

C. Auschütz,

BLACK JUSTICE

- ☪ The denial of civil rights to Negroes in law and in practice
- ☪ The only survey of all the discriminations against citizens on account of color
- ☪ Of all minorities in the United States, the 15,000,000 Negroes suffer most violations of their civil rights

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Lynched!

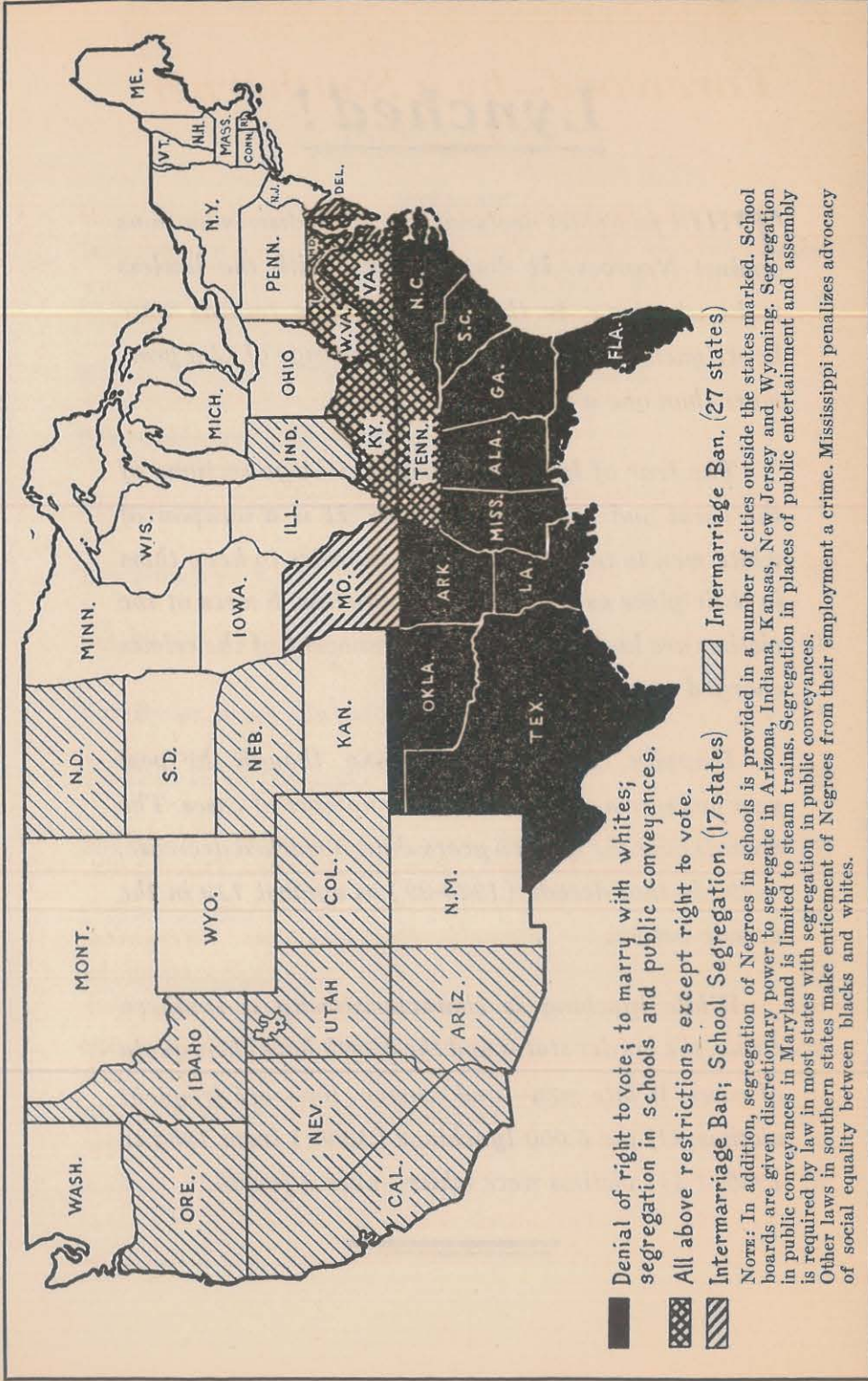
THIS pamphlet deals with the legal discriminations against Negroes. It does not deal with the lawless mobs who have, in the 48 years since records were kept, lynched 3,555 Negroes—an average of 74 a year, more than one a week.

The fear of lynching dominates large sections of the rural and small-town South. It is a weapon of white men to terrorize Negroes in order to keep them in their place as a servile working-class. Scores of the victims are known to have been innocent of the crimes charged against them.

Happily, lynching is declining, though the past year has seen a sudden rise in the number of cases. The records over the last ten years show a marked decrease,—292 in that decade (1920-29) as against 710 in the decade before.

While lynching is characteristically a southern crime, the border states and the North have their quota of cases. White men—and women, too—are frequent victims. Of the 5,000 lynchings (4,999) from 1882 to 1930, 1,444 victims were white—over a fourth.

Legal Restrictions on Negroes' Rights



Foreword—by a Southerner

The following pages reveal a melancholy story of legal discriminations against Negroes, in violation of unequivocal guarantees in the federal constitution. The practices cited are principally chargeable to the southern states, though not wholly so.

It is right that all southerners and all Americans should recognize the facts here set forth. It is proper that these conditions should be given the frankest and baldest statement. The greatest social inequities, by their very hugeness and pervasiveness, often escape our thought. The relative progress which the Negro has made in the last decades blinds our eyes to the galling limitations put upon him. Such a stock-taking as this pamphlet represents searches our honesty, and increases our humility.

We are not satisfied without asking the question, "Why these gross discriminations against Negroes?" In discovering the reasons, we shall have found the remedies.

The reasons are at least three hundred years old, dating from the beginning of Negro slavery in America. Discrimination against the Negro springs from a hoary source of fear, hatred, and suspicion, namely, from economic inferiority. The Negro has been oppressed because he has a low standard of living and little economic independence. And, the other way round, he is economically servile because he has been oppressed. Dependence and exploitation have encouraged each other. What we term race antipathy is really economic scorn, or, as often happens, consciousness of the threat of economic competition.

It is this fear of economic competition which, in the present connection, deserves emphasis. We speak, particularly in

the case of the South, of the superior race. In the face of impositions upon the Negro, we content ourselves in the reflection that the whites are his betters, that in refusing social generosity we are at least preserving precious cultural integrity.

We have used this argument so readily that we have failed to examine into its truth. The fact is that the Negro is put upon, not because the gap which separates him from the whites is wide, but because it is narrow. The enemy of the Negro is not the attainment of the generality of the whites, but the lack of attainment. The Negro is disliked in the South because, in an honest view, blacks and whites are poor together, ignorant together, unindustrious together. Distinctions are sharp because in reality they are blurred. They have the appearance of being fundamental because they are really so largely superficial. The color line is graved deep because it is in fact shallow.

In this view, the shame of our white South at its treatment of the Negro becomes enveloped in our concern for our own condition. Advanced opinion has long declared that betterment of the whites depends upon betterment of the Negroes. I am not sure but what we should go further and recognize that improvement for the blacks hinges upon improvement for their white brothers.

Both of these reflections contain the answer as to remedies for discriminations—in law, in economic practice, in social habit—against the Negroes. Our problem is not racial, but broadly human. It is a matter of total efficiency, total enlightenment. While moral resolves will help, tolerance is the child of competence. Competence of both races will open the way for mutual help to replace mutual hurt.

We Southern whites are more the victims of slavery than the Negroes because, possessing a little economic advantage,

we have nourished the constant inclination toward unfairness. The Negro, with notable patience, has nevertheless not failed through the long years to be aspiring; above all, in the present juncture, he demands justice, and here he is our master.

BROADUS MITCHELL

The Johns Hopkins University

Baltimore, Md., May 1931

This pamphlet on legal discriminations against Negroes is put out by the American Civil Liberties Union because we feel obligated to present to our friends so striking an aspect of the violations of civil liberty. But this is not a field of activity in which the Union operates, because another organization already covers it—the National Association for the Advancement of Colored People, with headquarters at 69 Fifth Avenue, New York City. Most of the court cases cited in this pamphlet have been fought through by this Association. The test cases still in the courts are under its auspices. Further information in regard to any of them can be secured by addressing the Association.

Of all the violations of civil rights in the United States, those affecting Negroes are by far the most numerous and diverse. This pamphlet covers only the discriminations in law. It could not cover within its brief compass the varied forms of pressure and control by which the Negro, particularly in the rural South, is kept in far greater bondage than legal subjection.

BLACK JUSTICE

The Constitution Says:

¶ Neither slavery nor involuntary servitude shall exist within the United States.

¶ No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

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

From the 13th, 14th, and 15th amendments.

Despite the Constitution

A DISTINGUISHED educator, Booker T. Washington, once wrote a volume which he entitled "Up From Slavery." The legislators and judges of a large number of states have spent the last half century in writing into their statutes and constitutions a volume that might well be entitled, "Down From Slavery."

The war is over, not the World War, but the Civil War. The Thirteenth, Fourteenth and Fifteenth amendments are dusty with age. Yet the Negro today is still struggling to secure and maintain the rights guaranteed him by those amendments.

Despite those guarantees, ten southern states, as shown by the map on page 4, declare that:

The Negro may not vote.

The Negro may not marry according to his choice.

The Negro must accept separate accommodations in public schools and on public conveyances.

In all but 21 states of the United States at least one form of the above legal restrictions is practiced. And in practically all of these same states, illegal violence is practiced against the constitutional rights of the Negro.

The Right to Vote

THE political history of the South since the ratification of the Fourteenth amendment in 1868 has been the history of a bitter and unrelenting struggle on the part of whites to control the ballot box. The decade of the Reconstruction Period following the Civil War saw a carnival of misrule by the newly enfranchised slaves and unscrupulous northern politicians. Then, when northern domination was withdrawn, the whites of the South began, by one means and another, the disfranchisement of the Negro.

Today, although no law on any statute book denies the Negro the right to vote, his disfranchisement is partial or complete in ten states. The state laws do not say that the Negro *cannot* vote, but they do lay down qualifications as to who *can* vote so that the Negro is generally barred from the polling place. The "white primary," the poll tax, educational tests and the "grandfather clause" are the chief means of taking the vote from the Negro. Despite the obstacles, the Negroes are doubtless voting more generally in the South today than ever before in purely local elections.

The "white primary" operates by prohibiting Negroes from voting in the Democratic primary. The attitude of southern state officials is clearly demonstrated by Rivers Buford, attorney general of the state of Florida, who has declared: "The executive committee of any political party may confine its membership to the white race if it desires to do so, and in such cases only white electors may participate in the primary of such party." In those southern states where the Democratic party holds unquestioned sway and the Democratic primary represents the final election results, barring the Negro from the party means actual disfranchisement.

To effect this disfranchisement, the state of Texas enacted a statute decreeing: "In no event shall a Negro be eligible to participate in a Democratic primary held in the state of Texas."

A Negro, L. A. Nixon of Texas, appealed to the courts in defense of his right to vote. The lower court sustained the Texas statute, claiming that the subject matter of the suit was political and not within the jurisdiction of the court and that no violation of the Fourteenth and Fifteenth amendments was shown.

The case was appealed to the United States Supreme Court and the judgment of the lower court reversed, (*Nixon vs. Herndon*, 117 U.S.). "It seems to us hard to imagine a more direct and obvious infringement of the Fourteenth Amendment", the court said in its opinion, adding, "States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case."

Nothing daunted, southern legislators revised the wording of their statutes. Nothing was said about Negroes being barred from primaries, but party officials were given the right to decide who should belong to the party. This type of statute has also been declared unlawful by the courts, as in the case of *Bliley vs. West Virginia*, where the district court held that a party has no right to prohibit a Negro from voting. Test cases on the "white primary" are pending in the courts of other states, as in *Nixon vs. Condon*, now being contested in Texas. And while they are pending, the "white primary" continues to flourish.

Typical of the educational requirement statutes is the Mississippi law. It states that, to be eligible to vote, any person must be able to read and write any phrase of the Constitution of the United States. The examination is in the hands of local registrars throughout the state. The catch is that no standard questions about the Constitution are established; the registrar makes up his own questions. The registrar is white, invariably a believer in "white supremacy," and therefore determined that the Negro shall not vote. The questions are asked in such a form that not only may illiterate whites vote, while illiterate Negroes may not, but it can be and is made impossible for an educated Negro to vote.

This Mississippi law was upheld by the Supreme Court of the United States in the case of *Williams vs. State of Mississippi* (107, U. S.), the court holding that the law was fair because on its face it could be administered impartially, and partiality had not been proven in the Williams case. Yet despite the failure of Mr. Williams to prove discrimination in his own case, the testimony of thousands of intelligent southern Negroes reveals that these laws are not administered impartially.

During more recent years, nine southern states have imposed tax or property tests for prospective voters. Practically all the revised

constitutions of the southern states insisted upon the payment of poll taxes before the election. Several states demanded also the ownership of from \$300 to \$500 worth of property, automatically disfranchising impecunious Negroes.

However, since many poor and illiterate whites would also have been disfranchised by the property and educational tests, another clause was added to state constitutions. Known as the "grandfather clause," it permitted an applicant, disfranchised by other restrictions, to vote if he had been a voter or soldier in 1866, or if he were the lineal descendent of such soldier or voter. Negroes were not voters in 1866. Though the legality of the "grandfather clause" has been successfully attacked in the United States Supreme Court, it is still used in many sections of the South. Numerous states, whose constitutions included the "grandfather clause," have failed to eliminate it.

It is true that, in a few southern cities, Negroes do vote in city, state and national elections. But they do not vote in primaries. Usually in such cases, they are able to pass the property and educational tests, and they are present in such numbers and so well organized that their rights cannot be ignored.

Jim Crow

IT IS 65 years or more since Jim Crow fluttered down, folded his ebon wings and perched in the vestibule of southern transportation. He is still a passenger, albeit somewhat costly and vexatious. Jim Crow is the practice of segregating races in public conveyances. Fifteen southern states have Jim Crow laws of one type or another.

The Kentucky statute is typical. It specifies that all railroads must furnish separate coaches or cars for Negroes and whites; that each compartment or coach divided by substantial wood partitions shall be deemed a separate coach or compartment; that each compartment must bear the label of the race for which it is intended; that there must be no discrimination in the quality or conveniences of the accommodations and, should any passenger refuse to occupy the car, coach or compartment to which he is assigned, the conductor may put him off the train.

The segregation is not limited to trains but is enforced by most southern cities in street cars and buses. The general practice is to seat the Negroes at the rear of the car, the whites at the front.

The United States Supreme Court has lent its sanction to the Jim Crow tradition. In the case of *Plessy vs. Ferguson*, arising in Louisiana, the court held that the state's Jim Crow law did not violate the constitution. However, a Louisiana statute *discriminating against interstate* passengers on account of color was declared unconstitutional because it interfered with interstate commerce, (*Hall vs. DeCuir*, 95, U.S. 487). As a result, Jim Crow laws have been so phrased as to apply specifically to intrastate commerce.

In theory, segregation of races on trains is equitable. If the Negroes must keep to their own quarters, the whites in turn must keep to theirs. The courts have held that segregation does not imply inferiority on the part of the Negro.

In practice the Negro suffers. His chief cause for legitimate complaint is the fact that Negro accommodations are usually inferior and insufficient. The rear part of the baggage car is frequently used as the Negro day-coach. It also serves as his smoker and dining car. Being placed immediately behind the tender it gets most of the smoke and cinders. The news vendor or the conductor may occupy two of the all too few seats for the arrangement of wares, or for clerical work. Although there be plenty of seats in the other coaches, Negroes, even mothers with children, must stand when there are no longer any seats available in the restricted quarters.

While Jim Crow is severe with the poorer class of Negroes who must travel in day-coaches, it also embarrasses the well-to-do. The willingness to occupy Pullman space throughout the South is a test of the courage of the colored passenger. It is only with great difficulty and usually through subterfuge that a Negro can obtain Pullman accommodation when traveling from South to North, although a Negro may buy any kind of Pullman space when going from New York to the South. A few years ago a Negro woman traveling from New York was taken from a Pullman car in Florida, arrested and fined \$500 on the strength of that state's Jim Crow law. Since she was occupying her Pullman space legally, she sued the railroad. The case was settled out of court for \$2,750.

Confusion is often caused when a coach passenger on a continuous trip is going through states, some of which have segregation laws, while others have not. Colored persons traveling in a coach from New York to Atlanta occupy the same coaches as whites until Virginia is reached. Then they must go forward to the Jim Crow cars.

A Negro, going from Philadelphia, Pa., to Indiana and passing through Maryland, West Virginia and Kentucky, would find himself in a quandary. When the train enters Maryland he must go to the Jim Crow car. In West Virginia he may go into any coach. In Kentucky he goes back Jim Crow. When the train reaches Indiana he returns to any car. As soon as the conductor hangs up the sign, "White Coach," he must traipse up to his own "black coach." Similarly, if a white person finds himself in a colored coach when the Mason-Dixon line is crossed he must depart in haste. Legally interstate passengers in coaches, as in Pullmans, have a right not to be Jim Crowed, but practically they are. Railroad companies do not distinguish between interstate and intrastate coach passengers.

But other quandaries confront the Negro traveling in southern cities. In Memphis, Negroes enter and leave street cars from the rear, whites enter and leave from the front. In Atlanta, Negroes must leave from the rear, although they may enter from the center or rear. Some cities require the Negro to use Negro taxicabs, others permit him to use any cab.

In San Antonio, Texas, Ida Hutchinson, Negress, was arrested because she refused to sit on the left-hand side of the rear seat of a city bus, the space designated for colored people. Her case was dismissed when the court ruled that if the Public Service Commission did not want Negroes to occupy the entire rear seat it must erect a barrier in the middle of the seat.

A doubtfully pleasant incident is related by George S. Schuyler in "Traveling Jim Crow," appearing in the *American Mercury* for August, 1930. He says:

"In the capital city of a trans-Mississippi Commonwealth there is an elderly Negro who not so long ago was a traveling school official visiting all parts of the State. He was able to get a Pullman berth only when going to a city about 150 miles distant, and he got that

through being a friend of the Pullman porter who ran "in charge" between the two cities. It would have been out of the question for this Negro official to have got a reservation through the ticket agent. The train did not leave until late at night. The porter would prepare the berth and then when there were no white folks looking, this Negro official would sneak into it, button the curtains and stay there until all of the white passengers had left the car next morning.

"On one trip there was an elderly female of the Superior Race who lingered in bed until she thought the porter and herself were the only ones present. Then she complained that this and that article of clothing had been lost or dropped under the berth and had the alarmed porter hunting for them. After that she made him help her get dressed, wanted to know if he was married, and sought his opinion concerning her general appearance and shapeliness. She ended by insisting that he go out and get her some breakfast. Both the Negroes were scared to death. The porter tried to explain that it was dangerous for her to remain on the car, while the school official, now fully clothed, shivered with fear behind his curtains. At last, about eight-thirty, the woman departed and the two Negroes had to consume a pint of corn liquor to restore their shattered nerves. After that the school official rode Jim Crow."

Amusing? Yes, but not to the Negroes.

Today, then, a Negro traveling in the South, however well-to-do or well educated, is usually forced to use the day-coach. Pullmans are too risky. And in the day-coach, his accommodations are always inferior.

The Right to an Education

SCHOOL SEGREGATION, with separate schools for Negroes and white children, is enforced in seventeen states and the District of Columbia. It is accomplished by constitutional provision in most of these states, and by statute in others. All such legislation was passed subsequent to the Civil War. In addition, in Arizona, Indiana, Kansas and Wyoming discretionary power is given school boards to establish separate schools. There are also some cities in other states which

have separate facilities for Negroes. Philadelphia and certain Ohio cities are examples.

Why object to segregation? Because in theory it is the antithesis of democracy. Because in practice it means the limitation, if not the complete abrogation of educational facilities for the Negro. When school funds are apportioned, the Negro, who contributes on an equal basis to the funds, gets what is left after the whites are cared for.

The Jackson, Miss., *Daily News* has said editorially, "The plain and brutal truth is that we have never given equal or adequate opportunity to the Negro children of our state."

A study made in 1928 of the administration of school funds in ten states having racial segregation in schools, the study being financed by the American Fund for Public Service, revealed that in South Carolina with a Negro population of over 51%, more than ten times as much was expended per capita for the education of white children as for Negro children; that in Florida, Georgia, Mississippi and Alabama, with a Negro population of over 40%, more than five times as much; in North Carolina, Virginia, Texas, Oklahoma and Maryland more than twice as much.

The report of State Commissioner of Education Sweringen for the state of South Carolina for 1925 provides the following information: that while the number of schools for each race was about the same, the Negroes had only half as many teachers as the whites with a resulting average of thirty pupils per teacher in schools for white children and 62 pupils per teacher in colored schools. The amounts appropriated for the year were, for white schools \$7,000,000 and for colored schools \$900,000. The per capita expenditure per white child was \$39; per Negro child, \$4; while the average annual salaries were, for white teachers, \$880; for colored teachers, \$261.

Of Mississippi public funds less than \$6 per year per child is spent on the education of Negro children as against \$26 a year for white children. Sixty percent of the school population is colored, and this sixty percent gets twenty percent of the school fund while the white, forty percent, receives eighty percent of the fund.

If the situation is deplorable regarding elementary education, it is worse on the secondary school level. Until recently there was not a

single public high school in the state of Georgia which a Negro could attend, and the population of the state is about half Negro. With a few exceptions, the only opportunity for a high school education offered a Negro in the South is provided through schools supported by religious organizations or philanthropists.

Even the laws relating to compulsory education in the South are often, if not usually, drawn so as to leave out the colored children. In eight states children are not compelled to go to school if there is no school within three miles of their home and if no free transportation is provided. There are many communities where it is impossible for a Negro to get transportation even if he is willing to pay for it.

In certain districts the school officials decide whether or not the children must attend school. Some counties have the right to decide for themselves whether the state compulsory education legislation shall be operative within the county. In Georgia, school boards are authorized to excuse children from school during the crop season. This permission is so interpreted that during cotton-picking time children—and this, of course, means colored children—may even be forbidden to go to school.

A depressing situation for teachers may often arise from the separate school system. In Richmond, Va., where separate schools are operated for Negroes and whites, a Negro may not advance above the rank of teacher. The principals of Negro schools are white men or women. Salaries for Negro teachers range from \$800 to \$1500 a year. The net result of these two factors, low salaries and lack of possibility for advancement, can be seen in the fact that only 71 percent of the teachers in the Negro high schools have had any college training, while only 1% of the teachers in the elementary and junior high schools have any credit for college attendance.

Edward Reuter, author of "The American Race Problem" states that "about seventy percent of the teachers in the black belt have less than a sixth grade education." Furthermore, until recent years, "the Negro school has been almost wholly without supervision. Many superintendents did not visit Negro schools at all and gave no attention to training Negro teachers." The state universities of the South which are supported by public funds are entirely closed to the Negro. Such Negro colleges as exist are, with few exceptions, privately supported.

It is in the matter of the few normal, agricultural and mechanical schools conducted for Negroes in the South that one of the most deplorable discriminations in the apportionment of public funds exists. Such training is indispensable to the colored masses of the South, yet these schools receive only *one thirty-fifth* of the entire appropriation. (See Gilligan, "*The Morality of the Color Line*".)

In this connection the federal government might logically be charged with abetting discrimination, for much of the money used for the support of these industrial schools comes through federal aid. Funds are allotted to the several states and apportioned by the states to individual institutions. State education officials in charge of these disbursements are privileged, if they see fit, to give most of the money to white schools. They usually see fit.

Although the school segregation legislation in the South dates back many years, attempts are now being made to extend it to certain northern communities where recent migration has greatly increased the Negro population. Only two years ago the school authorities of Toms River, N. J. tried to have all Negro pupils transferred to a segregated school in an outlying section. The plan was defeated. An attempt was recently made at Gary, Ind., to oust a number of colored pupils from Emerson High School and to build a separate secondary school for colored pupils. A bitter fight, in which the student body took sides, resulted. The town of Gary finally was permanently enjoined from using any public moneys for the erection of a separate high school.

In many smaller cities and towns in Pennsylvania separate schools for Negroes are common. In some Pennsylvania schools where the small number of Negro pupils does not justify a separate building, the Negro children are segregated in a special room, regardless of grade, all being taught by one teacher.

Negroes themselves brought about segregation of colored pupils in Philadelphia public schools, in order to provide posts for colored teachers. The segregation is general in grade schools. Only Negro children living in white districts away from the Negro sections go to the regular schools. No segregation exists in high schools.

Residential Segregation

THE average white person prefers to live in a white district. The average Negro prefers to live among his brethren. Why then should racial segregation of city residential districts be one of the most vexing phases of the race question, as it is? Why does the Negro not remain in his alley hovel?

Because, in the case of the more advanced Negro, as his cultural standards rise and he becomes "civilized," in the bath-tub sense of the word, he feels a natural desire to better his environment, to escape the depressing squalor of the districts to which he has been confined, to enjoy the refinements which his new position has taught him to appreciate and enabled him to secure. And chiefly, in the case of the Negro masses, because the Negro population of cities North and South has been hugely augmented in recent years. It is estimated that one million Negroes have migrated from the South to the North since the World War. Most of them live in cities, and expansion of Negro residential districts has been inevitable.

The resultant invasion of "white" territory is, more often than not, fiercely resented. Legal means have been resorted to in an attempt to prevent it. Municipal segregation laws have been passed. New Orleans, Dallas, Norfolk, Richmond, St. Louis, Indianapolis and Atlanta passed such ordinances (St. Louis by popular vote), only to have them successfully fought in the courts. In a Supreme Court decision in 1917, (*Buchanan vs. Warley*) the court held unconstitutional a residential segregation ordinance forbidding sale of property by whites to Negroes in the city of Louisville, Ky. The court declared that the ordinance which bases the interdiction upon color and nothing more passes beyond the legitimate bounds of the police power and invades the civil rights to acquire and to use property, a right enjoyed by all citizens.

With such forms of segregation proven illegal, other means have been used to effect that end. Instances of mob violence and intimidation have been not uncommon. Most effective, perhaps, are covenants among property-owners who agree not to sell or rent to Negroes. In this type of discrimination the Supreme Court has declared itself

without jurisdiction, with the result that the practice has become general.

If such covenants can be used to bar Negroes from certain districts, why cannot they be used to bar Jews, or Germans, or Scandinavians, or Anglo-Saxons? There's the rub;—they can be. What then of "civil rights"—and rights in property at that!

The Right to Marry According to Choice

"WOULD YOU," asked a certain gentleman, stirred to near apoplexy by the heat of the discussion, "want your sister to marry a Negro?"

"Well, no," said his somewhat calmer respondent. "Not especially. I don't think she'd want to. But I don't see that my opinion should be made a law."

No phase of the racial question, perhaps, is so prone to excite animosity and arouse passion as miscegenation. It were futile, in this space, to attempt even to enumerate the various aspects of the problem. Many and ponderous tomes have been compiled by sociologists, biologists and moralists—one to prove that the crossing of races results in an inferior issue, another that the crossing of races is the only way to prevent decadence and sterility; one to prove that race mixture has often preceded or accompanied cultural advance, another that the history of half-castes is one of lowered mental and physical standards.

Theories to one side (and they must remain theories, inasmuch as each side has so conclusively proven its case) the two contradicting facts remain that a certain document states that all men are created equal, yet in 27 of the 48 states a difference in color is a legal barrier to marriage, either by statute or judicial decision.

Some states go further, and decree that men and women of different races legally married in another state may not live together in a state that prohibits intermarriage. Illustrative of this attitude is the Georgia statute, which reads, "All marriages solemnized in another state by parties intending to reside in this state shall have the

same legal consequences and effects as if solemnized in this state. Parties residing in this state cannot evade any of the provisions of its laws by going into another state for the solemnization of the ceremony." Delaware, Mississippi and other states have similar statutes.

The zeal with which these laws are applied is demonstrated by the following. Paul Peters, a Negro of rather fair complexion, and a resident of Washington, D.C., married a white woman at her home in Maryland and returned with her to Washington to live. He was arrested in Washington by a sheriff from Maryland, taken back to that state and tried under its anti-intermarriage law. He escaped imprisonment and possible lynching—the feeling against him ran high in the community—when several white boyhood friends testified that they had played with him as children, had accepted him as white, and that he was generally so considered in the neighborhood in which he lived. As the state could not prove that he was a Negro, the jury acquitted him.

A typical anti-intermarriage law is that of Oregon. It reads: "Hereafter it shall not be lawful within this state for any white person, male or female, to intermarry with any Negro, Chinese, or any person having one-fourth or more Negro, Chinese or Kanaka blood, or any persons having more than one-half Indian blood; and all such marriages or attempted marriages shall be absolutely null and void." The statute, enacted in 1866, provides a penalty of three months to a year in jail.

Which introduces a puzzling complexity to the anti-miscegenation situation, observable in other states where Orientals and Indians are included. A white person may marry neither a Negro nor a Mongolian in Oregon, yet in neighboring Washington he may marry either. In Idaho a white person may marry a Mongolian but not a Negro; in Wyoming he may marry a Negro but not a Mongolian. South Dakota prohibits marriage between "persons of different races." Louisiana prohibits marriage between whites and "persons of color."

Have these injunctions proven effective? Dr. Melville J. Herskovits in *Opportunity*, in a study of the Negro's ancestry, estimates that only twenty percent of the American Negro group are pure Negroes,

indicating that the mixing of the races has not been seriously interfered with by law.

At the present time the overwhelming majority in each racial group have no desire to marry persons from the other group. Social ostracism is too inevitably the result. Why, then, the fuss and feathers about miscegenation?

Because of the incongruity of the two phrases: "All men are created equal" and "it shall be unlawful for any white person to intermarry with any Negro." Because such discrimination inevitably brands the Negro as an inferior, not as an equal, in the effort of white men to keep him in a servile economic state. Because it interferes with the little minority who would prefer open and legal marriage. Because anti-miscegenation laws put a premium on illicit sexual relationships. They may prevent intermarriage, but they do not prevent bastardy.

A Jury of His Peers

THE United States Supreme Court has ruled that when a Negro has been convicted in a court where Negroes are barred from the jury, he has not been given a trial by due process of law before a jury of his peers. There are, moreover, no states where Negroes are constitutionally prohibited from serving on juries. Yet, according to Morris L. Ernst, Lewis Gannett and James Weldon Johnson, in a report to the American Fund for Public Service, "It is true that all southern states bar Negroes from juries, with only very rare exceptions." And, "It is probable that every court day some Negro is convicted illegally in each of these states."

How so? Because the same Supreme Court has decided that a statute simply providing for an exercise of judgment on the part of the jury commissioners is not unconstitutional, and that these commissioners may lay down their own rules for the selection of jurors. Furthermore, most jurors are selected from voters' lists, and Negroes are not on them.

If a Negro is called by chance, local commissioners can easily prevent him from qualifying as a juror. An educational test is the com-

mon means. A question such as, "How many justices are there in the Supreme Court of the United States?" would make it easy to pass the "right" men—for jury duty while, "Explain what is meant by a bill of attainder" would help bar the unwanted.

Even if a Negro answers a question on the Constitution in a way that seems logical on the face of the wording of the Constitution, the applicant may be rejected on the grounds that the courts have ruled that the meaning is entirely different. A Supreme Court justice himself might be forced to retire to the back room for a study of "the book" before answering some of the questions exhaustively. Such being the case, the barring of Negroes from juries becomes a simple matter.

As to court evidence, the testimony of a Negro, no matter how intelligent and sincere, is of no avail against the word of a white person of any type. The ballot, most powerful check upon public officials, being denied to the Negro, attorneys and judges alike fear no reprisal in cases of injustice to Negroes.

The general status of the black man before the law is precarious. Ben Bess, colored farmer of South Carolina, was convicted of a statutory charge on a white woman's testimony and served thirteen years of a thirty-year prison sentence. The woman then admitted that her testimony was perjured. The governor of the state granted an unconditional pardon. The woman, learning that she was liable to prosecution for perjury, repudiated her confession. The governor revoked the unconditional pardon he had issued, asserting that fraud had been committed. The South Carolina Supreme Court deliberated for eleven months before ruling that the governor had no authority to revoke his unconditional pardon, and only then was Bess freed. Ben Bess was the exception to the general rule in that he found protagonists to take up his cause and carry it through to a just conclusion.

Public Accommodation

IN EIGHTEEN northern and western states the Negro is guaranteed by statute the right to enter any place of public accommodation, such as hotels, restaurants and theaters, and he is also pro-

tected by law from any discrimination. These laws, generally, are of little effect. The problem, of course, is not acute in the South where the extent of the Negro population makes common the maintenance of separate—and inferior—public accommodations.

In the North a Negro traveler may find it necessary to spend a night in a town where there are no Negro hotels. He may wish to eat a meal in a district where there are no Negro restaurants. If he does, it may be necessary for him to go to court to get his bed or his meal.

The New York law is a good example of such legislation. Enacted in 1918, it states:

"All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodations, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons."

Everything from kindergartens to saloons is included in the category of the "places of public accommodations," among others being inns, taverns, restaurants, health resorts, ice cream parlors, theaters, airdromes, gymnasiums, recreation parks, bowling alleys, public libraries and hospitals. Violation of the law is punishable by a fine of \$100 to \$500, or a 30 to 90-day jail sentence or both.

Yet despite the decisiveness and inclusiveness of the law, numerous cases are recorded where Negroes have resorted to court action to secure their rights under the bill. A few collected damages. Discrimination, however, when committed by subterfuge, is difficult of proof.

A Negro, inquiring for hotel accommodations and meeting with the curt and pointed reply that all accommodations were taken or reserved would be hard put to ascertain the truth of the assertion. A restaurant, while it may not go so far as to refuse service to a colored person, can humiliate him to the extent of making a second visit to the place inadvisable. A waiter can go through the motions of giving service without actually giving it. A restaurant contended, in a recent New York case, that a certain Negro was being served as long as the waiter was placing silver, etc., on his table. It was shown that the actual process of setting up the table occupied forty minutes.

Laws of other states, less specific in designating what constitutes a place of public accommodation, have proven ineffective because of this lack of specification. A proprietor may contend that his establishment does not come under the law, and the difficult burden of proof is on the plaintiff.

"Chinamen and Dogs Not Allowed"

THERE is, or was, a sign in a Shanghai park, "Chinamen and dogs not allowed." There was, during the World War, a sign in a park in New York City, "Sailors and dogs not allowed." There might, carrying out the idea, well be signs in parks in southern states, "Negroes and dogs not allowed." Or perhaps the signs should not include the dogs, for in most parks they are admitted. The Negro, whose taxes help build the parks, is barred.

He is barred from the "public" library. He may not walk or rest on municipal bathing beaches, nor swim in the municipal pool. A Negro city official of the northerly city of Pittsburgh, Pa., recently obtained an injunction as the first step in a fight to obtain for his daughter the right to swim in a pool erected at public expense. Provision for public recreation does not include the Negro in the South. More, it is a misdemeanor and sometimes a crime in most southern states to conduct a public meeting where segregation is not observed in seating blacks and whites. By law or custom, the Negro is segregated in public gatherings everywhere in the South.

To seat Negroes and whites together brings trouble. Stephen Graham, a white labor organizer, conducted a meeting in Virginia. Six white workers and 150 Negroes came to hear Graham explain the benefits of labor organization. They sat together. Graham was arrested, the charge being "inciting the Negro population to insurrection against the white population." After two trials he was acquitted, only to be rearrested, charged with advocating the violent overthrow of the government, and recommendations for his deportation were drawn up.

In Atlanta, Ga., six Communists were arrested last year for "inciting to rebellion" solely for organizing meetings of white and col-

ored workers to discuss unemployment and trade unionism. Shortly afterward, Prof. Horace Davis, teacher at Southwestern College, Memphis, announced his intention of helping hold a street meeting to arouse interest in the defense of the six Communists. A police permit was given, then revoked and Davis and his wife were arrested.

"Social equality" is a bitter issue in the South. Mississippi penalizes its advocacy. Other states make short work of those who advocate or practice it—as the recent treatment of Communists vividly shows.

Taxation Without Representation

INSTANCES beyond end of discrimination against tax-paying Negroes who do not share in the benefits of public expenditure come to light.

The Negro community of Vineville, Ga., part of the city of Fort Valley, was destroyed by fire in 1922 because the city water system, paid for by public and equal taxation, did not extend into the Negro quarter.

Negro home-owners stood helplessly by while the conflagration ate its leisurely way down one side of the street and up the other. The buildings burned one at a time, and the most rudimentary kind of fire apparatus would have sufficed to check the holocaust. No insurance was carried by the home-owners because of this same lack of water system.

In Wilmington, N. C., in 1929, a dying Negro was refused first aid at a hospital. When he reached a second hospital, 35 miles away, he was beyond aid. The situation is not unusual.

Public sanitation, including the cleaning of streets, has been commonly neglected in Negro districts in the South. Epidemics arising from these conditions have taken their toll from blacks and whites alike. The law of self-preservation would seem to indicate a clear course for the white officials who superintend sanitation.

Slavery Today?

SLAVERY in America today? Not under that name, of course. In interpreting the Thirteenth amendment, the United States Supreme Court has declared unconstitutional a state statute which makes it a penal offense for a person who has contracted to labor for another person for any given time in the cultivation of land, to leave or abandon the contract. The court has definitely labeled such statute as an attempt to establish a system of peonage.

Despite this decision, peonage is still prevalent in the South, the Wickersham Commission was recently informed by the National Association for the Advancement of Colored People. Prosecutions under the decision are rare because of the Negroes' ignorance and their fear of violent retribution, if they complain.

Tenant or share-farming represents one of the chief evils. A Negro undertakes the farming of a piece of land for the white owner. He borrows the money to pay for seed, equipment and food. When the crop is harvested he receives a certain share of the proceeds, but the principal and interest of the money he has borrowed must first be repaid. Lucky is the tenant-farmer who does not find himself more deeply in debt at the end of the year than he was at the beginning. Peonage occasioned the brutal Arkansas riots of 1919, according to a representation made to the United States Supreme Court at that time. Investigation has proven that, of the hundreds of Negroes lynched in the South during the last half century, a large percentage died because of their objection to this vicious practice of debt slavery.

Such conditions, and the possibility of securing employment at good wages in the North led to an exodus of Negroes from the South to the North immediately after the World War. Southern states and communities, alarmed at the prospect of having the supply of cheap labor depleted, resurrected ancient statutes concerning "vagrancy." Any Negro traveling northward was liable to be seized, held and made to prove his right to freedom of movement. Tenant-farmers were prohibited from leaving the land they were tilling at little or no profit.

Severe restrictions were placed on agents attempting to recruit labor for the North. Alabama, Arkansas, Mississippi and Georgia passed laws in an effort to restrict the activities of these agents. Jacksonville, Fla., passed an ordinance requiring migration agents to pay a \$1,000 license fee to recruit labor sent out of the state under penalty of a \$600 fine and sixty days in jail.

The city council of Macon, Ga., raised its license fee for labor agents and required that such an agent be recommended by ten local ministers, ten manufacturers and twenty-five business men.

On September 26, 1916, the Montgomery, Ala. city commission passed an ordinance to the effect that any person who should entice, persuade or influence any laborer or other person to leave the city of Montgomery for the purpose of being employed at any other place as a laborer must, on conviction, be fined not more than \$100 or be sentenced to hard labor for the city for not more than six months. Another ordinance provided similar punishment for merely advertising for the purpose of enticing laborers to leave the city.

That such measures did not prove especially effective in deterring many Negroes who wished to migrate is shown by the fact that a million of them did find their way northward. In 1914, literature, dropped furtively in the streets of Savannah, Ga., under cover of darkness, was answered by an equally furtive, nocturnal exodus of workers who, walking to a point several miles outside the city, boarded trains that would take them to jobs that paid a living wage. To the countless number of colored tenant-farmers who are still in the South, however, there remains the prospect of continued peonage.

Slavery in America today? Not under that name, of course.

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The first section of the report is devoted to a general survey of the progress of the work during the year. It is divided into three parts: the first part contains a general account of the work done; the second part contains a detailed account of the work done in each of the departments; and the third part contains a summary of the results of the work.

The second section of the report is devoted to a detailed account of the work done in each of the departments. It is divided into three parts: the first part contains a detailed account of the work done in the department of the Secretary; the second part contains a detailed account of the work done in the department of the Treasurer; and the third part contains a detailed account of the work done in the department of the Auditor.

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