁴ *Laws of New Jersey*, 1806, p. 668.

⁶⁵ *Ibid.*, 1809, p. 200-201.

⁶⁶ *Ibid.*, 1811, pp. 313-314.

⁶⁷ *Ibid.*, 1808, pp. 112-113.

⁶⁸ *Supra*, p. 175.

⁶⁹ *Laws of New Jersey*, 1812, pp. 15-18.

⁷⁰ Isaac Holmes, *An Account of the United States of America, Derived from Actual Observation, During a Residence of Four Years in That Republic* (London, 1823), p. 324.

A memorial from inhabitants of Middlesex County praying for an efficient law to "prevent kidnapping and carrying from the State blacks and other people of color"⁷¹ stimulated the lawmakers to prohibit their removal unless the master had lived in the State five years and planned to move permanently; the slave had been owned by him five years previously; the master had obtained a license to carry out the slave who was of full age and had given his consent before a judge in a private examination; and unless further, the master was going on a journey to another part of the United States; the slave had been sentenced for crime; or the slaves belonged to travelers passing through the State. Neither could slaves be transferred to non-residents.⁷²

In 1820, the Reverend John Boyd secured the passage of a law which permitted him to remove from the state Sam, about 21 years, Dinah, about 17, and Ned, about 15, if they of their own will consented to go and if the wife of Sam gave her consent for him to go.⁷³

That Queen Anne's denial to Negroes of the right to hold property had in time been invalidated was evidenced in 1832 by the action of the legislature in behalf of Sharp Halsey. Joseph Halsey had freed his slave, Sharp, around 1803 by an instrument which had become lost. The freedman had bought and sold property. He requested a clarification of his status. The state, ruling the transactions valid, declared "that the said Sharp Halsey be, and he is hereby declared to be entitled to all the *rights, privileges and immunities of a free colored man of this state*; may hold estate, real and personal, in his own right, and convey and dispose of the same by deed, will or otherwise."⁷⁴ In 1842, York Mulford was likewise declared to possess these rights.⁷⁵

Paralleling these movements directed toward ameliora-

⁷¹ *Votes and Proceedings of the Assembly*, 1818, p. 7.

⁷² *Laws of New Jersey*, 1820, pp. 3-6.

⁷³ *Ibid.*, 1820, p. 139.

⁷⁴ *Ibid.*, 1832, p. 108.

⁷⁵ *Ibid.*, 1842, p. 49.

tion of the conditions of slaves and freedmen was another movement designed to encourage the emigration of Negroes to other countries. The Reverend Robert Finley,⁷⁶ one of the founders of the American Colonization Society established in Washington in 1816, with other leaders of the Presbyterian Church, the most numerous sect in New Jersey at that time, encouraged the emigration of emancipated Negroes to Africa. In 1823, the Reverend Samuel Miller⁷⁷ of the Princeton Theological Seminary advocated the colonization of the Negroes "because of the impossibility of their being able to remain in this country with the whites on terms comfortable to either since they would be treated and made to feel like inferiors." The Board of Directors of the African School at Parsippany appointed by the Presbyterian Synod of New Jersey made clear that it was not attempting to educate Negroes for American Society, "but preparing them to go home."⁷⁸

The Reverend Doctors Miller and Finley and others crusaded for many years in behalf of the colonization movement in New Jersey.⁷⁹ In 1822, the *Newark Sentinel of Freedom* carried statements which voiced the approvals of the Presbyterian Church, General Synod of the Reformed Dutch Church and the Annual Convention of the Protestant Episcopal Church in Virginia for this movement.⁸⁰

In 1824, these crusaders succeeded in persuading the legislature to adopt a resolution supporting a system of foreign colonization that would in due time effect the entire emancipation of the slaves in this country, and furnish "an

⁷⁶ *Historical Notes on Slavery and Colonization* (Elizabeth-Town, 1842), p. 18. Cf. Wright, *op. cit.*, p. 79.

⁷⁷ Samuel Miller, *A Sermon Preached at Newark, October 22, 1823* (Trenton, 1823), p. 13. Wright, *op. cit.*, p. 87.

⁷⁸ *Minutes of the Synod of New Jersey*, 10/19/1825. Also Wright, *op. cit.*, p. 89.

⁷⁹ *Newark Sentinel of Freedom* (Newark), 1/28/1817; 7/14/1818; 6/8/1824; 12/7/1824; 12/21/1824; 3/29/1825; 6/24/1828. These are only a few of the issues reporting news on this movement in New Jersey.

⁸⁰ *Ibid.*, 6/14/1822.

asylum for the free blacks without any violation of the national compact or infringement of the rights of individuals." This resolution requested the governor to forward copies of the resolutions to the executives of each State and to the representatives of New Jersey in the Congress.⁸¹

But the proponents of this movement encountered many protests from Negroes. Especially virulent were the Reverends Samuel Cornish and Theodore Wright. Anticolonization meetings condemned attempts to colonize Negroes in Africa and pledged support to William Lloyd Garrison and the abolitionists.⁸² One newspaper acknowledging a protest by Negroes against colonization attempted to give assurances that there was nothing to fear.⁸³

In 1851, the New Jersey Colonization Society extended an invitation to the members of the assembly to attend one of its meetings which was being held that night in the city hall. The invitation was accepted.⁸⁴ In 1855, an act to encourage the emigration and settlement in Liberia of the free people of color of New Jersey provided that an act approved March 24, 1852, appropriating money to the New Jersey Colonization Society be revived and extended for five years from the date of expiration. It also authorized the treasurer to pay the society the unexpended appropriations of 1853, 1854, and 1855 to be used for building houses and necessary expenditures for the reception and accommodation of emigrants previous to arrival in Liberia.⁸⁵

Citizens interested in the welfare of the Negroes continued to seek legislative assistance in their fight to protect the rights of freed Negroes and to secure the freedom of those still held in bondage. An act passed in 1804 simplified and clarified the rules governing the acceptance of instruments of manumission and threw further safeguards

⁸¹ *Laws of New Jersey*, 1824, p. 191.

⁸² Wright, *op. cit.*, pp. 103-107.

⁸³ *Newark Sentinel of Freedom* (Newark), 1/14/1817.

⁸⁴ *Votes and Proceedings of the Assembly*, 1851, p. 115.

⁸⁵ *Laws of New Jersey*, 1855, p. 321.

around those deeds that had been or would be executed.⁸⁶ Another act passed in 1837 attempted to protect emancipated Negroes from fraudulent claims through the provision of jury trials and the stipulation that the judge before whom a claim against a supposed fugitive was made, call in two other judges to assist in handling the case.⁸⁷ In 1844, a law which was designed to confirm the manumission of certain slaves made valid the manumission of slaves when only one instead of two witnesses was present.⁸⁸

In the years 1847 and 1849, the legislature passed resolutions directed against the further extension of slavery. The first resolution pleaded that slavery or involuntary servitude, except as a punishment for crime, be forever excluded from the territories to be annexed.⁸⁹ In the second resolution the legislature, representing the views and opinions of the people of New Jersey and believing the institution of slavery to be a great moral and political evil which, if unrestrained by the general government, was calculated to sap the foundations of our social and political institutions, resolved "that while we would refrain from all manner of interference with the institution of slavery in the states where it constitutionally exists, yet we would peaceably but firmly resist by all constitutional means, its further extension." The law makers specifically urged that slavery be prohibited within the bounds of New Mexico and California, and further resolved that "the existence of the traffic of slaves in the District of Columbia is inconsistent with the theory of our national institutions, and a reproach to us as a people, and ought, in the opinion of this Legislature, to be speedily abolished."⁹⁰

An extremely interesting sidelight of this resolution lies in the very special concession to the slave-holding interests

⁸⁶ *Laws of New Jersey*, 1804, p. 460.

⁸⁷ *Ibid.*, 1837, pp. 134-136.

⁸⁸ *Ibid.*, 1844, pp. 138-139.

⁸⁹ *Ibid.*, 1847, pp. 188-189.

⁹⁰ *Ibid.*, 1849, pp. 334-335.

of the Southern States. The various laws and petitions to the legislature pertaining to Negroes during this period bear ample testimony to the conflicting interests centering around the colored population. While there were those who sought their release from their spiritual and physical shackles there were others who resisted with all their might activities designed to put to an end any and all forms of involuntary servitude. The latter group consisted mainly of persons who possessed ties with the Southern section of the country through feelings of sympathy motivated by strong economic bonds. It is reported that these resolutions caused considerable debate among the voters of Cumberland County and that men who participated in meetings were denounced as "wooly heads" or "negro lovers."⁹¹

In 1834, a mob attacked the Reverend Dr. W. R. Weeks, pastor of the Fourth Presbyterian Church in Newark, New Jersey, while he was delivering a lecture on "The Sin of Slavery."⁹² In Jersey City, where the general feeling was adverse to the slaves and to the abolitionists, the churches closed their doors to all who wished to speak for the slaves or who denounced the attitude of Congress and the courts in connection with the Fugitive Slave Law.⁹³ The *Newark Sentinel of Freedom* carried editorials and articles supporting slavery and expressing sympathy with the South on this issue.⁹⁴

Atkinson⁹⁵ tells us that "Newark though situated at the North was essentially a Southern work shop. For about two-thirds of the century the shoemakers of Newark shod the South, its planters and its plantation hands, to a large extent. For generations the bulk of the carriages, saddlery, harness and clothing manufactured in Newark found a

⁹¹ Isaac T. Nichols, *Historic Days in Cumberland County, N. J., 1855-1865* (publisher missing, 1907), p. 9.

⁹² *Sentinel of Freedom* (Newark), 7/15 and 29/1834.

⁹³ Alexander, MacLean, "The Underground Railroad in Hudson County," *The Historical Society of Hudson County*, vol. 1.

⁹⁴ *Sentinel of Freedom*, 11/4/1834; 9/8 and 22/1835.

⁹⁵ Joseph Atkinson, *The History of Newark* (Newark, 1878), p. 239.

ready and profitable market south of Mason and Dixon's line. And so it was to a greater or lesser extent with all our other industries. Newark was therefore substantially interested in the South." He says that a publicist of the day insisted that the "band of mercenary and unprincipled men" engaged in southern trade who had been foremost in bringing about the defeat of Governor Pennington in his race for Congress "could not have worked more heartily to carry out the wishes of their Southern masters" if "they had been slaves themselves, and every morning had been lashed into humility."

The above instances help to explain why Chief Justice Hornblower⁹⁶ failed in his attempt to secure an inclusion of a clause putting an end to slavery in the Constitution of 1844 which declared first of all that "all men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and of pursuing and obtaining safety and happiness." True to his conviction, Justice Hornblower gave a dissenting vote in the case of *The State vs. Post* and *The State vs. Van Beuren* when in reply to the contention of the petitioners that the new constitution abolished slavery, the Supreme Court ruled that first, the relation of the master and slave existed by law, when the present constitution of the State of New Jersey was adopted; and second, that the Constitution had not destroyed that relation, abolished slavery, or affected the laws in relation to that subject existing at the time of its adoption.⁹⁷

It was a law passed in 1846 which stated that "slavery in this state be and it is hereby abolished, and every person who is now holden in slavery by the laws thereof is made free, subject, however, to the restrictions herein after men-

⁹⁶ *Biographical Encyclopedia of New Jersey* (Philadelphia, 1877), p. 77.

⁹⁷ *The State v. Post, the State v. Van Beuren in Cases Determined in the Supreme Court of Judicature of the State of New Jersey, May Term, 1846*, Spencer, vol. 1, pp. 368-386.

tioned and imposed." These restrictions and obligations made the slaves *apprentices* for life. Such apprentices could not be discharged without the approval of the apprentices and could not be sold without the consent of the apprentices.⁹⁸

During this period citizens not only sought complete freedom for the remaining slaves but also interested themselves in the welfare of the offspring of slaves born after July 4, 1804. In 1841, citizens of Paterson complained to the legislature that the children of African descent attained their majority at an age later than that agreed upon for white children; that these children were employed at tasks which failed to prepare them to earn a livelihood after they had completed their terms of service; that inadequate provisions were made for their education. Under the conditions then prevailing, it was cheaper for many masters to pay the fines, if it were exacted of them, than to have the children instructed in reading.⁹⁹ The only remedy which they saw for a system which deprived children of the love and care of their own parents was to free completely these children and to liberate the slaves so that such of them as had children might be restored to the guardianship of their children, "a right which ought never to have been taken from them, for it is one which they hold by the appointment of the God of nature."¹⁰⁰

In 1845, in a legal argument before the Supreme Court of New Jersey, Alvan Stewart,¹⁰¹ placing the number of

⁹⁸ Elmer, *A Digest of the Laws of New Jersey, 1709-1855* (Philadelphia, 1855), 2nd Ed., pp. 758-767.

⁹⁹ In 1823, some one raised the question as to whether or not any one had ever invoked the law requiring masters to teach their slaves to read. The law made it the duty of collectors who visited every household once a year to check on whether this law was being adhered to. *The Trenton Federalist* (Trenton), May 26, 1823. Quoted from *The New Brunswick Times*.

¹⁰⁰ *Address to Legislature of New Jersey in Behalf of the Colored Population of the State by Citizens of Paterson* (Paterson, 1841), pp. 1-12.

¹⁰¹ Alvan Stewart, *A Legal Argument Before the Supreme Court of New Jersey at the May Term, 1845, at Trenton for the Deliverance of 4,000 Persons from Bondage* (New York, 1845), p. 26.

those in bondage at 4,000 persons, described these servants as "property, in its base sense, slaves for years, the parents deprived of all jurisdiction of their offspring, all direction of their education, and paternal tenderness." The law confined these poor servants, and obliged them to live with those who had owned and abused the mother who bore them, and was still continuing to hold their parents until death as slaves. The master could sell this servant and horse together. "This servant woman at 15, and the male-servant at 18, contract marriage, and when the woman is 19, and the man 22 years of age, having three little children, the father is sold to one end of the State, and the mother to the other; their little children left in the street, the marriage relation broken, the paternal and maternal relation dissolved; these little ones not to see their parents for two years or more; the husband cannot see his wife or babies for two years to come. Call you this being born *free*?" Continuing, Stewart insisted that the new constitution could never be honored or respected until there was meaning, power, and vitality in those blessed words of justice, truth, mercy, freedom, safety, etc. These evils the slavery law attempted to correct when it decreed that the children hereafter born to slave parents were to be absolutely free from birth and discharged of and from all manner of service whatsoever.¹⁰²

An enactment passed in 1853 endeavored to provide for such colored servants as might become paupers when no longer in the employ of former masters. The legal settlement of such a servant was to follow that of the former master and all charges for his support were recoverable from such person or his estate.¹⁰³

Anti-slavery protagonists continued to petition the legislature concerning slavery. Inhabitants of Gloucester County asked in vain for a repeal of all laws pertaining to slavery and the arrest of persons escaping from slavery.¹⁰⁴

¹⁰² Elmer, *op. cit.*, p. 759.

¹⁰³ *Laws of New Jersey*, 1853, p. 374.

¹⁰⁴ *Votes and Proceedings of the Assembly*, 1849, pp. 493, 516.

A petition from Passaic sought the passing of a resolution on slavery.¹⁰⁵ Other New Jersey citizens requested the legislature "to instruct the senators in Congress from this state relative to the right of petition and to use their endeavors to abolish slavery in the District of Columbia or resign their seats." They further resolved that "this and other petitions of a similar nature be referred to a select committee to report resolutions to this House, either in conformity to the prayer of the petitioners, or the reasons why the petition should not be granted."¹⁰⁶

Other legislative acts of this period reflected the interest in the enlightenment of the minds of the Negroes as well as an interest in the freedom of their bodies. It was the African School at Parsippany that precipitated an act concerning the African Education Society in 1826. The sponsors of this school had set out to train Negroes as preachers and teachers to work among their people in America, Haiti, and Liberia, particularly the last two. Experiencing difficulty in locating pupils with sufficient academic background to enable them to pursue the higher branches of learning, these sponsors sought to provide training in the rudiments of learning for a larger number. They secured from Benjamin Lear promise of assistance from the Kosciusko Fund of which Lear was trustee. The above law authorized the incorporation of persons interested in promoting the establishment of educational facilities for Negroes. Unfortunately legal entanglements prevented the money of the fund from becoming available so that only a few Negroes were given some education in Newark, New Jersey.¹⁰⁷

The Society of Friends was responsible for two other laws in this field. With funds made available by the will of Isabel Hartshorne in 1792, members of this society established a school for Negroes in Rahway.¹⁰⁸ Laws passed in 1849¹⁰⁹

¹⁰⁵ *Ibid.*, 1850, pp. 533, 602.

¹⁰⁶ *Ibid.*, pp. 626, 754.

¹⁰⁷ Wright, *op. cit.*, chap. VIII. Cf. *Laws of New Jersey*, 1826, pp. 89-90.

¹⁰⁸ *Ibid.*, pp. 123-124.

¹⁰⁹ *Laws of New Jersey*, 1849, pp. 4-5.

That the Civil War and Reconstruction did not settle major problems concerning free Negroes is evidenced by several laws purporting to assure to the members of this race equal opportunities for the enjoyment of the rights and privileges of citizenship. One such law attempted to abolish segregation in the schools. Several dealt with matters pertaining to the Bordentown School. Another fought segregation in cemeteries. Still others attacked the problems of civil rights and inciting of racial antagonisms.

It was a situation which arose in Fair Haven with respect to educational opportunities that stimulated the passage of a law in 1881 forbidding the exclusion of any child from a public school because of religion, nationality, or color. As a result of this enactment, separate schools for Negroes disappeared in the northern counties but little change resulted in the southern counties where the majority of such schools had developed.¹¹⁹ The courts have subsequently upheld the rights of parents to send their children to white schools where their exclusion was shown to have been based on color.¹²⁰ But state officials of public instruction have nullified the spirit of this law through adverse decisions in cases brought before them.¹²¹ Such decisions have in some instances been based upon the statement that a child was not to be *excluded* from a school because of color rather than that there should be no *distinction* because of color. Consequently schools have been built exclusively for

¹¹⁹ Wright, *op. cit.*, chap. XII.

¹²⁰ *Pierce v. Trustees* 46 L. 76, affirmed 47 L. 348; *Patterson v. Board, Board of Education in New Jersey Miscellaneous Reports*, Soney and Sage, 1934, p. 179; Egerton E. Hall, *The Negro Wage Earner of New Jersey* (New Brunswick, 1935), p. 75; Eleanor Hill Oak, *The Development of Separate Education in the State of New Jersey* (unpublished Master's Dissertation, Howard University, 1936), p. 27; Gladys Peterson, *The Courts and the Negro Public School* (unpublished Master's Dissertation, Howard University, 1934), pp. 36, 58.

¹²¹ Oak, *op. cit.*, pp. 28-30. The Commissioner of Education of New Jersey ruled against Negro citizens of Montclair, New Jersey, when they protested a move which they interpreted as being designed to segregate Negro children in the schools of that town.

Negro children with the approval of the State Department of Public Instruction. At the present time segregated facilities for colored children are increasing rather than decreasing. This segregation often accompanies inferior educational opportunities from point of view of quality and quantity.¹²²

Several enactments dealing with education for Negroes center around the Manual Training and Industrial School for Colored Youth at Bordentown. The Reverend Walter A. Rice attempted to do for Negro youths in New Jersey what was being done for other youths by Samuel Armstrong at Hampton and Booker T. Washington at Tuskegee. In 1886, he founded the institution which is now incorporated under the name above.¹²³ In 1884, the legislature designated this school as a branch institution to which would be applicable all the laws pertaining to and governing industrial and manual training schools in the state. Rules were made for the appointment of trustees with an outline of their powers and duties and the surrender of property to the trustees.¹²⁴ In 1896, an amendment effected a smaller board of trustees.¹²⁵ The following year provision was made for an annual appropriation of \$5,000 to the school from the state.¹²⁶ In 1900, the legislature placed this institution under the control and management of the State Board of Education.¹²⁷

During the same year another law passed making it legal for the New Jersey Conference of the African Methodist Episcopal Church to sell and convey real estate that it had or might possess to the Colored Industrial Educational Association of New Jersey.¹²⁸

In 1884, two acts attempted to combat segregation and discrimination. The first decreed that no cemetery, corpora-

¹²² Wright, *op. cit.*, chap. XIII.

¹²³ *Ibid.*, pp. 178-180.

¹²⁴ *Laws of New Jersey*, 1894, p. 526.

¹²⁵ *Ibid.*, 1896, p. 158.

¹²⁶ *Ibid.*, 1897, p. 127.

¹²⁷ *Ibid.*, 1900, p. 193.

¹²⁸ *Ibid.*, p. 540.

tion, association owning or having control of any cemetery or place of burial for the dead was to refuse to permit the burial of any deceased person therein because of the color of such deceased person.¹²⁹

The second law provided "that all persons within the jurisdiction of the State of New Jersey shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theatres and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." It also provided that "no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of this state on account of race, color, or previous condition of servitude." The penalty for infringement of the first section was the payment of \$500.00 to the aggrieved party in addition to being deemed guilty of a misdemeanor for which the offender was to be fined from \$500.00 to \$1,000.00 or imprisonment from thirty days to one year. For violation of the second section, the guilty party was to be deemed guilty of a misdemeanor and be fined not more than \$5,000.00.¹³⁰

An amendment to this law in 1917 was slightly more definitive in respect to the places of public accommodation, resort, or amusement, which were not to discriminate against Negroes. The punishment for disobeying the law now extended to persons "aiding or inciting denial" of accommodations. But the penalty of \$500.00 was no longer to be paid to the aggrieved party but to the Overseer of the Poor.¹³¹ This was surely a strong concession to opposing interests. In 1921 another amendment was even more definitive than that passed in 1917 and extended consider-

¹²⁹ *Laws of New Jersey*, 1884, p. 83.

¹³⁰ *Ibid.*, 1884, p. 339.

¹³¹ *Ibid.*, 1917, pp. 220-221.

ably the scope of the provisions of the law itself. The penalty of \$100.00 to \$500.00 for the civil offense now was to go to the State while the fine for the criminal offense was not to exceed \$500.00. There was now nothing to prevent those judgments of six cents which represented moral victories only. An alternative was imprisonment not exceeding ninety days or both fine and imprisonment. In this case the imprisonment could be less than one day. So although the law became more inclusive, the punishments were less severe. However, this amendment did provide for the injured party's recovering from the judgment the cost of the action and attorney's fees not exceeding \$50.00.¹³² In 1935, the regulation pertaining to attorney's fees provided for payments of not more than \$100.00 nor less than \$20.00.¹³³

The present law defines the civil rights of New Jersey citizens as follows:

1. All persons within the jurisdiction of the State of New Jersey shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodations, resort or amusement, subject only to conditions and limitations established by law and applicable alike to all persons. No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any such place shall directly or indirectly refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or directly or indirectly publish, circulate, issue, display, post, or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed or color, or that the patronage or custom thereof of any person belonging to or purporting to be of any particular race, creed or color is unwelcome, objectionable or not acceptable, desired or solicited. The production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any civil or criminal action that the same was authorized by such person. A place of public accommodation, resort or amusement within the meaning of

¹³² *Laws of New Jersey*, 1921, pp. 468-470.

¹³³ *Ibid.*, 1935, p. 762.

sons were not to be because of race, color, political faith, or creed.¹⁴¹

In 1935, the legislature passed a measure that was designed to protect all minority groups from activities that might result in animosities toward such groups or their members. It made it illegal to use means for "creating or intending to create hatred, violence or hostility against people of this state by reason of their race, color, religion or manner of worship." This was not to be done through printing certain propaganda, printed matter, records, pictures, or signs.¹⁴² Negro citizens of East Orange used this law as a basis for protesting against the showing of the film, *The Birth of a Nation*, on the grounds that it would incite hatred against Negroes.

In December, 1941, the Supreme Court of the State of New Jersey ruled this law as unconstitutional on the grounds that it was too vague and that it violated the constitution of the State of New Jersey and the Fourteenth Amendment of the Constitution of the United States. The Court insisted that it was an abridgement of the right of free speech.¹⁴³

The nullification of this law makes it necessary for citizens interested in promoting and maintaining improved relationships among various groups to pin their faith in a law passed in 1938 which set up the Goodwill Commission of the State of New Jersey. This enactment authorized the governor to appoint a permanent commission of not more than fifteen residents of the state to act as representatives of their racial and religious groups in the interest of fostering racial and religious amity and understanding.¹⁴⁴

Commission on the Urban Colored Population

In 1938, the state authorized the appointment of a *temporary* commission to study and report on the condition of

¹⁴¹ *Revised Statutes of New Jersey, Cumulative Supplement, 1937-1938, 1939, 1940*, p. 92.

¹⁴² *New Jersey Laws, 1935*, pp. 372-376.

¹⁴³ *State v. Klapprott*, 127 N. J. L., N. J. *Advance Reports and Weekly Law Review*, vol. xix, no. 50, pp. 396-405.

¹⁴⁴ *Revised Statutes, etc., op. cit.*, p. 521.

the urban colored population. Two reports made in 1939 and 1940 have set forth the findings and recommendations of this body.¹⁴⁵ In 1941, an enactment created a *permanent* Commission "to examine, report upon and formulate measures to improve the economics, cultural, health and living conditions of the urban colored population of this state in order to secure to the urban colored population equal opportunity with the general population thereof for self support and the economic and cultural development to the extent, if any, that such opportunity does not now exist."¹⁴⁶

The refusal of a road house to admit a Negro couple directed there for shelter by an air raid warden during a blackout stimulated the chairman of the commission with the assistance of other Negro leaders to sponsor successfully a law designed to prevent a recurrence of this type of discrimination. This law makes it a misdemeanor to refuse a person access to a place of shelter during an air raid alarm for reason of race, creed or color. It appears that New Jersey is the first state to take official cognizance of the fact that shelter facilities have been refused Negroes during practice blackouts.¹⁴⁷

VII. CONCLUSIONS

This study seems to warrant the conclusion that the social attitudes which have made necessary and the social attitudes which have stimulated the passage of laws pertaining to Negroes during the past sixty years have roots which run far back into the early beginnings of the history of New Jersey as a colony and as a state. In opposition to those people or groups who have sought to and did lower the social status of Negroes, there have been others who have

¹⁴⁵ *Report of the New Jersey State Temporary Commission on the Condition of the Urban Colored Population, 1939. Second Report of the New Jersey Temporary Commission on the Condition of the Urban Colored Population, 1940.*

¹⁴⁶ *Ibid.*, p. 238. It is hoped that in the near future a similar step will be taken in the interests of the rural colored population of the state. Many of these people have been and do live under most deplorable conditions.

¹⁴⁷ *New Jersey Herald News* (Newark), October 3, 1942, October 10, 1942.

struggled to enable Negroes to be men among men. The latter group has succeeded in securing laws designed to ameliorate and protect the social status of the colored population. The former group has in many instances vitiated the spirit and letter of such statutes. Social reformers, social workers, and educators interested in working toward the integration of democratic ideals and practices in respect to all citizens regardless of color must surely give attention to the history of social attitudes pertaining to Negroes in New Jersey. They will, then, need to decide to what extent educational procedures will need to accompany or be substituted for new laws or revisions of former enactments.

But the fact remains that the legal definitions of social relations between Negroes and whites have raised the status of Negroes from one of involuntary servitude to one in which they are entitled to full enjoyment of the civil and legal rights guaranteed to all citizens. Interested persons will need to consider steps by which these legal definitions can be effectively implemented.

It is important to note that the laws pertaining to the Bordentown School and the state militia make for distinctions and separations because of race. A commentator on the law which set up the colored militia remarked that New Jersey, in 1895, made provision for four companies of colored infantry presumably meaning that they should be all colored and kept separate from the other troops.

Whereas the amendments to the civil rights law extended the areas of social contacts covered by its stipulations, the change in penalties appears to have been designed to discourage suits under the law by providing that damages be paid to an agent other than the injured party. Consequently a desire to fight for fundamental rights will have to serve as an incentive to action in cases involving the violation of this law.

Persons interested in securing equality of opportunities for colored children and colored teachers through legal procedures will have to seek laws which prohibit *distinctions*

as well as *discriminations* because of race in the education of Negro children and the training and employment of Negro teachers, principals, supervisors and administrative officers in public school systems.

William J. Ellis, Commissioner of the Department of Institutions and Agencies, stated that "despite protective laws, personal privileges for Negroes in New Jersey are increasingly more limited, while segregation, instead of lessening, has tended to increase."¹⁴⁸ It is exceedingly important that Negro leaders within the state consider the full implications of the following challenging words of William Sackett published in 1914:

All the laws of the State are not for all the communities. There are some they are glad to obey; there are others to which they can never be forced to yield. The statute books of New Jersey—of all the states—are cumbered with enactments to which no one ever thinks of paying attention. Some state officials, armed with no better answer to a popular discontent than that such and such is the law and they must enforce it, do not seem to realize that it is physically possible for them to enforce only part of it, and that if they could enforce it all, as it is written in all the statutes, and were to undertake to do it, their people would lead them to the nearest river and throw them overboard. A general system of laws cannot be drawn, with such infinitesimal detail, and such plastic closeness as to meet the particular little local needs and views and interests of each of the communities. So the consequence is that the State makes a great variety of laws, and the communities pick from the mass those that please them, and do not repudiate the rest, but just forget to pay attention to them.¹⁴⁹

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¹⁴⁸ Oak, *op. cit.*, p. 31, cited from the *United States Daily*, 1/17/1933.

¹⁴⁹ William E. Sackett, *Modern Battles of Trenton* (New York, 1914), vol. ii, pp. 374-375.