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Declan McCurry Hahn April 15, 2016

The Georgia Black Code as American Law: Race, Law, and Labor in the 19th Century American Republic

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Abstract

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This thesis focuses on the set of laws known as the Black Codes, but more specifically, on the Black Code of Georgia. The Black Codes were the first laws that emerged in every former Confederate state immediately after emancipation. Previous scholarship on the Black Codes have characterized the legislation as an egregious attempt to reconstruct the racial hierarchy that defined the antebellum South so as to return the newly free black population to a position of enslavement. Up to this point scholars have argued that the Black Codes were based on laws governing free people of color in the antebellum period and are thus examples of the persistence of the pro-slavery Confederate ideology. However, focusing on the Black Code of Georgia, this thesis argues that the antecedents to the Codes were based mainly in Union Army labor policies towards escaped slaves during the Civil War, Freedmen's Bureau labor policies, and the North's experience with trying to curtail destitution in the early to mid 19th century. This claim is important because it challenges the existing the idea that the Black Codes, and more generally, the system of law and labor that emerged in the South immediately after emancipation, were a wholly southern institution. Instead I argue that the Black Code of Georgia was not a southern phenomenon, but an American one – inspired by the North as much as it was by the South.

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Table of Contents

Introduction

"Emancipation was the key to a promised land of sweeter beauty than ever stretched before the eyes of wearied Israelites."[1]

William Edward Burghart "W.E.B." Du Bois

This project began as I sat in the kitchen of my host-family's house in Spain in November of 2014. The grand jury in Ferguson, Missouri, had just announced its decision not to press charges against Officer Darren Wilson for the shooting of Michael Brown. The news on the television in the kitchen showed the cell phone video of the shooting. I was horrified, but my host-family was not only terrified, but completely confused. "How can you do this to each other?" my host mother asked. To her and the rest of the family, this video highlighted one of the many problems they had with the United States. They could not believe that a police officer would shoot and kill an unarmed young man. They began to press me with questions as I was the only lifeline they had to the American psyche. "Why did they shoot him?" "How can you just shoot someone dead?" For a family living in a small city where the police do not carry guns, watching an officer shoot another man dead was a harrowing experience. At first I tried to tell them that this was an anomaly, that this type of violence was uncommon; but then I thought about Trayvon Martin, about Eric Garner, and about the shooting of Tamir Rice that had taken place only a day earlier. I quickly abandoned my claims that this was a rarity and went to my room feeling pretty ashamed.

[1] W.E.B. Du Bois, *The Souls of Black Folk,* (Chicago: A.C. McClurg, 1903), 47.

Their questions kept me awake late into the night. How can we do this to one another? Why were these unarmed black men being killed by the police, and no criminal charges were brought? Clearly, our legal system needed major changes, but as a history major I thought, incredibly optimistically, that maybe if I could research the way in which the law has discriminated against African-Americans throughout history, then we could better understand how to approach criminal justice reform today. To do this, I wanted to look at the first laws that were created to govern the free black population in the South immediately after emancipation. I believed that in researching these laws, the original position that the white political elite envisioned for African-Americans would be revealed, and this could help us understand how the law functions to discriminate against African-Americans today.

I began to read about the Black Codes of the South, which were laws drafted in every ex-Confederate state from the end of 1865 through the spring of 1866 and aimed to govern the ex-slaves. What I quickly found was that while there was a huge body of scholarship on the history of Reconstruction, very little scholarship existed on the Black Codes. Generally, historians of the period of Reconstruction (1865-1877), have misunderstood and downplayed the importance of the Codes. Such treatments typically characterized the Codes as explicitly discriminatory and an attempt to return the black population to a position of slavery. The narrative surrounding the Black Codes was that they were adopted by southern state governments that had received a great deal of political autonomy under President Andrew Johnson's plan of Reconstruction, but then were quickly nullified by Congress on the grounds of their explicitly discriminatory nature. The general conclusion was thus that although the Codes were an egregious attempt to continue the legal oppression of African-Americans, because they were ephemeral, they were not all that important.

I soon decided I disagree. The Codes, I came to realize were important regardless of how long they were in effect because they were the first attempt to govern a newly and completely free black population in the southern states and, as such, revealed a great deal about the uses of the law in the making of a new racial order.

I could not properly research the Black Codes of every ex-Confederate state, so I have chosen to focus my attention on the particular case of Georgia because there was very little existing information on the legislation, and being in Atlanta, I would have the best access to all relevant materials including archival resources regarding Georgia's history. When I first started researching the Black Code of Georgia I was expecting to find a shockingly discriminatory set of laws that would confirm what I had previously read about the Codes elsewhere. But that is not what I found. Instead, I found a set of laws that - aside from one section titled "Persons of Color" which provided the freedmen with basic civil rights - was seemingly colorblind. In contrast to the Black Codes of Mississippi, South Carolina, Louisiana, and Alabama, which included race-specific language; the Georgia Code, which was one of the last Black Codes to be produced, made no explicit reference to race. At first I was a bit disappointed. I wanted to be able to show how Georgia had produced an offensive set of laws, but I quickly realized that the Code's colorblind nature actually made it much more interesting – and potentially more insidious - than the Codes of other states. Regardless of its non-discriminatory appearance, it quickly became clear to me that the same bigoted ideologies that were conspicuously expressed in the Black Codes of surrounding states, were expressed in the ostensibly colorblind wording of Georgia's Code. For this reason, the Georgia Black Code is important and especially significant because it is the first instance of an overtly non-discriminatory set of laws that could be applied discriminatorily.

This issue of laws that appear colorblind but which function to oppress certain marginalized constituencies – mainly African-Americans – is central to our understanding of the criminal justice system today. W.E.B. Du Bois made a compelling prediction when he wrote in 1903 that "the problem of the Twentieth Century is the problem of the color-line."[2] But it seems today that the problem of the Twenty-First Century is the problem of colorblindness. Issues of racial discrimination were relatively easy to identify when the law provided different rights depending on one's race, but after the Civil Rights Act of 1964, we entered what many refer to as a "post-racial" society. Systematic racism still exists and plays a role in our daily lives, but it has proven much more difficult to campaign against racial discrimination when de jure discrimination no longer exists.

This is why the Georgia Black Code is so important. Although it decreed that the freedmen "shall not be subjected to any other or different punishment, pain, or penalty… than such are as prescribed for white persons committing like acts or offences," the laws provided local judges with great discretion in sentencing, allowing them to impose more severe punishments on blacks than on whites.[3] These local judges were elected by the public which meant: first, they were elected because they were believed to best reflect the opinion of the public – a southern public that had just sacrificed hundreds of thousands of white men's lives to preserve the black population in slavery; and second, since only white men could vote, the reelection of these judges depended on pleasing this racially hostile citizenry. Thus, not only were the racist beliefs of the judge motivating unequal sentencing, but so too was their future career. If they did not please the public, they would not be reelected. This was an issue not only then, but today as well. District Attorneys throughout the United States, but especially in the

[2] W.E.B. Du Bois, *The Souls of Black Folk*, (Chicago: A.C. McClurg & Co.: 1904.
[3] Georgia, *Acts* (1865-66), No. 250

central and southwestern US, must appear to be harsh on crime if they want to be reelected, and this is generally accomplished by pursuing crimes that carry severe sentences. In Harris County, Texas, the county with the highest rate of execution in the United States, a district attorney's career prospects rely on convicting people of capital crimes, leading them to frequently pursue capital murder charges rather than convictions that carry lesser sentences.

Yet, what I believe is most important about the Black Codes are the antecedents. When I began my research I wanted to identify the legal precedents for the Georgia Code. If the antecedents to the Code were located in antebellum slave laws, then one could draw the conclusion that the white elite refused to accept the realities of emancipation; or if the antecedents were to be found in antebellum laws governing free persons of color, then we could conclude that emancipation had been accepted. However, what I discovered is that the antecedents to the Black Code of Georgia are located neither in antebellum slave codes nor in antebellum laws that governed free persons of color. Instead, the legal models for the code are to be found both in a bigoted southern white ideology that saw the freedmen as innately violent and indolent, but more importantly and surprisingly, in the Union Army's wartime labor policies to govern the slaves who had escaped to Union lines and in Freedmen's Bureau policies adopted in the immediate postwar period. This represented a long-evolving northern structure of attitudes, policies, regulations, and laws toward vulnerable and marginalized populations.

This is important because it changes the way we conceptualize not only the Black Codes, but the systems of law and labor that emerged in the South after emancipation. Until now, scholarship regarding the Black Codes has characterized the legislation as a wholly southern institution – a continuation of the southern antebellum system – but I do not believe that to be the case. Indeed, the legal damage they inflicted is not so easily charged to the southern account or

limited to a regional phenomenon. The impact of Union Army and Freedmen's Bureau policies on the creation of Georgia's Black Code suggests that the logic and the intent of the Georgia Code was not solely southern, but northern as well.

That is not to say that the no differences existed between the legal approaches to race in the North and the South in 1865 and 1866. At that time, northerners abhorred explicitly racist laws because they symbolized the very system the nation had lost thousands of lives fighting to destroy. Further, although there existed much racism in the North, northerners did not view blacks – whether in the North or the South – as inherently different, as did many whites in the South. The Black Codes of Mississippi and South Carolina were far more a product of southern institutions, violating both of these edicts, and were thus abrogated quickly.

However, the Code of Georgia was far more aligned with the northern legal system and as a result, was not revoked by Congress. The Georgia Code provided for coerced labor but did so in an ostensibly non-discriminatory manner, and espoused a commitment to the supremacy of the free market and its capacity to nurture socioeconomic mobility – both of which were principles that defined the northern legal system in the early to mid 19th Century. Congress' scorn for the Mississippi and South Carolina Codes, while allowing, and even applauding the Georgia Code, thus underlines an important issue then and now. When a law ceases to explicitly discriminate against a specific group – whether it is African-Americans or a different racial minority - there is a tendency to accept it as it appears without questioning how it is applied. Northern representatives for the most part had no real qualms with legal systems that oppressed marginalized constituencies as long as the laws were overtly colorblind. Much the same could be said today: The War on Drugs that began in the 1970s implemented mandatory minimums for sentencing, and in doing so, enacted laws that placed a far more severe sentence for the

possession of crack cocaine than for the possession of powder cocaine, despite their identical chemical makeup. As a result - and it was a predictable result - the rate of incarceration among the African-American population skyrocketed. The laws were obviously discriminatory, but faced little resistance because they were ostensibly colorblind. The appearance of a law is not the decisive factor/element. It is the application of the law that should serve as the barometer of whether or not it is discriminatory.

Studies of Reconstruction have sought to uncover the systems of law and labor that emerged after emancipation and scholars have interrogated nearly all aspects of the period. However, the Black Codes remain relatively understudied despite what they tell us about the origins of these systems and larger systems of law, race, and labor. Understanding the antecedents of the Black Codes would not only allow us to obtain a more complete understanding of the legal apparatuses that emerged in the South after the Civil War to oppress a newly freed population of African-Americans; it also provides us with important information about the origins of race-defining laws and the ways in which such laws were created to criminalize indolence, which in the South was often equated with blackness. Such questions regarding the origins of the relationship between law, race, and labor are critical to our comprehension of the modern criminal justice system. In highlighting the ways in which northerners and southerners together contributed to the creation of an ostensibly colorblind set of laws that functioned to oppress the black population, we may find our way to a better understanding of carceral reform today.

Chapter I

Uncertain Origins

"Since you last assembled great changes have taken place in our social and political condition, and upon you it is imposed the delicate and arduous task of adapting our new laws." So spoke Provisional Governor of Georgia James Johnson, to the Georgia House of Representatives on December 5, 1865, as he advised the legislators that "it will not only be necessary that many of the existing statutes be repealed or modified, but that also many new provisions… be introduced and adopted."[4] Nearly eight months after Robert E. Lee's surrender at the Appomattox Courthouse had ended the Civil War and freed almost four million slaves, every former Confederate state drafted a new set of laws that reflected the emergence of a suddenly expanded, free biracial population. In this watershed moment brought by emancipation, anything was possible. Governor Johnson's call for the implementation of new legislation could have motivated Georgia legislators to provide the ex-slaves with the franchise, with the small plots of land they so desired, and with sociopolitical avenues through which they could be fully incorporated into the American society that had been built on the backs of their labor. Yet, this is not what would occur. Instead, Georgia and every other Ex-Confederate State passed a new set of laws that would come to be infamously known as the Black Codes of the South.

This legislation carried great political and historical significance. It represented the first attempt to govern the newly free black population. And although the specific statutes differed by

[4] *Journal of the Senate of the State of Georgia*, Milledgeville, Georgia, December 1865- March 1866, Law Library Microform Consortium, Web. 26 June 2015. 7-8.

state, in general, every Black Code intended to impose on the freedmen the rights and responsibilities as dictated by the post-Confederate white political regime. The Black Codes defined what it meant to be "A Person of Color" – usually having 1/8 African blood – and defined their attendant rights. Typically, they provided the freedmen with the ability to acquire and own property, marry, make contracts, sue and be sued, and testify in court in cases in which a person of color was an interested party. But, while the Black Codes provided the freedmen with the rights that emancipation necessitated, the cornerstone of this new legislation was its attempt to control and stabilize the black population in order to ensure uninhibited white access to their labor. This was accomplished in various ways, but most notably, it was achieved through vagrancy, enticement, and apprenticeship laws, and strict contract provisions that expunged all economic opportunities available to the freedmen aside from plantation labor.

While the overarching themes of the Black Codes were congruent, the specifics of the Codes differed in each state, and Georgia's Code was perhaps the most unique. In March of 1866, the State legislature voted into law "The Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session in December 1865, and January, February, and March 1866," which would come to be known as the State's Black Code. This three hundred and fifty-page set of laws included everything from statutes establishing county limits to statutes prescribing the payment of state officials. Idiosyncratically, Georgia's bundle of post-Confederate laws was colorblind. The only race-specific section contained the new rights that the black population was afforded as free persons. Under the subhead, "Persons of Color," the freedmen were provided with the ability to make and enforce contracts; to sue and be sued; to inherit, purchase, lease, sell, and hold personal property; and were given "full and equal benefit of all laws and proceedings," which promised that they would not be subjected to any different

punishment or penalty than what would be prescribed for whites. The Code provided freedmen with the right to serve as competent witnesses in cases in which a person of color was an interested party; and defined interracial marriage as a misdemeanor offence in which the religious minister performing the ceremony was subject to indictment. Simply put, the Georgia legislature provided the freedmen with the civil rights that freedom necessitated - nothing more and nothing less. Even the vagrancy law that was included in the Code expanded on an already existing vagrancy law of 1861 and applied to whites and blacks alike. Despite the seemingly non-discriminatory language of Georgia's Code, as will be shown, the Georgia Code, like all Black Codes, sought to control black labor but did so in a unique and especially effective way.

The Black Codes Throughout History

The Black Codes inaugurated the Reconstruction Era and, more importantly, revealed the position the white elite envisioned for the freedmen. Throughout the 20th century, historians have investigated the ways in which the South, in the wake of the Confederate defeat, struggled to reestablish both the labor and legal systems that had been demolished by emancipation. The question that has driven the study of Reconstruction is how southerners addressed the "negro question": what would southern whites aim to do with the freedmen? Some scholars contend that the systems of law and labor that emerged were merely recreations of slavery to the degree that was possible, while others have argued that southerners accepted the realities of emancipation and strove to create a new system that combined law, labor, and coercion. These two general arguments have divided the study of Reconstruction into two groups – those who believe that southern whites tried to re-enslave the freedmen, and those who do not.

Although this question has received a great deal of attention, scholars have reached no consensus regarding the answer. The Black Codes themselves offer a way to engage with, and add to that debate. Unfortunately, though, they have not been employed to this end. Instead, the Black Codes have been consistently overlooked and deemed insignificant.

Over the last century, historians have attempted to come to terms with the tumultuous period of Reconstruction that lasted from 1865-1877, and in so doing, interpretations and discussions have evolved tremendously. Yet, despite the seismic shifts in Reconstruction historiography, the Black Codes have remained relatively untouched and even misinterpreted. The lacunae thus created in our understanding of Reconstruction carries great significance for any contemporary attempt to understand the way in which race, labor, and the law worked to criminalize black independence.

The changes in our understanding and interpretation of Reconstruction reflect the emergence of the various sociopolitical movements and ideologies that have come to define the 20th century. The study of Reconstruction began in the early 1900's with the work of William Archibald Dunning and was advanced by individual state historians. This school of thought, frequently referred to as the Dunning school, argued that at the end of the Civil War, southerners genuinely accepted Union victory and stood ready to provide the freedmen with civil and legal equality. Above all, scholars of the Dunning school argued, southerners desired reintegration into the Union. But, this "traditional" interpretation insisted "vindictive" Radical Republicans and carpetbaggers – northerners who traveled South after the Civil War - manipulated the freedmen's vote to gain control of southern state governments in order to force black supremacy on the defeated South. After years of political, economic, social, and military oppression of the South, southern whites banded together to end the northern occupation. This early school of

thought, in portraying northern radicals and the freedmen as the villains, and Andrew Johnson and the Redeemers (Southern Democrats) as symbols of moderation, inaugurated the Church of the Lost Cause. Written during the height of the Jim Crow era, the works that came to define the Dunning School would occupy the accepted interpretation of Reconstruction for some time.[5]

This traditional interpretation was challenged for the first time by Howard Beale in his 1930 book, *The Critical Year*. Beale, influenced by the Beardian interpretation that stressed economic motivations as the driving factor in history, argued that although Reconstruction was a dark page in American history – as had the Dunning school – the carpetbaggers had been pawns in the hands of northern industrial capitalists.[6] While this was a relatively minor departure from the traditional interpretation that argued that it had been the freedmen who were pawns in the hands of the radicals and the carpetbaggers, Beale conveyed - much like the Dunningites – that Andrew Johnson had been the victim of corrupt northern racketeers. This interpretation suited the atmosphere of the 1930's, as the stock-market crash of 1929 created palpable hostility to the market and business in general. While a few dissenting voices, namely the black historian W.E.B. Du Bois, contested both Dunning and Beale's interpretation, the 1930's saw the peak of Jim Crow indoctrinated institutional racism, leading African-American contributions to be largely overlooked. [7]

It would not be until the 1960s, nearly a century after Reconstruction commenced, that the original interpretations would be directly confronted. The emergence of the Civil Rights Movement, often referred to as the "Second Reconstruction," led scholars to place the activities

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[5] See William A. Dunning, *Reconstruction, Political and Economic, 1865-1866,* (New York: Harper & Bros, 1907); Claude G. Bowers, *The Tragic Era: The Revolution After Lincoln,* (Cambridge, MA: Houghton Mifflin Co., 1929); E. Merton Coulter, *The South During Reconstruction, 1865-1877, (*Baton Rouge, LA: LSU Press, 1947).
[6] Howard K. Beale, *The Critical Year: A Study of Andrew Johnson and Reconstruction* (New York: Harcourt Brace, 1930).
[7] See W.E.B. Du Bois, *Black Reconstruction in America* (New York: Russel & Russel, 1935).

and aspirations of blacks at the center of their study of Reconstruction, while completely rejecting the portrayal of Andrew Johnson as a hero or victim of northern oppression. Adopting the approach first used by Du Bois, this new school would come to be known as the revisionists. Revisionists portrayed Andrew Johnson as stubborn, intolerant of opposing views, and above all, racist. In doing so, they absolved Radical Republicans of vindictive motives and repositioned them as advocates of black equality.[8] The idea of "Negro rule" that was propagated most conspicuously in D.W. Griffith's "Birth of a Nation" and defined earlier writings on Reconstruction, was finally proven to be a myth. Instead, revisionist works focused on the positive accomplishments of Reconstruction, portraying the freedmen as the beneficiaries of extraordinary political, social, and economic progress.[9] This revisionist school of thought would remain the prominent interpretation of Reconstruction for a decade.

But just as the focus and conclusions of the revisionist school had been motivated by the Civil Rights Movement, the outcome of Martin Luther King Jr.'s movement showed that great resistance to racial progress remained, inspiring a new understanding of Reconstruction. Challenging the optimistic conclusions drawn by the revisionists, the leading historians of the 1970s and 1980s portrayed the changes wrought by the federal policies of Reconstruction as fundamentally superficial. This new interpretation would come to be known as post-revisionism and was defined by the argument that persistent racism, espoused by both northerners and southerners, negated any effort to extend civil and legal rights to the freedmen. Further, these post-revisionists concluded that federal and Republican policies were not radical; in fact, they were relatively conservative, allowing for the survival of the antebellum planter class and its ideology. William McFeely's account of the Freedmen's Bureau and its leader, O.O. Howard,

[8] See Eric L. McKitrick, *Andrew Johnson and Reconstruction,* (Chicago: University of Chicago Press, 1960).
[9] See Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877*, (Chapel Hill: University of North Carolina Press, 1965).

argued that the so-called "paternalism" that had defined the institution of slavery was recreated by Bureau agents who worked hand-in-hand with the planter class to force the freedmen to return to plantation labor. Both Michael Perman and Leon Litwack concluded that northern Reconstruction policy had eschewed radical policies in order to ensure the cooperation of white southerners. Post-revisionists, inspired by the shortcomings they saw with the "success" of the Civil Rights Movement, issued a new account of Reconstruction that departed from the interpretations of the Dunningites and the revisionists. While Dunningites claimed that a combination of innate black inferiority and the continued northern oppression of the South defined the unfortunate era of Reconstruction, post-revisionists argued that Andrew Johnson's racism, and northern moderation toward the South led Reconstruction to be defined as, "essentially nonrevolutionary and conservative."[10] The post-revisionist period was important, if not for the accuracy of its conclusion, then for the dichotomy in the historiography that it created in the post-Dunning era. Left with two schools of thought - one that proposed that Reconstruction was radical, another that believed it was conservative; one that concluded that it provided the freedmen with great socioeconomic progress and thus was successful, and the other that insisted that the period had accomplished little – our understanding of Reconstruction needed to be resolved.

With Eric Foner's *Reconstruction: America's Unfinished Revolution*, published in 1988, it seemed a powerful resolution had been found. Combining aspects of all previous schools of thought, Foner portrayed the freedmen as active agents in the process of Reconstruction, Andrew Johnson as an intellectually inadequate racist, while modifying the ideas of post-revisionist

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[10] William S. McFeeley, *Yankee Stepfather: General O.O. Howard and the Freedmen,* (New Haven, CT: Yale University Press, 1968); Michael Perman, *Reunion Without Compromise: The South and Reconstruction 1865-1868,* (Cambridge: Cambridge University Press, 1973); Leon Litwack, *Been in the Storm So Long: The Aftermath of Slavery,* (New York: Alfred A. Knopf, 1979); C. Vann Woodward, "Seeds of Failure in Radical Race Policy," *Proceedings of the American Philosophical Society*, Volume 110, Issue 1, (1966): 1-9. Online.

scholars, depicting the Freedmen's Bureau as well intentioned but unsuccessful in its execution. Since the release of Foner's monograph, no book length study of Reconstruction has gained intellectual traction, leading Foner, in essence, to have created a new school of thought.[11]

The great evolution in Reconstruction scholarship is clear. Seemingly every aspect of the period has been interrogated, yet amidst it all, the Black Codes have garnered little interest. The Codes have been subject to very little direct scrutiny and despite their obvious significance, appear merely as a means by which authors advanced their various arguments. Rather than being held as significant in themselves, they have been deemed unimportant.

The traditionalist Dunning School authors thus cast the Black Codes as a reflection of the benevolence of white southern legislators, E. Merton Coulter writing that their intention, "was to advance the fortunes of the Negroes rather than retard them or try to push them back into slavery… in doing this the South would be protecting itself against the lawlessness of Negroes… and it would be advancing its own material development as well as that of the Negroes in inducing them to work."[12] Chiding the freedmen as innately barbarous and unfit to function in a free labor society, the Black Codes, traditionalists argued, were as brilliant as they were necessary - protecting the whites from the freedmen as much as they protected the freedmen from themselves. This substantive interpretation of the Codes would be dismissed in later scholarship.

With the emergence of the revisionist school in the 1960s, Coulter's conclusion that the Black Codes represented the benevolence of white southerners would come crashing down, but scholars would continue to underestimate their significance as key moments in the definition of the new order. The Black Codes, revisionists argued, perfectly represented Andrew Johnson's

[11] Eric Foner, *Reconstruction: America's Unfinished Revolution*, (New York: Harper & Row, 1988).
[12] Coulter, *The South During Reconstruction*, 38.

racist tendencies since it was the latitude he provided to southern state governments that allowed the legislation to be enacted. Kenneth Stampp wrote that the Black Codes aimed "to keep the Negro, as long as possible, exactly what he was: a propertyless rural laborer under strict controls, without political rights."[13] The Codes were important because, in reflecting Johnson's inadequacies and the persistence of southern racism, they served to further delegitimize the Traditionalist interpretation. Yet, the revisionist assessment of the Codes did not stop there. Although the Black Codes were a nefarious creation, according to many historians, most notably, John and LaWanda Cox, they were not successful in their attempt to re-enslave the freedmen due to the interference of the Freedmen's Bureau.[14] Not only were the Black Codes used to refute earlier portrayals of well-intentioned southern whites; they were also used to disprove the Dunningite belief that carpetbaggers were the catalysts of corruption. Instead, Revisionists used the Black Codes to cast Andrew Johnson as the villain of Reconstruction and extol the virtues of northerners, specifically the Freedmen's Bureau.

This trend would continue as historians of the post-revisionist school employed the Black Codes as a representation of the shortcomings of the Freedmen's Bureau and the persistence of the antebellum pro-slavery ideology. In discussing the Black Codes, post-revisionist scholars argued that the legislation smacked of the bondage that emancipation had supposedly destroyed.[15] While the Union victory in the Civil War had defeated the Confederate government, historians of the 1970s and early 1980s saw the Black Codes as one of the many ways to show that the War had not erased the Confederate project. However, the post-revisionists made an important contribution when they drew parallels between the laws put forth

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[13] Kenneth Stampp, *The Era of Reconstruction*, *1865-1877*, (New York: Alfred A. Knopf, 1965) 79.
[14] See Chapter 9: "The President Declares War" in John and LaWanda Cox, *Politics, Principle, and Prejudice, 1865-1866: Dilemma of Reconstruction America*, (New York: Free Press of Glencoe, 1963).
[15] Perman, *Reunion Without Compromise,* 78-79.

in the Black Codes and the policies embraced by the Freedmen's Bureau.[16] Unfortunately, no evidence was provided to support this claim, but it was successful in that it furthered their conclusion that the Freedmen's Bureau was most successful in serving the interests of the planter class.

One of the main weaknesses of the literature and, I would argue, the failure to grasp the significance of the Codes in forging the new relationship between race and law in the post-emancipation South, follows from the exclusive focus on the efficacy of the law. Seen from that perspective, the laws are easily dismissed for many reasons. First, the legislation had been viewed as only one of many methods employed by white southerners to control the freedmen. Some former masters refused to free their slaves; many refused to sell or lease their land to blacks in order to force them to labor as they had in the antebellum period; and most saw any black assertion of independence as deserving of severe discipline and even death. According to Theodore Brantner Wilson, the author of the only monograph dedicated wholly to the Black Codes, the legislation was only one of many methods through which the southern legislators and the planter class controlled and oppressed the black population in the postbellum South. Thus, he concludes, because the Codes served alongside other means of compulsion, their efficacy was not all that important.[17]

Second, the Black Codes were ephemeral, in place only from 1865 – or in the case of Georgia, March of 1866 – until the ratification of the Civil Rights Act in April of 1866. Understandably, their limited duration has led historians to focus on more long-lasting developments. Finally, because the most flagrant provisions of the Black Codes never went into effect, due to both the vehement objections of northerners who detected the reinstatement of

[16] Litwack, *Been in the Storm So Long*, 366.
[17] Theodore B. Wilson, *The Black Codes of the South*, (Tuscaloosa, AL: University of Alabama Press, 1966).

slavery and to the interference of Freedmen's Bureau agents, there are far better examples of racist intentions coming to fruition. "Whatever anyone might have thought about these codes," wrote Coulter, "the question was in fact academic, for they were never actually put into effect."[18] This appraisal of the Black Codes as unimportant due to their inefficacy, then, has defined the way in which they would be discussed throughout the remainder of the 20th century.

The astoundingly few references to the legislation reflect the lack of importance with which the Black Codes have been regarded. In John and LaWanda Cox's study of Reconstruction from 1865-1866, the exact time period in which the Black Codes existed, the Codes are mentioned only three times.[19] Similarly, James McPherson's, *Struggle for Equality* only references the Codes four times. Most shocking, however, is that the Black Codes do not appear at all in William McFeely's, *Yankee Stepfather*. The book that criticized the Freedmen's Bureau for colluding with southern planters to force the freedmen to remain as plantation laborers makes no mention of the very legislation that represented the desire of the planter class, in the words of Union General Alfred H. Terry, to reestablish "slavery in all but its name."[20]

There is a further problem plaguing our understanding of the issue. The few scholars who have engaged the Black Codes, have made the mistake of focusing disproportionately on the Mississippi and South Carolina legislation, leading the Codes, specifically Georgia's, to be misunderstood. It is no surprise that the Black Codes of Mississippi and South Carolina have garnered the most attention. They were the first to be produced – passed by their state legislatures at the end of 1865 – and despite providing the freedmen with the basic rights of emancipation, they were far and away the most racially repressive of all of the former Confederate States. The Mississippi legislation required all freedmen to possess each January

[18] IBID, 40.
[19] John and LaWanda Cox, *Politics, Principle, and Prejudice.*
[20] Jack P. Maddex Jr., *The Virginia Conservatives, 1867-1879*, (Chapel Hill: UNC Press, 1970), 39.

written evidence of employment for the coming year; forced black laborers who broke their contracts to forfeit the wages they had already earned; and criminalized any act of insolence by a black toward a white.[21] The South Carolina Black Code, passed days after Mississippi's, banned freedmen from following any occupation other than that of plantation laborer or servant; required blacks to sign annual contracts that mandated labor from sunup to sundown; and prohibited them from leaving the plantation.[22] The men who created these laws made no attempt to hide their discriminatory nature. And because the provisions mirrored the slave codes so conspicuously, the Black Codes of Mississippi and South Carolina provided historians with a facile way to convey the malevolent intentions of the planter class. Although the Black Codes of surrounding southern states were not as blatantly discriminatory, the excessive scholarly focus on the Mississippi and South Carolina legislation has led the Black Codes as a whole to be misconstrued as a uniform body of laws defined only by conspicuously bigoted statutes.

The tendency to view the Black Codes as possessing historical value only as explicit symbols of the perpetuity of racist antebellum ideology has essentially erased the Georgia body of laws from historical consideration. Georgia was one of the last states to produce a new set of laws to govern the freedmen, and because they were not as overtly racialized as the legislation of surrounding states, the Georgia Black Code has remained almost completely unnoticed and misinterpreted. The two leading works on Reconstruction in Georgia, Paul Cimbala's, *Under the Guardianship of the Nation: The Freedmen's Bureau and the Reconstruction of Georgia*, and Edmund Drago's, *Black Politicians and Reconstruction in Georgia*, contain no mention of the

[21] Mississippi, *Laws* (1865), c. 2.
[22] Wilson, *Black Codes of the South*, 72-75.

Black Codes.[23] Perhaps more egregious is Alan Conway's statement in his survey of Reconstruction in Georgia, that the Georgia legislature, "refrained from passing a 'black code'."[24] This is factually incorrect, but is an accurate representation of historians' perspective.

The few historians who did not overlook the Georgia legislation, however, fall markedly short in their interpretation and analysis. Although Peter Wallenstein does not refer to the set of laws explicitly as the "Black Codes" – a reflection of the belief that Georgia never passed a Black Code - he explained that the "March 1866," legislation was "a civil rights act virtually identical to that enacted by Congress the following month."[25] The parallel Wallenstein draws between the Georgia Black Code and the Civil Rights Act of 1866 is completely inaccurate. The 1866 Civil Rights Act banned all laws that applied specifically to one race, leading to the nullification of the Black Codes, but Wallenstein's contention exemplifies the way in which the Georgia Code has been understood. Despite containing a section entitled, "Persons of Color," Georgia's Black Code had very few explicitly racist laws. Wallenstein, like most scholars who included the Black Codes in their study of Reconstruction Georgia, harked back to Coulter's conclusion, and pardoned the Georgia legislation as moderate because it did not follow the accepted construction of the Black Codes. This is a mistake. Although ostensibly non-discriminatory, the Georgia Black Codes provided local judges with great discretion in convicting and sentencing, allowing the laws to be racially applied despite their non-racial appearance.

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[23] Paul Cimbala, *Under the Guardianship of the Nation: The Freedmen's Bureau and the Reconstruction of Georgia, 1865-1870,* (Athens, GA: University of Georgia Press, 1997); Edmund Drago, *Black Politicians and Reconstruction in Georgia: A Splendid Failure,* (Athens, GA: University of Georgia Press, 1992).
[24] Alan Conway, *The Reconstruction of Georgia*, (St. Paul, MN: University of Minnesota Press, 1966), 54.
[25] Peter Wallenstein, *From Slave South to New South: Public Policy in Nineteenth Century Georgia*, (Chapel Hill: UNC Press, 1987), 143.

Finally, any discussion of the Black Codes would be incomplete without mention of Theodore Wilson's 1965 monograph, *The Black Codes of the South*. The question that drives this monograph is the same question that has motivated nearly every discussion of the Black Codes. How did the Black Codes function? Wilson discusses the substantive differences of the Black Codes in each state at length, concluding that the legislation operated in what he refers to as a "gray institution." This "gray institution" was characterized by an amalgam of law and custom, a pattern of legal and extralegal factors.[26] Not only is the general interpretation of the Georgia Black Codes incorrect; more importantly, by interrogating the Black Codes to discover whether or not they were successful in controlling and oppressing the freedmen, historians have failed to reveal their importance.

Asking the Right Questions

The proper way to understand the Black Codes is to not to focus on their efficacy, but instead to focus on what they represent. As novelist Thomas Pynchon wrote, "If they can get you asking the wrong questions, they don't have to worry about answers."[27] The question that needs to be asked of the legislation in order to uncover what it represents, concerns, I argue, legal antecedents. What were the antecedents to the Black Codes? More specifically in this thesis, where did the Georgia legislators who wrote the State's Code look for inspiration? The Black Codes were the first attempt to legally govern the newly free black population and thus, the precedents that molded and shaped the Codes reveal a great deal about the legal and socioeconomic position that white southerners intended the freedmen to inhabit in the new, post-emancipation order. If the antecedents to Georgia's Black Code are to be found in laws

[26] Wilson, *Black Codes of the South*.
[27] Thomas Pynchon, *Gravity's Rainbow*, (New York: Viking Press, 1973), 251.

governing slaves then one could assume that the Georgian elite did not accept the Confederate defeat or the abolition of slavery and aimed, as so many historians have insisted, to re-enslave the freedmen. If the antecedents are to be found in laws governing free people of color in the antebellum period, then it would seem that the legislators had indeed accepted the Union victory and knew there could be no return to slavery. Or, if the precedents for Georgia's Black Code came from neither laws governing slaves nor laws governing antebellum free persons of color, then the whole system of law and labor that emerged in the postbellum South would have to be reconsidered. Regardless, it is clear that in order to fully understand the way in which the white Georgia elite answered the "negro question," and thus, to fully understand the politics of Reconstruction, it is essential to locate the antecedents to the Black Codes. Yet, notwithstanding generations of scholarship, for all intents and purposes, this question has not been asked or answered.

To the present moment, the matter of legal antecedents has been treated only casually, usually in passing and in the absence of empirical evidence to support all conclusions. The most prevalent argument has been that when faced with emancipation, southern legislators looked to their previous experience with free blacks and modified the laws that had governed free people of color in the antebellum period. Ira Berlin, in the epilogue of his seminal work on free persons of color, argues that antebellum laws that were developed to control free blacks reappeared as the Black Codes in the postbellum period, "with scarcely a hint of disguise."[28] William Cohen reiterated this view in his study of the white control of black labor, stating that the Black Codes were firmly rooted in the southern heritage and mirrored antebellum legislation that had

[28] Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South*, (Oxford: Oxford University Press, 1974), 382.

governed free people of color.[29] Neither Berlin nor Cohen provides evidence to support their claims; and when placed alongside laws concerning free blacks, it is evident that the antecedents to the Black Codes are not to be found in this set of antebellum laws.

Georgia's antebellum law provided slaves and free people of color with nearly identical rights, making it impossible to differentiate between laws governing free blacks and laws governing slaves. The section of the 1861 Official Code of the State of Georgia – a compilation of the laws of Georgia in 1861 – entitled, "Of Free Persons of Color" states that, "all laws enacted in reference to slaves… shall be construed to include them (free persons of color), unless specifically excepted."[30] In asserting that all laws that applied to slaves, applied to free blacks as well, the Georgia legislature made clear that in the eyes of the law, there was little difference between a slave and a free person of color. According to the law, the status of a free black differed from that of a slave only in that no single master had dominion over the free use of their labor.[31] The only legal distinction made between a slave and free person of color was that a free person of color was not bound to a specific master. However, the law required that every free black in Georgia be registered, and thus, legally bound to a guardian.[32] This guardian was provided with nearly the same power over the free person of color who was assigned to them as a master was provided over their slave. Georgia law defined both the power of a guardian over a free person of color and the power of a master over a slave, as that of a father over his child.[33]

Further reflecting the parallels between a free person of color and a slave in the eyes of the law, Georgia's antebellum law defined the residence of a slave as that of their master, and

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[29] William Cohen, *Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control, 1861-1915*, (Baton Rouge, LA: LSU Press, 1991), 33-34.
[30] Georgia, *Penal Code* (1861), sec. 1613.
[31] IBID, sec. 1612.
[32] IBID, sec. 1617.
[33] IBID, sec. 1773 and sec. 1849.

defined the residence of a free person of color as that of their guardian.[34] Perhaps the most compelling way in which antebellum legislation conflated the legal rights of slaves and free blacks is the statute entitled, "Presumption of slavery" that declared all "negroes and mulattoes" to be "*prima facie*" slaves.[35] The lack of a legal distinction between slaves and free blacks in the antebellum period is what led Ira Berlin to conclude that free people of color were merely, as the title of his book put it, "Slaves Without Masters." There is no doubt that specific antebellum statutes provided inspiration for the Black Code of Georgia; but because the law provided nearly identical restraints to free blacks and slaves, it is impossible to distinguish the two. Thus, the contention that the antecedents to Georgia's Black Code are located only in the pre-war laws regarding free people of color, is inaccurate.

Most interesting, however, was Sec. III of Act No. 250, which stated that, "all laws and parts of laws in relation to slaves, and free persons of color… are hereby repealed." Reflecting Governor Johnson's call for new laws to be created and implemented, this postbellum legislation was not a simple modification of the antebellum laws that had previously governed blacks, slave or free; it was a completely new body of legislation.[36]

The other common suggestion is that the Black Codes could have been motivated by policies embraced by the Union army and Freedmen's Bureau. This contention arose first among the post-revisionists, but has since been put forth by some other scholars.[37] Theodore Wilson first compared Freedmen's Bureau policies regarding contracts to the contract stipulations of the Mississippi Black Code.[38] William Richter argued that the Texas Black Code

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[34] IBID, sec. 1649.
[35] IBID, sec. 1600.
[36] See Georgia, *Acts* (1865-66), No. 250, sec. I-III; No. 251; No. 252-254; and No. 240.
[37] See Leon Litwack, *Been in the Storm So Long*, 366.
[38] Wilson, *Black Codes of the South*, 66.

simply codified army orders or Bureau regulations.[39] Donald Nieman wrote, "the black codes were in some ways similar to the labor policies that Bureau agents had implemented earlier in 1865."[40] Even Eric Foner stated that some laws of 1865 and 1866 were modeled on army and Freedmen's Bureau regulations.[41] However, each one of these historians made a clear distinction between the Black Codes and the Bureau policies. Although the Black Codes reflected many of the army and Bureau policies, because Bureau regulations and army policies were intended as temporary expedients – necessary only due to the extraordinary circumstances created by emancipation - rather than permanent legislation, and were not driven by the same racist ideologies that motivated the Black Codes, army and Bureau policies were qualitatively different than the Black Codes. These historians thus concluded that army and Bureau directives could not have provided the antecedents to the Black Codes because, as Barry Couch explained, "The army and Bureau directives were promulgated with an entirely different intention than the code."[42] This is not to say that the notion that the Union Army and the Freedmen's Bureau provided inspiration to Georgia's Code is not true; instead, it is to say that the distinction that scholars have made between the Black Codes and army and Bureau policies is inaccurate.

Indeed, the argument regarding the role of the army and the Freedmen's Bureau may have been too quickly abandoned. In dismissing the idea that Union army and Freedmen's Bureau policies provided legal models to the creators of the Black Codes, scholars overlook two key issues. First, to state that army and Bureau regulations differed from the Black Codes because they were not motivated by racially bigoted ideologies is misleading. In fact, many

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[39] William L. Richter, *The Army in Texas During Reconstruction*, *1865-1870,* (College Station, TX: Texas A&M University Press, 1987), 60.
[40] Donald G. Nieman, *To Set the Law in Motion: The Freedmen's Bureau and the Legal Rights of Blacks, 1865-1868*, (Millwood, NY: KTO Press, 1979), 72.
[41] Foner, *America's Unfinished Revolution*, 208.
[42] Barry A. Crouch, "'All the Vile Passions': The Texas Black Code of 1866," *The Southwestern Historical Quarterly,* Vol. 97, Iss. 1, (1993), 12-34. Online.

Bureau agents were imbued with the same ideas about race and inferiority that, while not proslavery, were deeply detrimental to progressive legislation. Orlando Brown, the Assistant Commissioner of the Freedmen's Bureau in Virginia, complained that "a majority of the officers and men of the army… have little sympathy with the freedmen, while many are animated by a spirit of active hostility."[43] Many of the same racist beliefs that motivated the Black Codes of the South were exhibited by agents of the Freedmen's Bureau. Second, the fact that the army and Bureau policies were intended as temporary measures does not negate the possibility that they contributed to the creation of the Georgia Black Codes. As this thesis will show, labor policies implemented by the Union army and the Freedmen's Bureau did provide many of the precedents that would come to define the most severe statutes of Georgia's Black Code.

The Larger Significance

Since the beginning of the 20th century, scholars of Reconstruction have mischaracterized the Black Codes as a body of legislation, and, more importantly, failed to grasp their significance – not for their efficacy, but for what they represented. The Codes represented an early and formative statement of the socioeconomic position freedmen were to inhabit if the southern legislatures were allowed to determine their future. More generally, as will be shown, the Codes represented larger, national attempts to control the labor of marginal groups. And, perhaps most important to the study of Reconstruction, they led to the end of Presidential Reconstruction, as Andrew Johnson's willingness to allow the implementation of the Codes in the South showed northern Republicans that he was not committed to their idea of Reconstruction.

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[43] Orlando Brown to O.O. Howard, August 17, 1865. *Orders Issued by the Commissioners and Assistant Commissioners of the Freedmen's Bureau,* 39th Cong. 1st sess., House Exec. Doc 70.

The Black Codes in general are far more important than they have been given credit, but the Black Code of Georgia is even more significant. Passed in March of 1866, Georgia legislators had already witnessed the severe northern reaction to the Black Codes that had been implemented by other Ex-Confederate States. Wishing to avoid enraging northerners any further, Georgia legislators disguised the same policies that defined earlier Black Codes in a language that was not conspicuously discriminatory. In that the Georgia Black Code was idiosyncratic. But on close inspection it becomes clear that the same laws that defined the most infamous Black Codes of Mississippi and South Carolina - statutes that allowed southern whites to effectively maintain the antebellum racial hierarchy and ensured unfettered access to black plantation labor – were in fact incorporated into the Georgia legislation while appearing to conform to new expectations of racial neutrality in the law. In that sense the Georgia Black Code not only looks backwards, but it also looks forward to the ways in which legislators – beginning in the Redemption period – were able to create overtly non-discriminatory laws that functioned in a discriminatory fashion. Needless to say, this is a practice that has affected African-Americans and other marginalized groups to the present day.

The Black Codes of the South, and in Georgia especially, have been overlooked and consistently misinterpreted. No one has yet provided a definitive argument as to the origins of the Black Codes. While some have pointed to antebellum statutes governing slaves or free blacks, and others have hastily associated the Freedmen's Bureau with the southern legislators who created the Codes, neither answer seems sufficient. The Black Code of Georgia established the policies that outlined the system of law and labor that emerged in the state in the wake of emancipation, and thus, in locating the Code's antecedents, a better, more complete understanding of Reconstruction will be allowed.

Chapter II

The North Goes South

Repudiate the war debt, ratify the 13th amendment, and create a new system of laws that reflects the changes the war had wrought. These were the tasks that faced every former Confederate state's Constitutional Convention in 1865, and Georgia was no exception. Repudiating the debt and permanently abolishing involuntary servitude were accomplished rather expediently – though not without dissent - but establishing a new code of laws proved to be a much more complicated affair. The antebellum experience of Georgia's free black population provided one model for postwar policy, but much of that legislation had been determined by slavery's dictates, which had now been abolished. Luckily, though, Provisional Governor James Johnson provided the legislature with directives in the establishment of a new set of laws.

The legislators, Johnson stated, "shall secure those emerging from bondage, the enjoyment of their *legal rights*," in order to protect both the freedman and the citizen, from the "evils of sudden emancipation."[44] The clear distinction made between the "freedmen" and the "citizen" highlights the fact that regardless of their free status, the freedmen still represented the "other". Facing a financial crisis and deficient of any legal structure – conferred either by laws or by federal policies - Georgia was on the verge of socioeconomic chaos. "The changes which the war and its results have made in our property, population and resources, suggest that some… changes or modifications be made in the law," announced Governor Johnson.[45]

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[44] *Journal of the Proceedings of the Convention of the People of Georgia, Held in Milledgeville in October and November 1865. Together with the Ordinances and Resolutions Adopted.* Milledgeville, Georgia, 1865. *The Making of Modern Law: Primary Sources*. Web. 25 January 2016. 13,9.
[45] IBID, 10.

The members of the Georgia legislature in 1865, like the vast majority of whites at the time, envisioned a new legal system that would both control the movement of the black population and organize the black community "into efficient and trustworthy laborers."[46] Interestingly, though, Johnson did not look to radical secessionists to create this new code of laws. Instead – like most other southern states – the task was placed in the hands of the State's most respected citizens and jurists. Charles J. Jenkins, one of the appointed leaders of Georgia's Constitutional Convention and the next Governor, submitted a resolution that, once adopted, established a commission of five persons to prepare a recommended code of laws to be presented to the General Assembly at their next session.

As the Georgia Constitutional Convention came to a close on November 8, 1865, the Commission of 5 set out to carry into effect, Article II, Sec. V, Paragraph V of the newly created Constitution. According to the Constitution, the Commission needed to present a recommendation for a set of laws, "for the government of free persons of color… guarding them and the state against any evil that may arise from their sudden emancipation," to the General Assembly at its next session. The Constitution decreed that this set of laws must: prescribe in what cases black testimony would be admitted in court; regulate African-American relations with citizens (whites); provide blacks with basic civil and legal rights, including the ability to marry and inherit property; and control their movement through the "regulation or prohibition of their immigration into this State from other States of the Union, or elsewhere."[47] Not only was the Commission of 5 tasked with creating a completely new system of laws, but even the institution that had long served as the symbol of crime and punishment, the penitentiary, was no more. These five jurists would have to decide what would serve as the main method of punishment in

[46] IBID.
[47] 1865 GA Const. art. II, § V, cl. V.

Georgia. For all of these reasons, those appointed to the Commission of 5 needed to be legal scholars – and they were.

To the committee Charles Jenkins appointed Ebenezer Starnes, William Hope Hull, Logan E. Bleckley, Lewis N. Whittle, and Samuel Barnett. These men were not Lost Cause proselytizers hell-bent on recreating the institution of slavery that they believed was unconstitutionally taken from them. Rather, they were some of the most eminent jurists in Georgia. Ebenezer Starnes served as a Judge on Georgia's Supreme Court from 1849-1855 and is remembered as one of the most generally sustained judges in the state's history.[48] Samuel Barnett was described as one of the most influential citizens of Georgia. Logan Bleckley served as Chief Justice of the Georgia Supreme Court and was known for his moderate decisions. William Hope Hull had served as the assistant Attorney General of the United States – one of the highest ranking legal positions in the nation - under President James Buchanan. And Lewis Whittle had been the head of the bar in Macon, Georgia.[49] No better group of Georgian legal scholars existed.

When the Georgia General Assembly reconvened at its next session in December, the Commission of 5 presented a recommended new code of laws, titled "System of Laws".[50] This session would last far longer than the legislative sessions of surrounding states, but after four months of debate and revision, this set of laws would emerge as the Black Code of Georgia.

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[48] Charles C. Jones, *Memorial History of Augusta, Georgia: from Its Settlement in 1735 to the Close of the Eighteenth Century,* (Syracuse: D. Macon, 1890), 240.

[49] For information on Samuel Barnett see Lucian Lamar Knight's, *A Standard History of Georgia and Georgians, Volume 5,* (Chicago, New York: The Lewis Publishing Company, 1917), 2555; for information on Logan Bleckley see William J. Northen and John Temple Graves', *Men of Mark in Georgia: A Complete and Elaborate History of the State from its Settlement to the Present Time, Chiefly Told in Biographies and Autobiographies of the Most Eminent Men of Each Period of Georgia's Progress and Development,* (Atlanta: A.B. Caldwell, 1912), 85; for information on William Hope Hull see Northen and Graves' *Men of Mark*, 204; for information on Lewis N. Whittle see Lewis G. Pedigo, *History of Patrick and Henry Counties, Virginia,* (Baltimore: Regional Publishing Co., 1977), 69.

[50] *Macon Daily Telegraph,* "System of Laws." Online Article. January 9-11, 1866. America's Historical Newspapers Database. Accessed 9/24/15.

Introducing their original recommendation for the code of laws, the Commission of 5 warned the General Assembly that the proposal would be seen as, "too little for those who are expecting an instant and speedy remedy for all the ills which the present crisis has brought upon us;" and, "too much for those whose prejudices have not yet yielded to the necessities of our situation."[51] Although this new set of laws would see many changes before it was adopted as the Black Code of Georgia in March of 1866, there is no doubt that it provided the template for the March legislation.

The defining characteristic of every state's Black Code, including Georgia's, was its attempt to control the movement and labor of the black population. Thus, determining what inspired the statutes that controlled the movement and labor of the freedmen is crucial to understanding Georgia's Code as well as the labor system that emerged immediately after emancipation. Many of the statutes that comprised Georgia's Code were motivated by previously adopted Black Codes of surrounding states, the bigoted lens through which southern whites viewed the freedmen, and antebellum laws. However, the antecedents to the statutes that most severely inhibited black movement and labor are located in the precedents set by the Union Army labor policies regarding escaped slaves during the war, Freedmen's Bureau circulars, and existing northern laws that provided precedents for how best to control the labor of the lowest socioeconomic classes.

Locating the Antecedents

"The Acts of the General Assembly of the State of Georgia" also known as the "Black Code of Georgia", began, as did all Black Codes, by defining what it meant to be a "person of color" and prescribing the freedmen's new civil and legal rights as free people. Both the

[51] IBID.

definition of a "person of color" and the rights they were provided mirrored those laid out in the Black Codes of earlier states like Mississippi and South Carolina, suggesting that the Georgian legislators simply adopted the existing ideas.[52] All "negroes, mullatoes, mestizoes, and their descendants," Georgia's Code read, "having one-eighth negro, or African blood, in their veins, shall be known in this State as 'persons of color'." Further, the law provided persons of color with the right to make and enforce contracts; to sue and be sued, to be parties and give evidence; to inherit, purchase, lease, sell, and hold personal property; and to have equal protection under the law.[53]

The Confederate defeat in the Civil War had destroyed the racial hierarchy that slavery had enshrined in law, and even though the southern army was defeated, their ideology had survived. This white southern ideology had been developed throughout the two and a half centuries of slavery, and unsurprisingly, it continued to motivate many of the legal changes that came to comprise the Black Code of Georgia. Among the most common arguments put forward in the antebellum period to justify slavery was the contention that the black or African race was predisposed to violence and criminality. Pro-slavery ideologues, beginning especially in the 1830s and 1840s, employed what they saw as a lack of civilized development in Africa to argue that Africans, when not under the direct control of whites, reverted to unmitigated savagery and cannibalism.[54] Even though the apparatuses of control that were inherent in the institution of slavery assuaged white anxieties of a society overrun by black criminality, one of the most palpable white fears throughout the antebellum period was the idea of black insurrection. To insure that blacks, whether slave or free, could not foment rebellion, legislators in every slave

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[52] Mississippi, *Laws* (1865), c. 2, sec. 1; South Carolina, *Acts* (1865).
[53] Georgia, *Acts* (1865-66) No. 250.
[54] George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914,* (New York: Harper & Row, 1971), 49.

state made meeting and the right to bear arms illegal for all blacks. However, the collapse of slavery meant the collapse of the legal mechanisms that provided whites with nearly total control over the movement and actions of the black population.

Crippled by the fear of racially motivated attacks by the ex-slaves, the Georgia legislature drastically increased the penalties for crimes that they believed were more likely to be committed by the freedmen. When the set of laws was adopted in March of 1866, burglary in the night, arson when the building was occupied, theft of a horse or mule, rape, and insurrection were all made capital offenses, though couched at the end of the modified laws was the stipulation that upon the recommendation of the jury, the punishment could be converted from execution to imprisonment for two to five years.[55] The March legislation did not explicitly state that these crimes were made capital because they were more likely to be committed by the freedmen. But the original bill that recommended the capitalization of these laws was introduced in January as, "a bill to define and punish capital and minor offenses, when committed by persons of color." This bill defined insurrection or any attempt to excite insurrection, poisoning or any attempt to poison another, rape, burglary, and arson, all as capital offenses.[56] Although the modified laws were not explicitly racialized, the Georgia legislature enhanced the severity of these laws because the harsher sentences posed no threat to the white citizenry. Blacks were not allowed to serve on juries, and thus, the all white adjudicators could ensure that the crimes were capital when committed by an African-American and non-capital when committed by a white. Essentially, Georgia's legislators drafted overtly indiscriminate laws that were able to be applied racially. Although this violated the provision in the Black Code stating that persons of color

[55] Georgia, *Acts* (1865-66), Nos. 234, 235.
[56] *Macon Daily Telegraph,* "Georgia Legislature." Online Article. January 27, 1866. America's Historical Newspapers Database. Accessed 7/30/15.

shall not be subjected to any different punishment than that which would be prescribed for whites, because it did so in a *de facto* manner, it did not violate the law.[57]

Yet, the white ideology that most affected the writing of Georgia's Black Code was that which decreed that blacks were innately indolent and thus, represented a threat to the success of the emerging system of free labor. The same argument employed by pro-slavery ideologues in the antebellum period, like Professor Thomas R. Dew of William and Mary College, who argued that the "free black will work nowhere except by compulsion," continued to imbue, not only the minds of white southerners, but whites in general, long after the abolition of slavery, serving to motivate the creation of new laws to control black labor.[58]

For many slaves emancipation signified the end of long hours laboring in the field at the behest of another, which led a large number of freedmen to refuse to enter into wage labor contracts with white planters in the summer and fall of 1865. Understandably, the freedmen were reluctant to return to the same form of labor that had defined their existence as chattel. But given the political economy at the time, black attempts to engage in labor purely to achieve self-subsistence only further entrenched the existing belief that blacks would not work without compulsion. The economic situation in Georgia was becoming increasingly dire. The economy relied on the production and sale of cotton, which depended on large amounts of manual labor. As the summer and fall of 1865 unfolded, however, it became clear to whites that the freedmen preferred living in poverty and chasing self-subsistence to laboring under their former masters. The existing belief that blacks were innately idle looked even more prominent because it combined with a fledgling political economy in which the freedmen refused to return to plantation labor. In the eyes of many whites, this refusal to work was crystalline proof that

[57] Georgia, *Acts* (1865-66), No. 250.
[58] Quoted on pg. 46 of George Fredrickson's, *The Black Image in the White Mind*.

blacks were innately lazy, and led to calls throughout the polity for the "government," as one citizen of Thomas County, Georgia wrote, to dedicate "more power to restrain[ing] vagrancy." "Unless the negroes can be kept in better order," he concluded, "they will be a terrible incubus on business and society."[59]

The "evils" of "sudden emancipation" had come to fruition in the eyes of Georgia's citizens and legislators, and this necessitated a new approach to inculcate in the freedmen the habits that whites believed they were lacking. Throughout the South at the time, legislatures looked to increasingly severe vagrancy laws to control black labor. These laws, though different in every state, aimed to establish a large population of black plantation laborers, effectively, by criminalizing black unemployment. In Georgia, any person that appeared to be living in idleness with no property – essentially any black who was not doing manual labor – was deemed a vagrant. Those who still ignored the directive to engage in plantation labor, if convicted of vagrancy, could be forced to labor on the public works or be bound out to labor under a private individual. The message of the vagrancy law was simple: work or be worked.[60]

The perseverance of the pro-slavery antebellum ideology not only provided the impetus for the modification of many laws, but it also led Georgia's legislators to continue antebellum practices that were already enshrined in law. There was no more obvious example of the state's effort to maintain the preexisting system than the apprenticeship law of 1866. The apprenticeship statute of Georgia's Black Code provided the Judge of the County Court with the power to bind out all minors whose parents were deceased or whose parents, whether from age, infirmity, or poverty, were unable to support them.[61] The law was colorless. But again,

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[59] *Macon Daily Telegraph,* "Letter From Thomas County." Online Article. September 30, 1865. America's Historical Newspapers Database. Accessed 9/10/15.
[60] Georgia, *Acts* (1865-66), No. 240.
[61] IBID, No. 3.

discretion was welded into the law. In this case judges were allowed to decide whom to bind out and under whom they should be apprenticed, allowing the law to function racially. Edwin Belcher of the Georgia Freedmen's Bureau confirmed the racial application of the law, reporting that approximately one-third of the black children had been bound to planters.[62] That the apprentice law of 1866 allowed the planting class to recreate a quasi version of slavery is no surprise. "The articles regulating… master and apprentice are quite lengthy, but in effect almost exact transcripts of the old common law," wrote an editor for the *National Intelligencer*.[63] Although the Georgia legislature may have mobilized certain antebellum laws that reflected prejudicial attitudes towards blacks, this is not to say that the Black Code simply recycled antebellum laws governing free blacks. Instead, the perpetuity of the antebellum apprentice statute showed that the white Confederate ideology had not been defeated.

Most egregiously, the prejudiced ideology informed the creation of a coercive labor system defined by stringent contract stipulations, specifically vagrancy statutes, first implemented by the Union Army when faced with an increasingly large number of escaped slaves, and later by the Freedmen's Bureau. With the Confiscation Act of 1861, the Union Army was forced to make decisions regarding the treatment, organization, and labor of ex-slaves, and it was these policies toward the freedmen that provided much of the inspiration for the legal system that would emerge with the termination of the Civil War. As more and more slaves escaped to Union lines – beginning in 1861 - army officers, wanting to minimize federal expenditures on the freedmen, and more importantly, ensure the continued production of cash crops, employed the freedmen as agricultural laborers on land controlled by the federal government as well as private

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[62] Paul A. Cimbala, *The Terms of Freedom: The Freedman's Bureau and Reconstruction in Georgia, 1865-1870,* (Emory University, Thesis, 1983), 565.
[63] *National Intelligencer,* "Letter From the Editor." Online Article. January 6, 1866. Proquest Historical Database. Accessed 9/14/15.

lessees. These Union officials shared many of the bigoted ideologies of white southerners and exhibited strong reservations regarding the free black's propensity to labor.

This led to the establishment of a coercive contract labor system that did not appear to be much different than the system of slavery from which the freedmen had just escaped. In January of 1863, Union General Nathaniel Banks, stationed in Louisiana, issued General Order No. 12, stating that all freedmen who had been contracted out "shall be required to remain upon the plantation to which he is bound, to work faithfully and industriously, and maintain a… subordinate deportment toward his employer." All freedmen, the Order continued, "not otherwise employed, shall immediately be put to labor upon the public works, and all negroes found… without visible occupation or means of subsistence, shall be arrested as vagrants, and put to labor upon the public works or the… plantations."[64] Banks reassured planters that once a freedmen had signed a contract, the Union Army would enforce "conditions of continuous and faithful service… correct discipline, and perfect subordination on the part of the negroes."[65] With this order, Banks provided the foundation for the emerging labor system that would insure perpetual access to black manual labor through stringent vagrancy laws. Beginning with Banks, Union Army labor policies would posit Union officials, not as agents of black socioeconomic elevation, but instead, as quartermasters of black labor. General Banks, with the support of the federal government, was the first to convey the idea that freedom for the black population did not imply a lack of white control over their movement or labor. Freedom, for Banks and for many of his successors, connoted black subordination.

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[64] N.P. Banks, Circular by the Sequestration Commission, Enclosing a Contract Form, February 6, 1863, quoted in Ira Berlin, Thavolia Glymph, Steven F. Miller, Joseph P. Reidy, Leslie S. Rowland, Julie Saville, *Freedom: A Documentary History of Emancipation, 1861-1867,* Series 1, Vol. 3 "The Wartime Genesis of Free Labor: The Lower South", (Cambridge: Cambridge University Press, 1990), 419.

[65] N.P. Banks, General Orders No. 12, January 29, 1863, quoted in Claude H. Nolen, *African American Southerners in Slavery, Civil War, and Reconstruction,* (Jefferson, NC: McFarland & Company, 2001), 110.

However, the contributions of Union Army policies to the postwar legal system did not deal only with emerging ideas of freedom. Banks had made it clear that he believed black freedom would lead to an increase in idleness, and it was this belief along with particular contract stipulations that would persist long after the Civil War. General Banks urged planters to withhold payment until the end of the season and allowed planters to pay the freedmen with a portion of the crops raised, rather than wages.[66] These exact stipulations would be incorporated into the Black Code of Georgia, and provided the precedent for the sharecropping system that defined the South well into the 20th century. As the Civil War unfolded and the federal government's land holdings diminished, the former slaves were forced to work for their former masters and other landowners, and the termination of the War only allowed this process to carry forward.

With the emancipation of the slaves at the end of the Civil War, the Freedmen's Bureau, established to facilitate the transition from bondage to freedom, expanded on many of the army's existing policies to fit the post-war climate. In doing so, the Bureau provided many of the policies that would inspire the vagrancy law of the Black Code of Georgia. The Commissioner of the Bureau, Oliver Otis (O.O.) Howard, a Union general, appointed Rufus Saxton, a Union Brigadier General to oversee the Freedmen's Bureau in Georgia, South Carolina, and Florida. Saxton had been an abolitionist and this ideology affected his policy towards the freedmen. He pursued a program of settling freed slaves on land that had been confiscated by the Union Army, but unfortunately he spent far too much time focusing on South Carolina and failed to organize the Bureau in Georgia, leading to his removal as Assistant Commissioner.

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[66] Louis S. Gerteis, *From Contraband to Freedman: Federal Policy Toward Southern Blacks, 1861-1865,* (Westport, Conn: Greenwood Press, 1973), 80.

Recognizing that tasking one individual with supervising the Bureau in three different states might be unrealistic, Commissioner O.O. Howard appointed Brigadier General Davis Tillson to run the Bureau in Georgia in September of 1865.[67] Once Tillson assumed command, however, it quickly became clear that his approach would diverge from that of his predecessor. His political career prior to involving himself in the Freedmen's Bureau saw Tillson occupy many positions as a Republican in the legislature of his native state of Maine. When he voyaged south to head the Bureau, first in Memphis and then in Georgia, he brought the laissez-faire ideology towards the poor and dependent classes that defined the northeastern United States at the time, along with him. Tillson did not see the Freedmen's Bureau as responsible for supporting the former slaves. Rather, he was motivated by a pragmatic objective: to provide the freedmen with the opportunity to support themselves. Lack of dependency, in Tillson's eyes and according to the socioeconomic laws of the American Republic, was the defining characteristic of citizenship.[68]

As Tillson took control of the Bureau in Georgia he was faced with a black population that refused to make labor contracts, as they believed they would be apportioned land by the federal government. Thus, Tillson's first task was to dispel this myth and in doing so, his attitude toward the freedmen became clear. In front of an assemblage of freedmen in Washington, Georgia, on October 1, 1865, Gen. Tillson advised the freedmen to make contracts for the upcoming year, stating that they should not expect to be well paid, but that he would do his best to insure that they were not mistreated as long as they adhered to the stipulations of the contract. Reflecting his fear that the freedmen might renege on their contract, he threatened: "if

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[67] General Order No. 1, *Bureau of Refugees, Freedmen, and Abandoned Lands*, Office Acting Assistant Commissioner, State of Georgia, Issued in Augusta GA, September 22, 1865.
[68] John A. Carpenter, *Sword and Olive Branch: Oliver Otis Howard*, (Pittsburgh: University of Pittsburgh Press, 1964), 108.

the freedman violates his contract… the Federal authorities would make him work in a manner he would not relish." Further, he warned, if the freedmen tried to obtain land in any other manner than through honest labor, "they would be severely punished," even if it required an army "thrice as large as that which Sherman marched through Georgia," to do so. As to where to look for employment, Tillson complacently suggested that the freedmen "go at once to some former slaveowner, one who had always dealt kindly with his servants." Concluding the address that served as the freedmen's introduction to Tillson, the Assistant Commissioner stated explicitly that no equality could exist between the races, and that he will not let himself "down to a level with the freedmen by dining at his table, kissing his baby, etc."[69] Tillson's predisposition to view the freedmen as indolent and threatening to the establishment of a free labor system led him to implement many policies that, interestingly, were more stringent than those that would later comprise the vagrancy law of Georgia's Black Code.

The freedmen's reluctance to enter into labor contracts was not the only obstacle to establishing a new free labor system. The former masters, imbued with the belief that blacks would not work unless forced, looked to the Freedmen's Bureau to insure that the freedmen would not violate their contracts once signed. Anxieties among planters and Bureau officials emerged both because the freedmen were hesitant to sign contracts, and because planters seriously doubted whether the freedmen would carry out their contracts once signed. Aware that if the employer's apprehensions led them to refuse to make contracts with the freedmen, the southern agricultural economy would collapse and widespread destitution for the black population would emerge, Tillson prescribed severe methods of labor compulsion in an attempt to alleviate the reluctance of the planters. On November 15, 1865, General Tillson released

[69] *Macon Daily Telegraph,* "Gen. Tillson's Advice to the Freedmen." Online Article. October 12, 1865. America's Historical Newspapers Database. Accessed 1/23/16.

Circular No. 4, which explained the role the Bureau agents would play in mediating contract negotiations between the freedmen and the planters. More importantly, though, the Circular prescribed the ends to which Bureau agents could go to enforce the freedmen's compliance with their signed contracts. "Whipping, having been abolished in the army and navy, is forbidden," read Sec. VI of the circular; however, "fines, loss of wages, in whole or part, imprisonment, imprisonment at hard labor, solitary confinement on bread and water… labor with ball and chain… will amply suffice to enforce compliance with contracts."[70] With the release of Circular No. 4, Tillson and the Freedmen's Bureau made it clear that they prioritized the reinvigoration of the southern plantation economy over the wellbeing of the freedmen. When southern legislators recognized that the same antiquated methods of labor coercion that they wanted to implement had the support of the federal government, they quickly incorporated the provisions into their original "System of Laws".

A little over a month after the release of Circular No. 4, the Commission of 5 submitted their work, and it was immediately clear that the five jurists had integrated many of the precedents set by the Freedmen's Bureau. Article XII titled, "Offenses by Persons of Color" stated that upon the conviction of vagrancy, a person of color could be punished by a fine not exceeding two hundred dollars, imprisonment, labor on the public works, confinement on bread and water, and confinement on the stocks and pillory. The second conviction of vagrancy for any person of color, the law read, will be sentenced with any of the two aforementioned punishments.[71] Solitary confinement on bread and water had never been prescribed as a punishment for any offense prior to the release of Circular No. 4 of the Freedmen's Bureau, a

[70] Circular No. 4, *Bureau of Refugees, Freedmen, and Abandoned Lands*, Augusta, GA. Proquest Congressional Database. Accessed 9/14/15.
[71] *Macon Daily Telegraph,* "System of Laws." Online Article. January 9-11, 1866. America's Historical Newspapers Database. Accessed 9/24/15.

clear indication that the Commission of 5 had taken inspiration from the Bureau's prerogatives. Interestingly, the Commission of 5's recommended set of laws prescribed punishments that were less severe than those suggested by the Freedmen's Bureau. The loss of one's wages, either in part or in whole, and labor with a ball and chain were discarded in the Commission's recommendation for the System of Laws, presumably because they were deemed too reflective of slavery.[72]

As November and December of 1865 unfolded, Tillson found confirmation in his assumption that the freedmen would serve as the primary impediment to the establishment of a free labor system in Georgia. For months the Bureau in Georgia had received letters from planters reporting that a high demand for labor existed in the State, yet employers still had trouble inducing the freedmen into making contracts.[73] The punishments for absconding on a contract erased the planter's anxieties regarding the likelihood that the freedmen would not comply with their contracts, but the freedmen remained reluctant to return to plantation labor.

This led Tillson and the Freedmen's Bureau to issue Circular No. 5 on December 22, 1865, which amended the punishment for those who refused to enter into a contract, and provided the final contribution to what would become the vagrancy statute of Georgia's Black Code. Freedmen who had sufficient property to support themselves and their families without making contracts had the right to refuse to make contracts, but in all other cases, which involved the "vast majority of the freed people… it is absolutely necessary that they make contracts," for the coming year. The Circular allowed the freedmen to select their own employer, but if they had no evidence of a contract by January 10, 1866, Bureau agents were instructed to make labor contracts for them. These contracts, the Bureau declared, "shall be as binding on both parties as

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[72] IBID.
[73] See J.G. Barnet to D. Tillson, November 1, 1865. *Bureau of Refugees, Freedmen, and Abandoned Lands*, Augusta, GA, Proquest Congressional Database. Accessed 9/14/15.

though made with the full consent of the freed people."[74] Tillson's provision that freedmen must have evidence of employment for the coming year by January 10 mirrored the most severe vagrancy laws of surrounding Cotton Belt States, and the fact that it was announced after the ratification of the Mississippi Black Code suggests that Tillson may have taken inspiration from the state's vagrancy law.[75]

The last section of the Circular provided the final antecedent to the future vagrancy statute of Georgia's Black Code. Sec. V. of Circular No. 5 provided an anti-enticement law, stating that it was a criminal offense to "entice laborers to leave their employers before the expiration of their contracts, either by offering higher wages or other inducements."[76] These anti-enticement laws were some of the most consequential statutes of the Black Codes of all southern states. In criminalizing the enticement of laborers already engaged in a contract, competition between whites for black labor would remain at a minimum, keeping the price of black labor at the lowest possible market value. Essentially, these anti-enticement laws ensured that the black laborers had no control over their wages earned. By the time the vagrancy law emerged from the floor of the state legislature in March of 1866, the Bureau's previous prescriptions for punishing vagrancy that consisted of confinement on bread and water and confinement in the stocks and pillory, the provision that every ex-slave must have evidence of employment for the coming year by a certain date, and any overt anti-enticement statute, had all been removed. This left the southern Democrat-dominated Georgia legislature with a vagrancy

[74] Circular No. 5, *Bureau of Refugees, Freedmen, and Abandoned Lands*, Augusta, GA, December 22, 1865. Proquest Congressional Database. Accessed 9/14/15.
[75] See Mississippi, *Laws* (1865), c. 2, sec. 1 and 2.
[76] Circular No. 5, *Bureau of Refugees, Freedmen, and Abandoned Lands*, Augusta, GA, December 22, 1865. Proquest Congressional Database. Accessed 9/14/15.

law that was less stringent than many of the vagrancy provisions which the Freedmen's Bureau had prescribed.

Although the vagrancy law of Georgia's Black Code did not explicitly contain an anti-enticement provision, it incorporated the goal of limiting competition between whites for black labor that had been set by the December Circular. The provision of the vagrancy law of 1866 that read "it shall be lawful for any person to arrest said vagrants" allowed whites to arrest any individual – in reality, any black – who appeared a *prima facie* vagrant. Any black who searched for higher wages or better working conditions would have been seen as an able-bodied person, "wandering or strolling about," and was therefore subject to arrest as a vagrant. While the ability for any (white) person to arrest an individual believed to be a vagrant, punished the employee searching for better work, rather than the employer – in this way different than a traditional anti-enticement law that punished the employer - the provision had the same effect as it kept competition between whites for black labor to a minimum.[77]

While the vagrancy law that emerged with the release of Georgia's Black Code in March of 1866 provided three definitions of a vagrant, all conveyed the same message. A vagrant is one who, despite being able to work, has no property to support himself and lives in idleness.[78] This definition of a vagrant parallels the contract stipulations provided by the Bureau in Circular No. 5, and even though the Bureau order does not contain the word "vagrant," the underlying idea is the same. Not only is the ideology regarding a vagrant the same, but the punishments prescribed by both the Freedmen's Bureau in Circular No. 5 and the Georgia legislature are identical as well. Under the Bureau Circular, the punishment for a freedman who refused to

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[77] Donald G. Nieman, *To Set the Law in Motion: The Freedmen's Bureau and the Legal Rights of Blacks, 1865-1868*, (Millwood, NY: KTO Press, 1979), 96.

[78] Georgia, *Acts* (1865-66), No. 240. The unequal application of the law against blacks makes it clear that this law only applied to the freedmen.

enter into a contract was for a Bureau agent to make one in his name; under the vagrancy law of Georgia's Black Code, the punishment was labor on the public works. In both instances, the punishment for refusing to contract was forced labor.

Circular No. 5 provided the final precedent for the March vagrancy statute. The idea was that every freedman who did not own enough property to support themselves and their families owed a portion of their labor, whether it was surrendered willingly or not. The fact that the Freedmen's Bureau, an organization established by the federal government to aid and protect the freedmen after emancipation, provided many of the precedents for Georgia's racially oppressive Black Code is important because it challenges the existing idea that the Black Codes were a wholly southern institution.

The Union victory in the Civil War confirmed for those in the North not only their military supremacy but the superiority of their wartime system of labor as well. Thus, Freedmen's Bureau officials, the vast majority of whom were drawn from the Union Army, when tasked with establishing a new system of labor, looked to reconstruct the South in the image of the North as it existed in 1866. The North, in the thirty years preceding the Civil War, saw an increase in the urban population of over 700%, leading to a massive increase in the number of beggars, which created anxieties regarding labor that paralleled those existing in the South.[79] In response, northern state legislatures augmented older codes by passing harsh new vagrancy laws that punished persons who wandered about lacking work with both imprisonment and forced labor.[80] These new vagrancy laws provided a model for Bureau officials who were looking for the best method to curtail the perceived indolence of the freedmen. General Tillson, addressing a group of planters and freedmen in Athens, Georgia in December of 1865, stated

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[79] Paul Boyer, *Urban Masses and Moral Order:1820-1920,* (Cambridge, MA: Harvard University Press, 1978), 67.
[80] Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation*, (Cambridge: Cambridge University Press, 1998), 99.

that, "all able bodied negroes shall be made to work."[81] This statement made it clear that Tillson had implemented the ideology espoused in the current northern vagrancy laws, which, in punishing unemployment with forced labor, established labor compulsion as a means through which the supremacy of free labor would be enshrined in law.

The influence of northern laws on the creation of the Black Codes of Georgia and other surrounding states, however, was not only prompted by northern emissaries. Southern politicians looked to northern laws that aimed to control and organize the labor of the lower socioeconomic classes. On November 22, 1865, Lewis Parsons, the Provisional Governor of Alabama, advised his state's legislature to create a special code for the government of the freedmen. Faced with an increasingly large population of destitute freedmen, Governor Parsons recommended the adoption of vagrancy laws, suggesting, "vagrant laws similar to those in force in the State of Massachusetts be adopted."[82] Parsons, prior to taking office as governor, had served in the Confederate Army; yet, regardless of the detestation with which he must have viewed the North, he still believed that the Massachusetts vagrancy law was severe enough to compel the freedmen to labor. The Massachusetts law defined a vagrant as "idle or dissolute persons," who "neglect… employment, misspend what they earn and do not provide for themselves or for the support of their families." The punishment for said crime was a term, not exceeding six months, in the workhouse, a building in which able-bodied paupers and petty criminals were forced to labor.[83]

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[81] *New York Times,* "The Freedmen's Bureau: Necessity of Having the Best Men for Agents." Online Article. December 5, 1865. Proquest Historical Database. Accessed 9/30/15.
[82] *New York Times,* "Restoration in the South." Online Article. November 25, 1865. Proquest Historical Database. Accessed 9/30/15.
[83] William A. Richardson, Editor; George P. Sanger, Editor. *General Statutes of the Commonwealth of Massachusetts: Enacted December 28, 1859, to Take Effect June 1, 1860*. Boston, Published by the Commonwealth. Print; Heli Meltsner, *The Poorhouses of Massachusetts: A Cultural and Architectural History*, (Jefferson, NC: McFarland & Co. Publishers, 2012), 5.

Although this does not point explicitly to Georgia, the precedent that the Massachusetts legislature provided to Alabama was the same precedent that would come to define the vagrancy law of Georgia's Black Code. Taking inspiration from both the definition and punishments espoused by northern vagrancy laws, southern legislatures defined vagrants as those able-bodied persons who had neither property to support themselves or their family, and lacked employment, punishing those convicted with compulsory labor.

The South Follows the North

Prior accounts of the Black Codes have characterized them as wholly southern, as a last ditch effort by former Confederate ideologues to reinstitute, as close as possible, a system of racial hierarchy revolving around a system of involuntary servitude. Yet, these appraisals completely overlook the northern influence on the creation of the infamous legislation. Certainly some antecedents to the Georgia Black Code involved abiding by white southern prejudice; but more important and influential were the Union Army and Freedmen's Bureau labor policies, and existing northern vagrancy laws. The misconception that the Black Codes are wholly southern could be attributed to the fact that recent interpretations of Reconstruction, moving away from the postrevisionist school, describe northerners in the South after the Civil War – whether it was army officials or Freedmen's Bureau agents – as agents of black socioeconomic progress. This interpretation is challenged once it is recognized that the infamously discriminatory Black Codes were motivated as much by the North as they were by the white southern gentry. Compartmentalizing the Black Codes as a body of legislation idiosyncratic to the South certainly helps to further chastise white southerners at the time as unflinching racists, but a problem arises

when this implies that northerners were racial egalitarians who stood anathema to everything the Black Codes represented.

The Black Code of Georgia, and the labor controls that defined the legislation, are as northern an institution as they are southern. Thus, to truly understand the Black Code of Georgia, as well as the systems of law and labor that emerged in the South after emancipation, we must further examine the links between Georgia and the North, and the particular reason the Georgia Code was accepted and endorsed.

Chapter III

The South Goes North

When Georgia's General Assembly concluded its session on March 13, 1866, the legislators had accomplished much for which they might have been proud. The session that began in December had lasted far longer than those of other southern states, but even with its many dissenting factions, the General Assembly was able to produce a new set of laws that reflected the realities of the time. The three-hundred and fifty-one-page set of laws titled, "The Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session in December 1865, and January, February, and March 1866," established new county limits and imposed new tax laws in an attempt to revitalize the state that had been burned to the ground just over a year prior. But most importantly, the new set of laws provided for the government of the former slaves.

Through vagrancy, apprenticeship, and stringent contract laws, Georgian legislators ensured the existence of a ready supply of black manual laborers. Yet, what is most impressive about the legislation that would come to be infamously known as the Black Code of Georgia was the response it received from those in the North. The Georgia Code, unlike the Black Codes of surrounding states, avoided the scorn of Congress because it fit within the larger northern legal tapestry of the period. This broad legal pattern was defined by ostensibly non-discriminatory attempts to control the labor of marginal constituencies, and a total investment in the free market. Interestingly, the Georgia legislature had managed to create a discriminatory code that both

avoided the ire of Congressional Republicans in Washington, and was championed as an indication of southern progress

The only states to produce Black Codes in 1865 were Mississippi, South Carolina, and Louisiana and the explicitly racist laws set forth by those states provided the catalyst for enormous changes in Washington with respect to the existing plan for Reconstruction. The Black Codes of South Carolina, Mississippi, and Louisiana, which, among other things, required all blacks to possess written evidence of employment for the coming year by January 1st; provided that freedmen who left their place of labor prior to the expiration of their contracts would forfeit all wages earned; forbade freedmen from renting land; barred all blacks from following any occupation other than farmer or servant; and set the daily hours of labor from sunup to sundown.[84] In the eyes of most northerners, these laws were simply an attempt to reestablish slavery and stood as an insult to those who had lost their lives fighting in the Civil War. "We tell the men of Mississippi," wrote the *Chicago Tribune* on December 1, 1865, "that the men of the North will convert the state of Mississippi into a frog-pond, before they will allow any such laws to disgrace one foot of soil in which the bones of our soldiers sleep and over which the flag of freedom waves."[85] These laws were an affront to the North. And, in implying what the future of the South would look like if southern state governments were granted autonomy, the laws exacerbated the emerging concerns that Congressional Republicans had with President Andrew Johnson's plan for Reconstruction. Thus, the Black Codes of Mississippi and South Carolina led to the end of Presidential Reconstruction and the beginning of Congressional Reconstruction.

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[84] See Mississippi, *Laws* (1865); *Acts of the General Assembly of South Carolina, 1864-1865, Extra Session of 1866,* Columbia, South Carolina; *Acts of the General Assembly, 1865*, New Orleans.

[85] *Chicago Tribune*, "Black Codes of Mississippi: Remarks." Online Article. December 1, 1865. Proquest Historical Database. Accessed 12/9/15.

With the assassination of Abraham Lincoln in April of 1865, Vice President Andrew Johnson, the former Democratic military governor of Tennessee, ascended to the presidency of the United States, and many Republicans who had become dismayed with Lincoln saw this as a stroke of good fortune. Johnson's career as governor of Tennessee during the Civil War led many to believe that his plan for Reconstruction would catalyze radical change throughout the former Confederate States. "Treason must be made odious, and traitors must be punished and impoverished," declared Johnson in 1864; and later that year he declared himself a "'Moses.' Leading blacks to a promised land of freedom."[86] Further, Johnson's political career had been defined by his hatred of the southern "slaveocracy", and when he first released his plan for Reconstruction, a little over a month after taking office, his policies seemed to reflect a desire to erase the slaveholding elite's political and economic hegemony, providing the yeomanry with the best possible path to socioeconomic mobility.

Johnson's plan of Reconstruction, released on May 29, 1865, conferred amnesty and pardon, including the restoration of all property rights excluding slaves, to former Confederate supporters who took an oath pledging both loyalty to the Union and support for emancipation. Although the plan established fourteen classes of southerners who were required to apply individually for Presidential pardons, it reinstated the voting qualifications that had existed just prior to secession.[87] Johnson's Reconstruction policies were initially met with widespread support both north and south of the Mason-Dixon line, but the plan rested on the belief that the Confederate ideology had been expunged with the Union victory, and the emergence of South

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[86] Shelby M. Cullom, *Fifty Years of Public Service: Personal Recollections of Shelby M. Cullom, Senior United States Senator from Illinois,* (Chicago: A.C. McClurg & Co., 1911), 143; quoted in Eric Foner's *Reconstruction: America's Unfinished Revolution,* (New York, 1988), 177.

[87] *The New York Herald*. "Amnesty: The Terms of Pardon for the Rebels." Online Article. May 30, 1865. America's Historical Newspapers Database. Accessed 11/29/15.

Carolina, Mississippi, and Louisiana's Black Codes showed plainly that the ideology had persevered.

Offended by the discriminatory legislation passed by the South Carolina, Mississippi, and Louisiana State legislatures in December of 1865, Republicans in Congress looked to implement new legislation that would prevent all future forms of racialized law from being enforced. When Congress returned from Christmas break in January of 1866, Lyman Trumbull, a moderate Republican Senator from Illinois and chairman of the Judiciary Committee, presented a bill to extend the life and expand the authority of the Freedmen's Bureau. The bill stipulated that the freedmen were entitled to "any of the civil rights… belonging to white persons," and afforded the freedmen "full and equal benefit of all laws and proceedings," providing that no laws could discriminate on the basis of race when punishing those convicted. Any state official who continued to enforce discriminatory statutes would be punished by a fine as much as $1,000 and imprisonment for up to one year.[88] This Bureau bill, however, was only envisioned as a temporary measure and therefore only provided the freedmen with short-term legal protection. Recognizing the flaw, Trumbull supplemented the bill with a national civil rights act. Mimicking the language of the Bureau bill, the civil rights bill guaranteed freedmen equal rights in state law and nullified any law that applied specifically to one race. Drafted in response to the Black Codes of 1865, Trumbull's bills, which would ultimately be passed in April as the Civil Rights Act of 1866, reflected an admirable attempt to protect the freedmen from discriminatory legal practices. Unfortunately, however, they were ill suited to defend the southern black population from the Black Codes of 1866.

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[88] For text of the bill see Edward McPherson, *The Political History of the United States of America, During the Period of Reconstruction (from April 15, 1865, to July 15, 1870,) Including a Classified Summary of the Legislation of the Thirty-ninth, Fortieth, and Forty-first Congresses.: With the Vote*, (Washington: Philp & Solomons, 1871), 74.

The inability of the Civil Rights Act of 1866 to accomplish its goal of insuring the freedmen equal rights highlights the Congressional Republicans' myopic efforts to curtail legal discrimination in the former Confederate States. Rather than establishing an inventory of rights to which the freedmen would be entitled throughout the United States, the bill forced southern states to provide the freedmen the same rights, obligations, and liabilities that were imposed upon white persons. The bill made no attempt to inhibit the racist application of any southern laws; instead, as Trumbull emphasized while debating the bill on the Senate floor, "all that is required is that… the laws be impartial."[89] This provided a loophole through which state officials could harshly punish the freedmen, enforce the freedmen's specific performance of labor contracts, and use vagrancy or anti-enticement laws to coerce the freedmen to labor under undesirable terms. Because, as long as it was accomplished under laws that did not explicitly single out one race, the actions were deemed legal.[90] Although one might assume that Republicans were aware that de jure equal rights did not imply de facto equal rights, the Senate debates on the civil rights bill make it clear that Trumbull and other Republicans failed to differentiate between explicitly discriminatory laws and more illusive forms of racial discrimination. In their minds, if a law claimed to apply equally to whites and blacks alike, it was non-discriminatory.[91]

While the civil rights bill would not be adopted until April of 1866, southern legislators, by the end of 1865, were well aware of the coming legislation. On December 19, 1865, Trumbull informed the Senate that the Judiciary Committee was in the process of creating a bill that would protect the rights of the freedmen. A little over a month later, on January 30, Jacob

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[89] See Remarks of Lyman Trumbull in *Congressional Globe*, 39 Cong., 1 sess., 1760.
[90] See chapter 4, specifically pg. 109-111, "Bricks Without Straw" in Donald G. Nieman, *To Set the Law in Motion: The Freedmen's Bureau and the Legal Rights of Blacks, 1865-1868*, (Millwood, NY: KTO Press, 1979), for a fuller explanation of the inadequacies of the 1866 Civil Rights Act.
[91] See Remarks of Lyman Trumbull in *Congressional Globe*, 39 Cong., 1 sess., 1760, 319-320.

Howard, a Republican Senator from Michigan, in advocating for Trumbull's bill, made no attempt to hide the laws that the bill targeted, arguing that discriminatory southern state laws necessitated such a bill.[92] Aware of the effect the impending civil rights bill would have, in January of 1866, Gen. Daniel E. Sickles, the head of the military department in South Carolina, nullified South Carolina's Black Code, contending, "all laws shall be applicable alike to all inhabitants,".[93] Just prior to Sickles' abrogation of South Carolina's Code, Governor William L. Sharkey of Mississippi voided his state's Code.[94] The annulment of the Black Codes of South Carolina and Mississippi signaled the end of two-hundred and fifty years of race-specific laws in the United States, but the legacy of discriminatory legislation was far from over.

Georgia, aware of Congress' harsh response to South Carolina and Mississippi's Codes and to the impending national civil rights act, removed the discriminatory provisions from the "System of Laws" that had been drafted by the Commission of 5 and presented to the State legislature in December of 1865 as a recommendation for Georgia's Black Code. These five men who drafted the "System of Laws" were well aware of the political atmosphere at the time, and in recommending to the legislature an overtly racially discriminatory code, they made it clear that in November and December of 1865, they did not see their advised code as extreme. Although the set of laws would change drastically from the time the Commission of 5 presented their recommendations for a new code of laws to the legislature in December of 1865, to the ratification of the Black Code in March of the following year, the originally recommended code serves as an indication of the ideologies that continued to motivate the Code.

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[92] For text of Howard's speech see *Congressional Globe,* 39 Cong., 1 sess., 503-504.
[93] *Edgefield Advertiser*, "H'dq'rs. Dep't of So. Ca., General Orders, No. 1." Online Article. January 31, 1866. The Library of Congress, Chronicling America Database. Accessed 2/11/16.
[94] Foner, *Reconstruction*, 209.

The Commission of 5's original recommendation contained articles titled, "Offenses Relative to Persons of Color" and "Offenses by Persons of Color", which were comprised of explicitly racialized laws. Article XII, "Offenses by Persons of Color" contained the vagrancy statute, which punished vagrancy with labor on the public works, confinement on bread and water, or confinement in the stocks and pillory. The wording of the law was conspicuously race-specific, as it was placed in the section titled, "Offenses by Persons of Color" showing that in the minds of those drafting this recommended code of laws, vagrancy was a racialized crime.[95]

Article XI, titled "Offenses Relative to Persons of Color", stated that any person of color who was a citizen of another state and was accused of being a pauper, would be forced to leave the state, and if they refused, they would be forced to labor on the public works. Due to the overwhelming destitution of the freedmen, this statute would have functioned to either deport, or compel to labor, any black that was not a resident of Georgia. Article XI also provided an anti-enticement law, making it illegal for any person to knowingly employ a laborer who had already signed a contract for the year. Because freedmen could not be "enticed" away from their places of labor with better pay or working conditions, and could not sign a new contract without being legally discharged from their previous contract, this anti-enticement law that appeared in nearly every southern state's Black Code, created a system of black indentured servitude, not one of free labor.[96]

The Georgia state legislature knew that Congress would soon pass legislation nullifying all discriminatory laws, so as the December through March session unfolded in Milledgeville, Georgia's legislators discarded the discriminatory aspects of the statutes while insuring that the same system of un-free labor would persist. The set of laws that emerged from Georgia's Senate

[95] See *Macon Daily Telegraph,* "System of Laws." Online Article. January 9-11, 1866. America's Historical Newspapers Database. Accessed 9/24/15. Specifically Article XII, Statute No. V.
[96] IBID Specifically Article XI, Statute No. X, XI.

floor in March of 1866, while essentially colorblind, was no indication of a new commitment to racial justice. In reality, it was a political maneuver aimed to appease Congress in order to end the federal occupation of the South and restore rule to the state. Governor Jenkins, on March 12, 1866, in speaking to the State legislature, advised that "it is essential to our restoration that their (freedmen) capacity… should be made full and complete, that… they should be placed on the footing of the citizen. If we are to get rid of military rule – and of the Freedman's Bureau – if we are to have the laws administered by our own Courts… these things must be done."[97] Heeding the recommendation of the governor, the lawmakers removed all articles that prescribed different punishments for blacks than for whites when committing like offenses, discarded the racialized aspects of the vagrancy law, and temporarily eliminated any obvious anti-enticement statute. So successful were Georgia's legislators in passing a set of seemingly non-discriminatory laws that Davis Tillson, anticipating the ratification of the new legislation, predicted that the Bureau would be rendered an "unconstitutional institution," making, "the continuance of Federal interference… clearly illegal."[98]

Although the legislators removed all explicitly discriminatory provisions against blacks, they provided judges "sufficient discretion in sentencing to enable them to impose harsher punishments on blacks than on whites."[99] Yet, all that was required of the Georgia legislature in order to acquiesce to Congress' new stipulations was to draft a set of laws that was ostensibly non-discriminatory. Whether or not the laws functioned in a discriminatory fashion was of no concern to those in Congress.

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[97] *Journal of the Senate of the State of Georgia, at the Annual Session of the General Assembly, Begun and Held in Milledgeville, 1865-1866.* Milledgeville, Georgia, 1866. LLMC Digital Database. 586-587.
[98] *Macon Daily Telegraph,* "The Rights of Freedmen – What Georgia Has Done." Online Article. March 4, 1866. America's Historical Newspapers Database. Accessed 2/2/16.
[99] Nieman, *To Set the Law in Motio*n, 95.

The ratification of Georgia's Black Code was met with Congressional approval. While the Civil Rights Act of 1866 afforded Congress the ability to repeal the discriminatory laws in Mississippi, South Carolina, Louisiana, and Alabama, it was not used to vacate the Black Codes of other former Confederate States including Georgia, where vagrancy statutes and other stringent contract laws remained in effect well into the 20th century.[100] Had Congress found any problems with Georgia's laws, they surely would have nullified them, but the fact that many of these statutes persisted through Reconstruction reflects Congress' approval.

Interestingly, Georgia was the only ex-Confederate state not to include an anti-enticement statute in their Black Code, but when the state legislature later convened for their session in December of 1866, they re-instituted an anti-enticement law that would remain on the books as late as 1966.[101] Remember that the Commission of 5 presented a recommended code to the state legislature in December of 1865, which included an anti-enticement law. However, the statute had been removed before the Black Code was passed in March. One can assume that the lawmakers had removed the anti-enticement provision because they feared that such a law would be seen as discriminating and thus would enrage Congress. Only after the anti-enticement laws included in the subsequent Black Codes of surrounding states did not arouse Congress, did the Georgia legislators reinstate the statute in their set of laws. This points to the fact that Congress' requirements for a non-discriminatory code were not as strict as originally assumed. Georgia had removed the anti-enticement law from their Black Code because they believed it would be seen as discriminatory, but once the legislators recognized that Congress would allow an anti-enticement law as long as it appeared colorblind, the lawmakers immediately reincorporated the statute.

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[100] William Cohen, *At Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control, 1861-1915,* (Baton Rouge: Louisiana State Press, 1991), 32.
[101] See Cohen, *At Freedom's Edge,* 32; *Code of Georgia Annotated,* 1966, secs. 66-9904.

Northern Applause

Georgia's Black Code was met with applause throughout the North. The response to the Code highlights the parochial manner in which northerners viewed the socioeconomic condition in the South. One article in the *New York Times* stated that the moderation of the Code "has been done not from compulsion or for the sake of policy – not grudgingly or reluctantly – but freely, from a sense of justice, and an honest desire to promote the welfare and encourage the good conduct of the negro."[102] Those in the North mistakenly believed that the lack of discriminatory statutes reflected the commencement of a new era of racial egalitarianism in the southern United States. Further, days after the legislation emerged from the Georgia legislature, a *New York Times* editorialist wrote, "Public opinion everywhere approves of this course," because the set of laws, "affords the best practice proof of the determination of this State (Georgia) not to oppress or ill-treat the African race, but to treat them justly and with sympathetic consideration, not merely in words or promises… but in deed and truth, and with all the force of law."[103] Fixated on the ideologies that comprised the Codes of South Carolina and Mississippi, northerners – politicians and citizens alike – yearned for some indication that southerners had accepted the realities of the Confederate defeat and were willing to submit to Congress' demands. When placed alongside the South Carolina, Mississippi, and Louisiana legislation, Georgia's Code, which was bereft of the discriminatory statutes that plagued the previous Codes, was seen as a beacon of hope. On its face, Georgia's Code appeared to be a genuine attempt to provide the freedmen with equal rights and provide them with the necessary tools to improve their socioeconomic standing – and that is exactly how northerners viewed the legislation.

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[102] *New York Times,* "Affairs in the South: Life in Benighted Regions of Georgia." Online Article. April 2, 1866. Proquest Historical Database. Accessed 2/8/16.
[103] *New York Times,* "The Georgia Legislature Defining the Rights of Freedmen." Online Article. March 18, 1866. Proquest Historical Database. Accessed 2/8/16.

However, in championing Georgia's new set of laws, those in the North made it clear that they, by no means, required – or even desired – true racial equality. According to the "prevailing sentiment" of the "masses" in the North, the bill reflected "a cordial willingness to give them (the freedmen) a fair chance," at obtaining subsistence.[104] Apart from the small constituency of Radical Republicans, northerners did not foresee a southern system in which the freedmen were provided with reparations, whether in the form of land or money. All that the freedmen were to be given was "a fair chance," which was provided when the Georgia legislature discarded all discriminatory statutes from its legal system. Yet in celebrating Georgia's set of laws, the editorialist for the *Times* contradicted himself, and in doing so, illustrated the increasing similarities between northern and southern sentiment towards the freedmen. Georgia's Code, according to the writer, provided the freedmen, "every encouragement to make their living and be useful laborers."[105] How could a set of laws be non-discriminatory while at the same time, prepare the freedmen to become laborers? In the minds of those in the North and the South, the natural position of the freedmen was that of the laborer, and therefore, any law that prepared them to become "useful laborers" was not discriminatory; rather, it was proper. Although Congress refused to accept any overtly discriminatory laws, there was a long history in the North of insuring a steady source of laborers through the application of law. The reason the North embraced the Georgia Code goes beyond the fact that Georgia's Code was not explicitly discriminatory, and involves a deeper, more powerful synchrony between what was occurring in Georgia in 1866 and what had occurred in the North for the previous half century. Essentially, Georgia's Black Code received an ovation from the North because it meshed perfectly with the existing legal and ideological tapestry in the northern United States at the time.

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[104] IBID.
[105] IBID.

The Northern Establishment of Free Labor

At the beginning of the 19th century, the North witnessed a rapidly expanding class of free laborers, and it was the governmental response to this new class that set the precedent for how to deal with those transitioning from bonded labor to free labor. The American Revolution catalyzed the Age of Emancipation in the North which was defined by seismic transformations, led by the unraveling of previously unfree labor. This began with the gradual emancipation of slaves and also saw the end of the system of indentured servitude. While the importation of European servants was not abolished until 1820, the number of indentured servants experienced a sharp decline from 1818-1821, and by 1830 were all but non-existent.[106] As African-Americans emerged from bondage in this region, and indented servants ceased to exist, an influx of immigrants from the northern countryside and Western Europe - namely Ireland - would further complicate the socioeconomic situation. The ex-slaves upon gaining their freedom, and the Irish Catholic immigrants upon landing on the eastern coast of the United States, would face intense bigotry. Both groups provided important sectors of the manual labor in the North, and in return the two groups were vilified. Boston was the scene of violent anti-Irish race riots in 1829 and 1846, and signs that read "Irish Need Not Apply" were prevalent throughout most major northern cities. Many of the factories that were willing to hire Irish immigrants placed a limit on the number that were allowed to work at any time, citing their shiftless nature as a threat to production and safety.[107] In his study of immigrant life in New York City in the early to mid 19th century, historian Robert Ernst concluded, "no other immigrant nationality was proscribed as the

[106] David W Galenson, "The Rise and Fall of Indentured Servitude in the Americas: An Economic Analysis." *The Journal of Economic History* 44.1 (March, 1984): 1-26. Web. Accessed 2/9/16. 14.
[107] Oscar Handlin, *Boston's Immigrants, 1790-1865: A Study in Acculturation,* (Cambridge, MA: Harvard University Press, 1941), 186.

Catholic Irish were."[108] Much like African-Americans in the North and the South, the Irish were seen as sources of unskilled manual labor, but even their ability to accomplish elementary tasks was doubted. The use and power of racism in the North quickly created a stratified labor force in which the lowest class, comprised of African-Americans and Irish Catholic immigrants, would provide the unskilled manual labor.

The prevalent ideology of the time dictated that emerging privatized charities, but more importantly, the free market, astutely described by political economist Arthur Latham Perry as "one vast hive of buyers and sellers, every man bringing something to the market and carrying something off… You do something for me, and I will do something for you," would solve the poverty problem.[109] If the free commodity exchange market was properly established, proponents claimed, those who espoused industriousness would be rewarded and those who preferred a life of idleness would be punished. Essentially, the market would delineate the deserving poor from the undeserving poor. Yet, the number of homeless persons and beggars – those who existed outside of the capitalist market system – posed a grave threat to the success of the free market. In an effort to stabilize the market by minimizing the number of indigent individuals, throughout the northern United States, a restructuring of the legal system occurred.

As is seen, the turn of the 19th century in the northern United States underwent an enormous demographic change as many living in the countryside moved to increasingly urban areas, and immigration from Western Europe expanded the size and altered the ethnicity of the laboring class. Along with immigration to the burgeoning cities, technological advances led to a major recasting of the manufacturing economy. The artisan system that had dominated in the more rural agricultural economy of the 18th century gave way to an increasingly industrialized

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[108] Robert Ernst, *Immigrant life in New York City, 1825-1863*, (New York: King's Crown Press, 1949), 66.
[109] Arthur Latham Perry, *Elements of Political Economy,* (New York: C. Scribner, 1869), 92.

urban economy defined by the division of labor. This new system, due to the emergence of industrial tools as a mainstay in the manufacturing economy, frequently, but not always, involved mechanization. Further, the unstable economy that displayed frequent savage downturns and severe bouts of inflation, led many in charge of manufacturing to cut costs, one of the highest of which was the cost of manual labor. All of this combined to fuel a massive increase in economic disparity and the rate of poverty, leading to a socioeconomic crisis as the number of jobless, destitute individuals skyrocketed. The compiler of Boston's first atlas in 1861, overcome by what he saw, simply described a large portion of the city as, "full of sheds and shanties."[110] Further, a journalist in Philadelphia described the urban situation as, "the rottenest and most villainous neighborhood ever populated by human beings."[111] Historian Paul Boyer writes that from the 1830s to the 1850s, there was an almost constant proliferation of the urban poor.[112] Evidently, the number of homeless and quasi-homeless poor in major cities had reached a crisis proportion.

Faced with the widespread destitution that came with the rapid expansion of the free population and the reconfiguration of the manufacturing economy, northern officials replaced the disintegrating system of personal subordination with new mechanisms to discipline the behavior of working people. Officials in all major urban areas simultaneously expanded vagrancy laws and privatized poor relief.[113] Foreshadowing what would occur in the South after emancipation, what was believed to be causing the rampant indigence was laziness and a general refusal to labor, and again, much like the Black Codes of 1865-66, the response to the pervasive poverty and prevalent homelessness was the expansion and criminalization of vagrancy. As economist

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[110] Paul Boyer, *Urban Masses and Moral Order:1820-1920,* (Cambridge, MA: Harvard University Press, 1978), 68.
[111] IBID.
[112] IBID, 69.
[113] David Montgomery, *Citizen Worker: The Experience of Workers in the United States with Democracy and the Free Market during the Nineteenth Century,* (Cambridge: Cambridge University Press, 1993), 59.

Thomas Cooper wrote in 1826 in reference to the expanding poor laws, "It is not the suppression of poverty that is wanted, so much as the suppression of idleness, extravagance, dissipation, drunkenness, and vice, which are uniformly the parents of poverty."[114] These catalysts of poverty, as Cooper explained, thus came to define the very vagrancy statutes that aimed to inhibit laziness and unemployment.

This expansion of vagrancy laws functioned most oppressively for those in the lowest socioeconomic strata. The most systematic abuse of impoverished defendants occurred through offenses of disorderly conduct or vagrancy, which needed no indictment. The police charged men and women before juryless courts, sentencing them, generally, to imprisonment in the workhouse only hours after they were stopped on the street.[115] With this, northern governments indicated that charges of vagrancy and disorderly conduct did not require traditional jurisprudence - a sentiment that would greatly influence the South.

The expansion of vagrancy laws and the policies and sentiments issued by those agencies tasked with distributing relief in the North in the 1840s and 50s reflected the existing belief that the suppression of idleness in order to entrench the supremacy of the free labor market was the best vehicle through which the lower class could achieve socioeconomic mobility and thus less dependence on public relief. In major northern cities most vagrancy laws were aimed at punishing beggars with forced labor. Those who were able to find subsistence outside the free labor market were seen as parasites that must have been surviving off of the aid of private individuals. These individuals, in obtaining subsistence outside the wage commodity market that everyone else agreed to enter, threatened the very existence of free labor which depended on the belief that individuals would work without coercion because it was their only means to survive

[114] Thomas Cooper, *Lectures on the Elements of Political Economy,* (Columbia, S.C.: D.E. Sweeny, 1826), 260.
[115] Montgomery, *Citizen Worker*, (Cambridge, 1993), 63.

and advance socioeconomically. This idea that upward socioeconomic mobility was available to all Americans - an ideology that separated the United States from the rigid social strata of the Old World – would collapse, many governing officials believed, if some individuals were allowed to subsist without working. And finally, beggars violated the socioeconomic laws of the America Republic that defined productivity as a prerequisite for citizenship and sociopolitical participation.

The ideal citizen was unapologetically industrious. "Idle men and women are the bane of any community. They are not simply clogs upon society, but become, sooner or later, the causes of its crime and poverty... Every family motto should read: 'Be somebody. Do something. Bear your own load.'"[116] Beggars were anathema to this republican ideology, as they were the most conspicuous figures of dependency and thus, representatives of social chaos.[117] While the pervasive laissez faire ideology of the time dictated that the government could not control the way in which private individuals provided aid, the State could make the act of begging a crime. Further, city councils in many major urban cities gutted all relief appropriations, urging the indigent to look to relatives or private charities that would decide who was "deserving" of relief. The increase in prosecution of begging through charges of vagrancy as well as the massive reduction in government funds allocated to aid the poor, aimed to expunge any method of subsistence aside from participation in the wage labor commodity exchange, positing the "invisible hand" as the only and best way to alleviate the plight of the poverty stricken.

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[116] Quoted on pg. 65 of Stephan Thernstrom, *Poverty and Progress: Social Mobility in a Nineteenth Century City,* (Cambridge, MA: Harvard University Press, 1964).
[117] Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation,* (Cambridge: Cambridge University Press, 1998), 100-107.

Northern Ideologies in Southern Black Codes

The same policies and ideologies that aimed to curtail the destitute population in the North in the 1840s and 50s were implemented by northern emissaries who traveled South to assist the freedmen in their transition from chattel slavery to wage labor. The Freedmen's Bureau was led by northerners who had served in the Union Army and looked to implement a system of free labor; but the views on labor espoused in the policies put forward by General Tillson in Georgia, and by O.O. Howard in Washington, were motivated by antebellum northern conceptions of work, individual responsibility, a lack of dependency, and the supremacy of the market. On July 15, 1865, only two months after the war had ended, the Bureau announced that it would aid the destitute, but warned its agents to take "great caution… not to encourage dependency."[118] In the minds of the Bureau agents, relief for the poor was to be very short-lived and only provided to those who were deemed deserving of aid.

On October 3, 1865 Gen. Tillson issued Circular No. 2, prohibiting the distribution of alms to any freedmen who had refused a position of labor, and provided that any freemen who remained in the cities or towns of Georgia without any means of employment would be, "compelled… to go to the country and accept places of labor found by themselves, or for them by officers or agents of the bureau." The most important contribution that this Circular made to the vagrancy statute of Georgia's Black Code was the distinction it provided between the deserving and the undeserving poor. As in the North, the differentiation between the worthy and the unworthy poor was whether or not one labored, and if an individual refused to labor, they could be compelled to do so without compromising the system of free labor. Further, in Circular No. 2 Tillson stated, "The bureau refuses to fix a price for labor or allow it to be done by any

[118] *Circular No. 2,* issued by the Bureau of Refugees, Freedmen, and Abandoned Lands, Raleigh, N.C., July 15, 1865. Located in 39th Congress' "Report on the Freedmen's Bureau." Online. 3-4.

community or combination of people." Instead, echoing the market centered laissez-faire ideology that he had absorbed during his career in the Maine state legislature, labor would be left "like any other commodity, to sell itself, in the open market, to the highest bidder."[119] If relief to the poor was minimized and idleness was suppressed, everyone would be forced to participate in the free market, which would then lift the hard-working industrious individuals out of poverty while punishing those who preferred idleness.

In Georgia specifically, freedmen were swept off the streets and convicted as vagrants simply because they could not immediately show proof of employment or land-ownership. By punishing vagrants with forced labor, government officials hoped to inculcate the edicts of the free market system. Laziness would not be tolerated, and much like Georgia's 1866 vagrancy law, the message was simple: work or you will be worked. By the 1840s and 1850s in the North, there was no choice whether or not one was to labor. To exist outside of the free labor market became a crime. Ironically, as the system of free labor began to take hold in the North, expanded vagrancy laws insured the success and supremacy of the free market through the legal compulsion of labor in the South. Thus, as early as 1840, the North had indicated that labor compulsion and free labor were not mutually exclusive entities; methods of compelling labor could, and did, exist within a system of free labor.

The policies that were implemented in the South after emancipation reflected the same beliefs that had motivated the policies put forth to expunge destitution in the North in the early to mid 19th century. Amy Dru Stanley argues that northerners observed the transition from bonded labor to wage labor in the South after emancipation and implemented their learned experience in the North in the 1860s and 70s as northern hirelings argued that their system of employment was

[119] *Circular No. 2,* issued by the Bureau of Refugees, Freedmen, and Abandoned Lands, Augusta, GA, October 3, 1865. Located in 39th Congress' "Report on the Freedmen's Bureau." Online. 57-59.

nothing but "wage slavery."[120] However, she overlooks the fact that it had been northerners – whether in the Union Army during the war or the Freedmen's Bureau after the war – who provided the policies and ideologies that guided the transition from unfree to free labor in the South. Although it is true that the lessons of establishing a system of free labor that centered on the market in the South after emancipation affected the way northerners conceptualized the relationship between labor, class, and the law, these lessons were inspired by existing northern ideologies and statutes. It was the North that was first faced with a rapidly expanding and ethnically diverse free laboring class; and it was their response which relied on suppressing idleness through vagrancy laws, conservatively appropriating relief, and championing the free market as the mechanism to elevate the socioeconomic position of the lower class that provided the precedent for how the South was to deal with the rapidly expanding and suddenly biracial class of free laborers that emerged in the wake of emancipation. It was not that the lessons of the South motivated the North, but the exact opposite. The lessons of the North were transported to the South by northern emissaries who were tasked with organizing and implementing a system of free labor that would best aid the freedmen in their transition from bonded labor to wage labor.

Yet, forcing the total participation of the citizenship in the market through limited distribution of alms and arbitrary vagrancy statutes was also motivated by a desire to keep the price of labor to a minimum and insure the perpetual existence of a class of poor marginalized laborers. This was true in both the North and the South in which conceptions of race provided for a stratified labor force. In the South the marginalized group was defined solely by their blackness, whereas in the North the marginalized group was defined by a combination of their destitute state and race – both black and Irish Catholic.

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[120] Stanley, *Bondage to Contract*, 96.

In a free labor commodity market in which the employees are proprietor and vendor of their labor and the employer is the purchaser of that labor, the price at which the employee is able to sell their labor depends directly on the existing supply and demand within the market. Thus, if some individuals were allowed to live outside the market, the supply of labor would have decreased, leading the price of labor to rise, something the employer class wanted to prevent. As English economist Arthur Young said, "everybody but an idiot knows that the lower classes must be kept poor or they will never be industrious."[121] In legally coercing all people to participate in the market, the elite ensured that there would always be access to manual labor.

Conclusion

Georgia's Black Code was unique due its colorblind nature and the response it received from Congress and the North in general. The Black Codes of other States enraged the North to the point in which Congress abandoned President Andrew Johnson's plan for Reconstruction and led Washington to implement a more radical plan. The Black Code of Georgia, upon its ratification in March of 1866, was met with applause. It was an indication that Georgia and the South acknowledged the supremacy of Congress' demands and because it did not contain overtly discriminatory statutes, northerners believed that it would operate in this manner. More importantly, though, Georgia's Black Code received an ovation from those in the North because it fit perfectly into the existing legal and ideological fabric involving race, class and labor. The most infamous aspects of Georgia's Code: the vagrancy statute that allowed for the coercion and compulsion of labor, had long existed in the North. Further, the unflinching northern support for the free market's ability to lift the lowest class out of poverty provided the impetus for many of

[121] Quoted in Eric Foner, *Nothing But Freedom: Emancipation and its Legacy,* (Baton Rouge, LA: LSU Press, 1983), 15.

the policies that would come to comprise Georgia's Black Code. The Black Code of Georgia won praise for its non-discriminatory nature, but was in fact discriminatory. However, this was not a problem because it followed the northern tradition of neutral laws that oppressed specific marginalized constituencies. Thus, the Black Code of Georgia was able to avoid the disdain of the North and Congress simply because it was a southern model of an American system of law.

Epilogue

The Black Code Points Forward

"The slave went free; stood a brief moment in the sun; then moved back again toward slavery."[122]

William Edward Burghart "W.E.B." Du Bois

As blacks emerged from slavery, it seemed as if anything was possible. However, the emergence of the Black Codes in the former Confederate States, and in Georgia specifically, quickly signaled that despite the moniker, the "freedmen" would not truly be free. The Black Code of Georgia afforded the ex-slaves the potential ability to rent or own land, but neither the federal nor state government provided the freedmen with land, or funds to rent or purchase property. Thus, under the aegis of Georgia's Black Code, the freedmen entered a new world of free wage labor on land owned by whites.

The freedmen's labor was commodified, bought and sold in the free market. Their position was one in which they were allocated no land, no tools, and no skills that would have allowed socioeconomic mobility, and as a result, they were defined solely by their time and labor. Thus, as their labor was commodified, so too were they - a reversal back into servitude. As the freedmen sold their labor – their only possession – so too did they sell themselves. After two and a half centuries of slavery, over a half-century of abolitionist movements, and a bloody Civil War, the socioeconomic position of African-Americans in the United States had not markedly advanced.

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[122] W.E.B. Du Bois, *Black Reconstruction: An Essay toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880*, (New York: Russel & Russel, 1935), 30.

Emancipation represented the end of nearly two and a half centuries of bondage, of a subhuman status, and for many African-Americans, it promised much. With the passage of the Black Code in Georgia in March of 1866, however, all that changed. African-Americans throughout the state realized that although they were no longer chattel, they were far from free. As has been demonstrated in this thesis, the Black Code of Georgia was motivated by social, economic, and legal precedents that had long been in existence, and in that way, it perfectly represented the American legal apparatus at the time. Yet, the Black Code of Georgia is not only important for the precedents that inspired it, but also for the precedents that it set for the future.

The system of convict lease had existed in the South, beginning in Louisiana as early as 1844, but did not truly take hold until after the Civil War. Very quickly after emancipation, this system of forced labor would come to define the southern United States and oppress African-Americans well into the 20th century. Vagrancy statutes had been an important method through which the elite, both in the North and the South in the mid-19th century, controlled the movement and labor of marginalized groups. But the vagrancy statute of Georgia's Black Code provided the impetus to the convict lease system that would begin in the State in 1868. Georgia's 1866 vagrancy law allowed the County Court to bind those convicted, "out to some person… the person giving bond in a sum not exceeding three hundred dollars." Foreshadowing the system of convict lease, this stipulation provided that the State, if financially compensated, would entirely relinquish its control to the lessee. All that was required under the 1866 law was that once bound out, the lessee had to provide the convict with "clothe and feed, and… medical attendance," for the duration of the sentence.[123] Paralleling this agreement, contracts for convict lease signed away the rights and the labor of those convicted to whichever enterprise or corporation was willing to pay the highest amount.

[123] Georgia, *Acts* (1865-66), No. 240.

To be sure, the vagrancy statute also provided for the sentencing of vagrants to labor on the public works, and although an obvious instance of forced labor, it was quite similar to the sentence of labor in the workhouse that had been prevalent in the North for decades. Once a convict was sentenced to labor on the public works, legally they still worked for and existed under the control of the government, and therefore, this provision did not foreshadow the future system of convict lease.

In January of 1868, Thomas Ruger, a Union general, was appointed by President Andrew Johnson as the military governor of Georgia. Just three months after he assumed that position in the state, Ruger agreed to furnish "one hundred able bodied and healthy Negro convicts, now confined in the said Penitentiary," to William Fort to labor on the railroad in Georgia.[124] Under this agreement, Fort would pay all expenses involved with the clothing, feeding, and sheltering of the convicts, and in addition, pay the state $2,500 for the right to access their labor. This system provided the perfect cure for the socioeconomic problems of Georgia, and all former Confederate States. It reinvigorated the economies that had been decimated in the war through the funds the state governments received for the convict leases, it provided a method to rebuild the infrastructure that the war had destroyed, and most importantly, it provided a way to control the black population while continuing to extract their labor.

In the words of Douglas Blackmon, it was simply "Slavery By Another Name."[125] Because the 13th Amendment to the Constitution provided that slavery and involuntary servitude were permissible "as a punishment for crime whereof the party shall have been duly convicted,"

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[124] Quoted in pg. 42 of Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South,* (London: Verso Publishing, 1996).

[125] Douglas Blackmon, *Slavery by Another Name: The Re-enslavement of Black People in America from the Civil War to World War II*, (New York: Doubleday, 2008).

it was allowed.[126] The system of convict lease would lead to the death of hundreds of thousands of African-Americans throughout the 19th and 20th century, and it was the legal precedents provided by the Black Code of Georgia that allowed for its implementation in the state.

The Black Code of Georgia has been treated as an ephemeral and generally unimportant piece of legislation, but that is not the case. It reflected the position the white elite envisioned for the freedmen, and more generally, it reflected legal conceptions involving how best to control the movement and labor of the black population, as well as other marginalized groups. The Black Code of Georgia was not a flash in the pan. It was a living and breathing document that represented the systems of race, law and labor that emerged in the state in the wake of emancipation. More importantly, it established legal precedents for systems involving race, labor, and incarceration that prevented African-Americans from the sociopolitical participation they were entitled to as citizens. The Black Codes as a general body of legislation, but specifically the Black Code of Georgia, are important because they point backwards *and* forward.

[126] U.S. Const. amend. XIII

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