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FIFTY YEARS OF NEGRO CITIZENSHIP AS QUALIFIED BY THE UNITED STATES SUPREME COURT

The Historic Background

The citizenship of the Negro in this country is a fiction. The Constitution of the United States guarantees to him every right vouchsafed to any individual by the most liberal democracy on the face of the earth, but despite the unusual powers of the Federal Government this agent of the body politic has studiously

evaded the duty of safeguarding the rights of the Negro. The Constitution confers upon Congress the power to declare war and make peace, to lay and collect taxes, duties, imposts, and excises; to coin money, to regulate commerce, and the like; and further empowers Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." After the unsuccessful effort of Virginia and Kentucky, through their famous resolutions of 1798 drawn up by Jefferson and Madison to interpose State authority in preventing Congress from exercising its powers, the United States Government with Chief Justice John Marshall as the expounder of that document, soon brought the country around to the position of thinking that, although the Federal Government is one of enumerated powers, that government and not that of States is the judge of the extent of its powers and, "though limited in its powers, is supreme within its sphere of action."[1] Marshall showed, too, that "there is no phrase in the instrument which, like the Articles of Confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described."[2] Marshall insisted, moreover, "that the powers given to the government imply the ordinary means of execution," and "to imply the means necessary to an end is generally understood

[1] *McCulloch* v. *Maryland*, 4 Wheaton, 416.

[2] *Ibid.*, 416.

as implying any means, calculated to produce the end and not as being confined to those single means without which the end would be entirely unattainable."[3] He said: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and the spirit of the Constitution, are constitutional."

Fortified thus, the Constitution became the rock upon which nationalism was built and by 1833 there were few persons who questioned the supremacy of the Federal Government, as did South Carolina with its threats of nullification. Because of the beginning of the intense slavery agitation not long thereafter, however, and the division of the Democratic party into a national and a proslavery group, the latter advocating State's rights to secure the perpetuation of slavery, there followed a reaction after the death of John Marshall in 1835, when the court abandoned to some extent the advanced position of nationalism of this great jurist and drifted toward the localism long since advocated by Judge Roane of Virginia.

In making the national government the patron of slavery, a new sort of nationalism as a defence of that institution developed thereafter, however, and culminated in the Dred Scott decision.[4] To justify the high-handed methods to protect the master's property right in the bondman, these jurists not only referred

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[3] *Ibid.*, 416.

[4] *Dred Scott* v. *Sanford*, 19 Howard, 399.

to the doctrines of Marshall already set forth above but relied also upon the decisions of Justice Storey, the nationalist surviving Chief Justice Marshall. They believed with Storey that a constitution of government founded by the people for themselves and their posterity and for objects of the most momentous nature —for perpetual union, for the establishment of justice, for the general welfare and for a perpetuation of the blessings of liberty —necessarily requires that every interpretation of its powers have a constant reference to those objects. No interpretation of the words in which those powers are granted can be a sound one which narrows down every ordinary import so as to defeat those objects.

In the decision of *Prigg* v. *Pennsylvania*, when the effort was to carry out the fugitive slave law,[5] the court, speaking through Justice Storey in 1842, believed that the clause of the Constitution conferring a right should not be so construed as to make it shadowy or unsubstantial or leave the citizen without the power adequate for its protection when another construction equally accordant with the words and the sense in which they were used would enforce and protect the right granted. The court believed that Congress is not restricted to legislation for the execution of its expressly granted powers; but for the protection of rights guaranteed by the Constitution, may employ such means not prohibited, as are necessary and proper, or such as are appropriate to attain the ends proposed. The court

[5] 16 Peters, 539, 612.

held, moreover, in *Prigg* v. *Pennsylvania*, that "the fundamental principle applicable to all cases of this sort, would seem to be, that when the end is required the means are given; and when the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted." It required very little argument to expose the fallacy in supposing that the national government had ever meant to rely for the due fulfillment of its duties and the rights which it established, upon State legislation rather than upon that of the United States, and with greater reason, when one bears in mind that the execution of power which was to be the same throughout the nation could not be confided to any State which could not rightfully act beyond its own territorial limits. All of this power exercised in executing the Fugitive Slave Law of 1793 was implied, rather than such direct power as that later conferred upon Congress by the Thirteenth Amendment, which provided that Congress should have power to pass appropriate legislation to enforce it.

As the Supreme Court decided in the case of *Prigg* v. *Pennsylvania* that the officers of the State were not legally obligated to assist in the enforcement of the Fugitive Slave Law of 1793, Congress passed another and a more drastic measure in 1850 which, although unusually rigid in its terms, was enthusiastically supported by the Supreme Court in upholding the slavery regime. The Fugitive Slave Law of 1850 deprived the Negro suspect of the right of a trial by jury to determine the question of his freedom in a competent court of the State.

The affidavit of the person claiming the Negro was sufficient evidence of ownership. This law made it the duty of marshals and of the United States courts to obey and execute all warrants and precepts issued under the provisions of this act. It imposed a penalty of a fine and imprisonment upon any person knowingly hindering the arrest of a fugitive or attempting to rescue one from custody or harboring one or aiding one to escape. The writ of habeas corpus was denied to the reclaimed Negro and the act was *ex post facto*. In short, the Fugitive Slave Law of 1850 committed the whole country to the task of the protection of slave property and made slavery a national matter with which every citizen in the country had to be concerned. In the interest of the property right of the master, moreover, the Supreme Court by the Dred Scott Decision[6] upheld this measure, feeling that there was in Congress adequate power expressly given and implied to enforce this regulation in spite of any local opposition that there might develop against the government acting upon individuals to carry out this police regulation. The Negro was not a citizen and in his non-political status could not sue in a Federal court, which for the same reason must disclaim jurisdiction in a case in which the Negro was a party.

In the decision of *Ableman* v. *Booth*[7] the court in construing the provision for the return of slaves according to the Fugitive Slave Law of 1850 further recognized the master's right of

[6] *Dred Scott* v. *Sanford*, 19 Howard, 399.

[7] 21 Howard, 506.

property in his bondman, the right of assisting and recovering him regardless of any State law or regulation or local custom to the contrary whatsoever. This tribunal then believed that the right of the master to have his fugitive slave delivered up on the claim, being guaranteed by the Constitution, the implication was that the national government was clothed with proper authority and functions to enforce it. These were reversed during the Civil War by the nation rising in arms against the institution of slavery which it had economically outgrown and the court in the support of the Federal Government exercising its unusual powers in effecting the political and social upheaval resulting in the emancipation of the slaves, again became decidedly national in its decisions.

Out of Rebellion the Negro emerged a free man endowed by the State and Federal Government with all the privileges and immunities of a citizen in accordance with the will of the majority of the American people, as expressed in the Civil Rights Bill and in the ratification of the Thirteenth, Fourteenth and Fifteenth Amendments. A decidedly militant minority, however, willing to grant the Negro freedom of body but unwilling to grant him political or civil rights, bore it grievously that the race had been so suddenly elevated and soon thereafter organized a party of reaction to reduce the freedmen to the position of the free people of color, who before the Civil War had no rights but that of exemption from involuntary servitude. During the Reconstruction period when the Negroes figured conspicuously

in the rebuilding of the Southern States they temporarily enjoyed the rights guaranteed them by the Constitution. As there set in a reaction against the support of the reconstructed governments as administered by corrupt southerners and interlopers, the support which the United States Government had given this first effort in America toward actual democracy was withdrawn and the undoing of the Negro as a citizen was easily effected throughout the South by general intimidation and organized mobs known as the Ku-Klux Klan.

One of the first rights denied the Negro by these successful reactionaries was the unrestricted use of common carriers. Standing upon its former record, however, the court had sufficient precedents to continue as the impartial interpreter of the laws guaranteeing all persons civil and political equality. In *New Jersey Steam Navigation Company* v. *Merchants Bank*[8] the court speaking through Justice Nelson took high ground in the defence of the free and unrestricted use of common carriers, a right frequently denied the Negroes after the Civil War. The court said that a common carrier is "in the exercise of a sort of public office and has public duties to perform from which he should not be permitted to exonerate himself without assent of the parties concerned." This doctrine was upheld in *Munn* v. *Illinois*[9] and in *Olcott* v. *Supervisors*[10] when it was decided

[8] 6 Howard, 344.

[9] 94 U.S., 113.

[10] 16 Wall., 678.

that railroads are public highways established under the authority of the State for the public use; and that they are none the less public highways, because controlled and owned by private corporations; that it is a part of the function of government to make and maintain highways for the convenience of the public; that no matter who is agent or what is the agency, the function performed is *that of the State*; that although the owners may be private companies, they may be compelled to permit the public to use these works in the manner in which they can be used; "Upon these grounds alone," continues the opinion, "have courts sustained the investiture of railroad corporations with the States right of eminent domain, or the right of municipal corporations, under legislative authority, to assess, levy, and collect taxes to aid in the construction of railroads."[11] Jurists in this country and in England had also held that inasmuch as the innkeeper is engaged in a quasi public employment, the law gives him special privileges and he is charged with certain duties and responsibilities to the public. The public nature of his employment would then forbid him from discriminating against any person asking admission, on account of the race or color of that person.[12]

In the *Slaughter House Cases*[13] and *Strauder* v. *West Virginia*[14]

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[11] This was held in *Township of Queensburg* v. *Culver* (19 Wall., 83), in *Township of Pine Grove* v. *Talcott* (19 Wall., 666), and in Massachusetts in *Worcester* v. *Western R. R. Corporation* (4 Met., 564).

[12] *Storey on Bailments*, Sec. 475-6, and *Rex* v. *Ivens*, 7 Carrington & Payne, 213; 32, E. C. L., 495.

[13] 16 Wall., 36.

the United States Supreme Court held that since slavery was the moving or principal cause of the adoption of the Thirteenth Amendment, and since that institution rested wholly upon the inferiority, as a race, of those held in bondage, their freedom necessarily involved immunity from, and protection against all discrimination against them, because of their race in respect of such civil rights as belong to freemen of other races. Congress, therefore, under its present express power to enforce that amendment by appropriate legislation, might enact laws to protect that people against deprivation, *because of their race*, of any civil rights granted to other freemen in the same States; and such legislation may be of a direct and primary character, operating upon States, their officers and agents, and also upon, at least, such individuals and corporations as exercise public functions and wield power and authority under the State.

The State was conceded the power to regulate rates, fares of passengers and freight, and upon these grounds it might regulate the entire management of railroads in matters affecting the convenience and safety of the public, such as regulating speed, compelling stops of prescribed length at stations and prohibiting discriminations and favoritisms. The position taken here is that these corporations are actual agents of the State and what the State permits them to do is an act of the State. The Thirteenth and Fourteenth Amendments made the Negro race a part of the public and entitled to share in the control and use of

[14] 100 U. S., 303.

public utilities. Any restriction in the use of these utilities would deprive the race of its liberty; for "personal liberty consists," says Blackstone, "in the power of locomotion of changing situation, of removing one's person to whatever places one's own inclination may direct, without restraint, unless by due course of law."

In several decisions the court had held that the purpose of the Thirteenth and Fourteenth Amendments was to raise the Negro race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of civil rights with all other persons within the jurisdiction of the United States. In *Strauder* v. *West Virginia*,[15] and *Neal* v. *Delaware*,[16] the court had taken the position that exemption from race discrimination is a right of a citizen of the United States. Negroes charged that members of their race had been excluded from a jury because of their color. The court was then of the opinion that such action contravened the Constitution and, as was held in the case of *Prigg* v. *Pennsylvania*, declared it essential to the national supremacy that the agent of the body politic should have the power to enforce and protect any right granted by the Constitution.

In *Ex Parte Virginia* the position was the same. In this case one Cole, a county judge, was charged by the laws of Virginia with the duty of selecting grand and petit jurors. The laws of that State did not permit him in the performance of that duty

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[15] 100 U. S., 306.

[16] 103 U. S., 386.

to make any distinction as to race. He was indicted in a Federal court under the act of 1875, for making such discriminations. The attorney-general of Virginia contended that the State had done its duty, and had not authorized or directed that county judge to do what he was charged with having done; that the State had not denied to the Negro race the equal protection of the laws; and that consequently the act of Cole must be deemed his individual act, in contravention of the will of the State. Plausible as this argument was, it failed to convince the court; and after emphasizing the fact that the Fourteenth Amendment had reference to the acts of the political body denominated a State, "by whatever instruments or in whatever modes that action may be taken" and that a State acts by its legislative, executive and judicial authorities, and can act in no other way, it said:

"The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibitions; and, as he acts under the name and for the State, and is clothed with the State power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or evade it. But the constitutional amendment

was ordained for a purpose. It was to secure equal rights to all persons, and, to insure to all persons the enjoyment of such rights, power was given to Congress to enforce its provisions by appropriate legislation. Such legislation must act upon persons, not upon the abstract thing denominated as State but upon the persons who are the agents of the State, in the denial of the rights which were intended to be secured."[17]

The Supreme Court of the United States soon fell under reactionary influence and gave its judicial sanction to all repression necessary to establish permanently the reactionaries in the South and to deprive the Negroes of their political and civil rights. It will be interesting, therefore, to show exactly how far the United States Supreme Court, supposed to be an impartial tribunal and generally held in such high esteem and treated with such reverential fear, has been guilty of inconsistency and sophistry in its effort to support this autocracy in defiance of the well established principles of interpretation for construing the constitutions and laws of States and in utter disregard of the supremacy of Congress in the exercise of the powers granted the government by the Constitution of the United States.

The Right of Locomotion

In 1875 Congress passed a measure commonly known as the Civil Rights Bill, which was supplementary of other measures

[17] *Ex Parte Virginia*, 100 U. S., 346-7.

of the same sort, the first being enacted April 9, 1866.[18] and reenacted with some modifications in sections 16, 17, and 18 of the Enforcement Act passed August 31, 1870.[19] The intention of the statesmen advocating these measures was to secure to the freedmen the enjoyment of every right guaranteed all other citizens. The important sections of the Civil Rights Bill of 1875 follow:

> *Section 1.* That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.
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> *Section 2.* That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offense forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall also, for every such offense be deemed guilty

[18] 14 statutes, 27, Chapter 31.

[19] 16 statutes, 140, Chapter 114.

> of a misdemeanor, and, upon conviction therefor, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year. *Provided*, That all persons may elect to sue for the penalties aforesaid, or to proceed under their rights at common law and by State statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred: But this provision shall not apply to criminal proceedings, either under this act or the criminal law of any State: and provided further, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively.

Although the Negroes by this measure were guaranteed the rights which were granted by the Constitution to every citizen of the United States, the members of the Supreme Court of the United States instead of upholding the laws of the nation in accordance with their oaths undertook to hedge around and to explain away the articles of the Constitution in such a way as to legislate rather than interpret the laws according to the intent of the framers of the Constitution. Subjected to all sorts of discriminations at the polls, in the courts, in inns, in hotels, on street cars, and on railroads, Negroes had sued for redress of their grievances and the persons thus called upon to respond in the courts attacked the constitutionality of the Civil Rights Bill, and the War Amendments, contending that they encroached upon the police power of the States.

The first of these *Civil Rights Cases* were: *United States* v. *Stanley*, *United States* v. *Ryan*, *United States* v. *Nichols*, *United States* v. *Singleton*, and *Robinson and wife* v. *Memphis and Charleston R. R. Co.* Two of these cases, those against Stanley and Nichols, were indictments for denying to persons of color the accommodations of an inn or hotel; two of them, those against Ryan and Singleton, were, one on information, the other on indictments, for denying to individuals the privileges and accommodations of a theatre. The information against Ryan was for refusing a colored person a seat in the dress circle of McGuire's Theatre in San Francisco; and the indictment against Singleton was for denying to another person, whose color was not stated, the full enjoyment of the accommodation of the theatre known as the Grand Opera House in New York.

The argument to show the culpability of the State was that in becoming a business man or a corporation established by sanction of and protected by the State, such a person or persons discriminating against a citizen of color no longer acted in a private but in a public capacity and in so doing affected an interest in violation of the State by controlling, as in the case of slavery, an individual's power of locomotion. The Civil Rights Bill was appropriate legislation as defined by the Constitution to forbid any action by private persons which "in the light of our history may reasonably be apprehended to tend, on account of its being incidental to quasi public occupations, to create an institution." The act of 1875 in prohibiting persons

from violating the rights of other persons to the full and equal enjoyment of the accommodations of inns and public conveyances, for any reason turning merely upon the race or color of the latter, partook of the specific character of certain contemporaneous, solemn and effective action by the United States to which it was a sequel and is constitutional.

Giving the opinion of the court in Civil Rights Cases,[20] Mr. Justice Bradley said that the Fourteenth Amendment on which this act of 1875 rested for its authority, if it had any authority at all, does not invest Congress to legislate within the domain of State legislation or in State action of the kind referred to in the Civil Rights Act. He believed that the Fourteenth Amendment does not authorize Congress to create a code of municipal law for the regulation of private rights. He conceded that positive rights and privileges are secured by the Fourteenth Amendment but only by prohibition against State laws and State proceedings affecting those rights.[21] "Until some State law has passed," he said, "or some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the Fourteenth Amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity; for the prohibitions of the amendment are against State laws and acts under State authority."

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[20] 109 U. S., 1.

[21] *United States* v. *Cruikshank*, 92 U. S., 542; *Virginia* v. *Rives*, 100 U. S., 318; *Ex Parte Virginia*, 100 U. S., 339.

Otherwise Congress would take the place of State legislatures and supersede them and regulate all private rights between man and man. Civil rights such as are guaranteed by the Constitution against State aggression, thought Justice Bradley, cannot be impaired by the wrongful acts of individuals unsupported by State authority in the shape of laws, customs, or executive proceedings, for those are private wrongs.

Justice Bradley believed, moreover, that the Civil Rights Act could not be supported by the Thirteenth Amendment in that, unlike the Fourteenth Amendment, the Thirteenth Amendment is primary and direct in abolishing slavery. "When a man has emerged from slavery," said he, "and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, ceases to be the special favorite of the laws, and when his rights as a citizen or a man, are to be protected in the ordinary modes by which other men's rights are protected." To eject a Negro from an inn or a hotel, to compel him to ride in a separate car, to deny him access and use of places maintained at public expense, according to Justice Bradley, do not constitute imposing upon the Negroes badges and incidents of slavery; for they are acts of individuals with which Congress, because of the limited powers of the Federal government, cannot have anything to do. The particular clause in the Civil Rights Act, so far as it operated on individuals in the several States was, therefore, held null and void, but the court

held that it might apply to the District of Columbia and territories of the United States for which Congress might legislate directly. Since then the court has in the recent *Wright Case* declared null and void even that part which it formerly said might apply to territory governed directly by Congress, thus taking the position tantamount to reading into the laws of the United States and the laws of nations the segregation measures of a mediaeval ex-slaveholding commonwealth assisted by the nation in enforcing obedience to its will beyond the three mile limit on the high seas.

Although conceding that the Thirteenth Amendment was direct and primary legislation, the court held that it had nothing to do with the guarantee against that race discrimination commonly referred to in the bills of complaint as the badges and incidents of slavery. The court found the Fourteenth Amendment negative rather than direct and primary because of one of its clauses providing that "no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States nor shall any State deprive any person of life, liberty and property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The court was too evasive or too stupid to observe that the first clause of this amendment was an affirmation to the effect that all persons born and naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. In other words, the court held that if there is one negative clause in a paragraph,

the whole paragraph is a negation. Such sophistry deserves the condemnation of all fairminded people, when one must conclude that any person even without formal education, if he has heard the English language spoken and is of sound mind, would know better than to interpret a law so unreasonably.

In declaring this act unconstitutional the Supreme Court of the United States violated one of its own important principles of interpretation to the effect that this duty is such a delicate one, that the court in declaring a statute of Congress invalid must do so with caution, reluctance and hesitation and never until the duty becomes manifestly imperative. In the decision of *Fletcher* v. *Peck*,[22] the court said that whether the legislative department of the government has transcended the limits of its constitutional power is at all times a question of much delicacy, which seldom, if ever, is to be decided in the affirmative, in a doubtful case. The position between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other. In the *Sinking Fund Cases*[23] the court said: "When required in the regular course of judicial proceedings to declare an act of Congress void if not within the legislative power of the United States, this declaration should never be made except in a clear case. Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the

[22] 6 Cranch, 128.

[23] 99 U. S., 418.

government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule." And this is exactly what happened. The judiciary here assumed the function of the legislative department. Not even a casual reader on examining these laws and the Constitution can feel that the court in this case felt such a clear and strong conviction as to the invalidity of this constitutional legislation when that tribunal, as its records show, had under different circumstances before the Civil War held a doctrine decidedly to the contrary.

Mr. Justice Harlan, therefore, dissented. He considered the opinion of the court narrow, as the substance and spirit were sacrificed by a subtle and ingenious verbal criticism. Justice Harlan believed, "that it is not the words of the law but the internal sense of it that makes the law; the letter of the law is the body, the sense and reason of the law the soul." "Constitutional provisions adopted in the interest of liberty," said Justice Harlan, "and for the purpose of securing, through national legislation, if need be, rights inhering in a state of freedom, and belonging to American citizenship, have been so construed as to defeat the end the people desire to accomplish, which they attempted to accomplish, and which they supposed they had accomplished, by changes in their fundamental law."

The court, according to Justice Harlan, although he did not mean to say that the determination in this case should have been materially controlled by considerations of mere expediency

or policy, had departed from the familiar rule requiring that the purpose of the law or Constitution and the objects to be accomplished by any grant are often the most important in reaching real intent just as the debates in the convention of 1787 and the discussions in the *Federalist* and in the ratifying conventions of the States have often been referred to as throwing important light on clauses in the Constitution seeming to show ambiguity. The debates on the war amendment, when they were proposed and ratified, were thoroughly expounded before the court in bringing before that tribunal the intention of the members of Congress, by which the court, according to a well established principle of interpretation, should have been influenced in construing the statute in question.

The court held that legislation for the enforcement of the Thirteenth Amendment is direct and primary "but to what specific ends may it be directed?" inquired Justice Harlan. The court "had uniformly held that national government has the power, whether expressly given or not, to secure and protect rights conferred or guaranteed by the Constitution."[24] Justice Harlan believed then that the doctrines should not be abandoned when the inquiry was not as to an implied power to protect the master's rights, but what Congress might, under powers expressly granted, do for the protection of freedom and the rights necessarily inhering in a state of freedom.

The Thirteenth Amendment, the court conceded, did more

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[24] *United States* v. *Reese*, 92 U. S., 214; *Strauder* v. *West Virginia*, 100 U. S., 303.

than prohibit slavery as an *institution*, resting upon distinctions of race, and upheld by positive law. The court admitted that it "established and decreed universal civil freedom throughout the United States." "But did the freedom thus established," inquired Justice Harlan, "involve more than exemption from actual slavery? Was nothing more intended than to forbid one man from owning another as property? Was it the purpose of the nation simply to destroy the institution and then remit the race, theretofore held in bondage, to the several States for such protection, in their civil rights, necessarily growing out of their freedom, as those States in their discretion might choose to provide? Were the States against whose protest the institution was destroyed to be left free, so far as national interference was concerned, to make or allow discriminations against that race, as such, in the enjoyment of those fundamental rights which by universal concession, inhere in a state of freedom?" Justice Harlan considered it indisputable that Congress in having power to abolish slavery could destroy the burdens and disabilities remaining as its badges and incidents which constitute its substance in visible form.

The court in its defense had taken as an illustration that the negative clause of the Fourteenth Amendment was not direct and primary, that although the States are prohibited from passing laws to impair the obligations of contracts this did not mean that Congress could legislate for the general enforcement of contracts throughout the States. Discomfitting his brethren on

their own ground Harlan said: "A prohibition upon a State is not a *power* in *Congress or in the national government*. It is simply a *denial* of *power* to the State. The much talked of illustration of impairing the obligation of contracts, therefore, is not an example of power expressly conferred in contradistinction to that of this case and is not convincing for this would be a court matter, not a matter of Congress. The Fourteenth Amendment is the first case of conferring upon Congress affirmative power by *legislation to enforce* an express prohibition on the States. Judicial power was not specified but the power of Congress. The judicial power could have acted without such a clause. The Fourteenth Amendment is not merely a prohibition on State action. It made Negroes citizens of the United States and of the States. This is decidedly affirmative. This citizenship may be protected not only by the judicial branch of the government but by Congressional legislation of a primary or direct character. It is in the power of Congress to enforce the affirmative as well as the prohibitive provisions of this article. The acceptance of any doctrine to the contrary," continued Justice Harlan, "would lead to this anomalous result: that whereas prior to the amendments, Congress with the sanction of this court passed the most stringent laws—operating directly and primarily upon States and their officers and agents, as well as upon individuals—in vindication of slavery and the right of the master, it may not now, by legislation of a like primary and direct character, guard, protect, and secure the freedom established, and the most essential right

of the citizenship granted, by the constitutional amendments."

It did not seem to Justice Harlan that the fact that, by the second clause of the first section of the Fourteenth Amendment, the States are expressly prohibited from making or enforcing laws abridging the rights and immunities of citizens of the United States, furnished any sufficient reason for upholding or maintaining that the amendment was intended to deny Congress the power, by general, primary, and direct legislation, of protecting citizens of the several States, being also citizens of the United States, against all discrimination, in respect of their rights as citizens, which is founded on "race, color, or previous condition of servitude." "Such an interpretation," thought he, "is plainly repugnant to its fifth section, conferring upon Congress power, by appropriate legislation, to enforce not merely the provisions containing prohibitions upon the States, but all of the provisions of the amendment, including the provisions, express and implied, in the first clause of the first section of the article granting citizenship." The prohibition of the State laws could have been negatived by judicial interpretation without the Fourteenth Amendment on the ground that they would have conflicted with the Constitution.

The court said the Fourteenth Amendment was not intended to enact a municipal code for the States. No one will gainsay this. This Amendment, moreover, is not altogether for the benefit of the Negro. It simply interferes with the local laws when they operate so as to discriminate against persons or permit agents of

the States to discriminate against persons of any race on account of color or previous condition of servitude. Of what benefit was it if it did not do this? The constitutions of the several States had already secured all persons against deprivation of life, liberty or property otherwise than by due process of law, and in some form recognized the right of all persons to the equal protection of the laws. If this be the correct interpretation even, it does not follow that privileges which have been granted by the nation, may not be protected by primary legislation upon the part of Congress. Justice Harlan pointed out that it is for Congress not the judiciary, to say that legislation is appropriate, for that would be sheer usurpation of the functions of a coordinate department. Why should these rules of interpretation be abandoned in the case of maintaining the rights of the Negro guaranteed by the Constitution?

The Civil Rights Act of 1875 could have been maintained on the ground that it regulated interstate passenger traffic, as one of the cases, *Robinson and Wife* v. *Memphis and Charleston Railroad Company*, showed that Robinson a citizen of Mississippi had purchased a ticket entitling him to be carried from Grand Junction, Tennessee, to Lynchburg, Virginia. This case substantially presented the question of interstate commerce but the court reserved the question whether Congress in the exercise of its power to regulate commerce among the several States, might or might not pass a law regulating rights in public conveyances passing from one State to another. The

court undertook to hide behind the fact that this specific act did not recite therein that it was enacted in pursuance of the power of Congress to regulate commerce. Justice Harlan, therefore, inquired: "Has it ever been held that the judiciary should overturn a statute, because the legislative department did not accurately recite therein the particular provision of the constitution authorizing its enactment?" On the whole, the contrary is the rule. It is sufficient to know that there is authority in the Constitution.

In this decision, too, there was the influence of the much paraded bugbear of social equality forced upon the whites. To use the inns, hotels, and parks, established by authority of the government and the places of amusement authorized as the necessary stimulus to progress, to buy a railroad ticket at the same window, ride in the same comfortable car on a limited train rather than incur the loss of time and suffer the inconvenience of inferior accommodations on a slow local train; to sleep and eat in a Pullman car so as to be refreshed for business on arriving at the end of a long journey, all of this was and is today dubbed by the reactionary courts social equality. Justice Harlan exposed this fallacy in saying: "The right, for instance, of a colored citizen to use the accommodations of a public highway, upon the same terms as are permitted to white citizens, is no more a social right than his right, under the law, to use the public streets of a city or a town, or a turnpike road, or a public market, or a post office, or his right to sit in a public building with others, of whatever

race, for the purpose of hearing the political questions of the day discussed."

What did the Negro become when he was freed? What was he when, according to section 2 of Article IV of the Constitution, he became by virtue of the Fourteenth Amendment entitled to all privileges and immunities of citizens in the several States?[25] From what did the race become free? If Justice Bradley had been inconveniently segregated by common carriers, driven out of inns and hotels with the sanction of local law, and deprived by a mob of the opportunity to make a living, would he have considered himself a free citizen of this or any other country? "A colored citizen of Ohio or Indiana while in the jurisdiction of Tennessee," contended Justice Harlan, "is entitled to enjoy any privilege or immunity, fundamental in citizenship, which is given to citizens of the white race in the latter State. Citizenship in this country necessarily imports at least equality of civil rights among citizens of every race in the same State." In *United States* v. *Cruikshank*[26] it was held that rights of life and personal liberty are natural rights of man, and that "equality of the rights of citizens is a principle of republicanism."

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[25] *Ward* v. *Maryland*, 12 Wall., 418; *Corfield* v. *Coryell*, 4 Washington, D. C., 371; *Paul* v. *Virginia*, 8 Wall., 168; *Slaughter-house cases*, *Ibid.*, 36.

[26] 92 U. S., 542.

Inconsistency of the Court

In the case of *Hall* v. *DeCuir*[27] the court reached an important decision when an Act of Louisiana passed in 1869 to give passengers without regard to race or color equality of right in the accommodations of railroad or street cars, steamboats or other water crafts, stage coaches, omnibusses or other vehicles, was declared unconstitutional so far as it related to commerce between States.[28] Here a person of color had been discriminated against by a Mississippi River navigation company which was

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[27] 95 U. S., 487.

[28] The Louisiana Act was:*Section*—. All persons engaged within this State in the business of common carriers of passengers, shall have the right to refuse to admit any person to their railroad cars, street cars, steamboats or other water-crafts, stage coaches, omnibusses, or other vehicles, or to expel any person therefrom after admission, when such persons shall, on demand, refuse or neglect to pay the customary fare, or when such person shall be of infamous character or shall be guilty, after admission to the conveyance of the carrier, of gross, vulgar, or disorderly conduct, or who shall commit any act tending to injure the business of the carrier, prescribed for the management of his business, after such rules and regulations shall have been made known: *Provided*, said rules and regulations make no discrimination on account of race or color, and shall have the right to refuse any person admission to such conveyance where there is not room or suitable accommodation; and, except in cases above enumerated, all persons engaged in the business of common carriers of passengers are forbidden to refuse admission to their conveyance, or to expel therefrom any person whomsoever.*Section 4.* For a violation of any provision of the first and second sections of this act, the party injured shall have right of action to recover any damage, exemplary as well as actual, which he may sustain, before any court of competent jurisdiction. Acts of 1869, page 77; Rev. Stat. 1870, page 93.

called to answer before a United States court for violating this act.

Giving the opinion of the court, Chief Justice Waite said: "We think it may be safely said that State legislation which seeks to impose a direct burden upon inter-state commerce, or to interfere directly with its freedom does encroach upon the exclusive power of Congress. The statute now under consideration in our opinion occupies that position." "Inaction by Congress," the court held, "is equivalent to a declaration that interstate commerce shall remain free and untrammelled." This meant that the carrier was "at liberty to adopt such reasonable rules and regulations for the disposition of passengers upon his boat, while pursuing her voyage within Louisiana or without, as seemed to him best for the interest of all concerned. The statute under which this suit is brought, as construed by the State court, seeks to take away from him that power so long as he is within Louisiana, and while recognizing to the fullest extent the principle which sustains a statute unless its unconstitutionality is clearly established, we think this statute to the extent that it requires those engaged in the transportation of passengers among the several States to carry colored persons in Louisiana in the same cabin with whites is unconstitutional and void. If the public good requires such legislation it must come from Congress and not from the States."

Justice Waite here expressed his fear as to the delicate ground on which he was treading in saying: "The line which separates

the powers of the States from this exclusive power of Congress is not always distinctly marked, and oftentimes it is not easy to determine on which side a particular case belongs. Judges not infrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary rule by which the line must in all cases be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved." Thus the way was left clear to vary the principle of interpretation according to the color of the citizens whose rights might be involved.

In view of the subsequent decisions in separate car cases, moreover, the following portion of Justice Waite's opinion as to a clause in the law involved in the case of *Hall* v. *DeCuir* is unusually interesting. "It does not act," said he, "upon the business through the local instruments to be employed after coming within the State, from without or goes out from within. While it purports only to control the carrier when engaged within the State it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. We confine our decision to the statute in its effect upon foreign and interstate commerce, expressing no opinion as to its validity in any other respect."[29]

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[29] Mr. Justice Clifford concurred in the judgment but went into details to justify the segregation whereas the opinion of the court merely tried to see whether the details conflicted with the power of Congress to regulate commerce.

With the rapid expansion of commerce in the United States and the consequent necessity for regulation both by the State and the United States, no power of Congress was more frequently questioned than that to regulate commerce and no litigant concerned in such constitutional questions easily escaped the consequences of the varying interpretation given this clause by the United States Supreme Court. The court, of course, accepted as a general principle that there are three spheres for the regulation of commerce, namely: that which a State cannot invade, that which the State may invade, when Congress has not interfered, and that which is reserved to the State in conformity with its police power. But as late as 1886 the nationalistic school found some encouragement in the decision of the *Wabash, St. Louis and Pacific Railway Company* v. *Illinois*[30] given by Justice Miller. He said: "Notwithstanding what is there said, that is, in the decisions of *Munn* v. *Illinois; C. B. and Q. R. R. Company* v. *Iowa*, and *Peik* v. *Chicago and N. W. R. R. Co.*,[31] this court held and asserted that it had never consciously held otherwise, that a statute of a State intended to regulate or to tax, or to impose any other restriction upon the transmission of persons or property or telegraphic messages, from one State to another, is not within the class of legislation which the States may enact in the absence of legislation by Congress; and that such statutes are void even as to the part of such transmission which may be within

[30] 118 W. S., 557.

[31] All of these are in 94 U. S.

the State." Chief Justice Waite, and Justice Bradley and Justice Gray, however, dissented for various reasons.

In the *Louisville Railway Company* v. *Mississippi*,[32] however, in 1899, the court, evidently yielding to southern public opinion, reversed itself by the decision that an interstate carrier could not run a train through Mississippi without attaching thereto a separate car for Negroes and had the audacity to argue that this is not an interference with interstate commerce.[33] To show how inconsistent this interpretation was one should bear in mind that in *Hall* v. *DeCuir* the court had held that this was exactly

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[32] 133 U. S., 587.

[33] This was the law of Mississippi:*Sec. 1.* "Be it enacted, That all railroads carrying passengers in this State (other than street railroads) shall provide equal, but separate accommodation for the white and colored races by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition, so as to secure separate accommodations."*Sec. 2.* That the conductors of such passenger trains shall have power and are hereby required to assign each passenger to the car or the compartment of a car (when it is divided by a partition) used for the race to which said passenger belongs; and that, should any passenger refuse to occupy the car to which he or she is assigned by such conductor, said conductor shall have the power to refuse to carry such passenger on his train and neither he nor the railroad company shall be liable for any damages in any event in this State.*Sec. 3.* That all railroad companies that shall refuse or neglect within sixty days after the approval of this act to comply with the requirements of section one of this act, shall be deemed guilty of a misdemeanor and shall upon conviction in a court of competent jurisdiction, be fined not more than five hundred dollars; and any conductor that shall neglect to, or refuse to carry out the provisions of this act, shall, upon conviction, be fined not less than twenty-five nor more than fifty dollars for each offense.*Sec. 4.* That all acts and parts of acts in conflict with this act be, and the same are hereby repealed, and this act to take effect and be in force from and after passage. Acts of 1888, p. 48.

what a State could not do in that the statute acted not upon business through local instruments to be employed after coming into the State, but directly upon business as it comes into the State from without or goes out from within, although it purported only to control the carrier when engaged within the State. It necessarily influenced the conduct of the carrier to some extent in the management of his business throughout his entire voyage. "No carrier of passengers," said the court in *Hall* v. *DeCuir*, "can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a State line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other to be kept separate. Uniformity in the regulation by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it, Congress, which is untrammelled by State lines, has been invested with exclusive legislative power of determining what such regulation should be."

Giving the opinion in the Mississippi case, however, Justice Brewer said: "It has been often held by this court that there is a commerce wholly within the State which is not subject to the constitutional provision and the distinctions between commerce among the States and the other class of commerce between citizens of a single State and conducted within its limits exclusively is one which has been fully recognized in this court, although it may not be always easy, where the lines of these classes approach each other, to distinguish between the one

and the other."[34] He might have added some other comment to the effect that this court will not definitely draw the line of distinction between such classes of commerce since it desires to leave adequate room for evasion, because it had been unusually easy to find such a line in cases in which the rights of Negroes were concerned and such definite interpretation might interfere with the rights of white men. Justices Harlan and Bradley dissented on the grounds that the law imposed a burden upon an interstate carrier in that he would be fined if he did not attach an additional car for race discrimination, and that the opinion was repugnant to the principles set forth in that of *Hall* v. *DeCuir*.

The United States Supreme Court finally reached the position of following the decision of *Ex Parte Plessy* which justified the discrimination in railway cars on the grounds that it is not a badge of slavery contrary to the Thirteenth Amendment. This decision, in short, is: So long, at least, as the facilities or accommodations provided are substantially equal, statutes providing separate cars for the races do not abridge any privilege or immunity of citizens or otherwise contravene the Fourteenth Amendment of the United States Constitution. In such matters equality and not identity or community of accommodations is the extreme test of conformity to the requirements of the amendment. The regulation of domestic commerce is as exclusively a State function as the regulation of interstate commerce is a Federal function. The separate car law is an exercise of police power in

[34] 133 U. S., 592.

the interest of public order, peace and comfort. It is a matter of legislative power and discretion with which Federal courts cannot interfere.

In *Hennington* v. *Georgia*,[35] it was later emphasized that it had been held that legislative enactments of the States, passed under the admitted police powers, and having a real relation to the domestic peace, order, health, and safety of their people, but which by their necessary operation, affect, to some extent, or for a limited time, the conduct of commerce among the States, are yet not invalid by force alone of the grant of power of Congress to regulate such commerce; and, if not obnoxious to some other constitutional provision or destructive of some right secured by the fundamental law, are to be respected in the courts of the Union until they are superseded and displaced by some act of Congress passed in execution of power granted to it by the Constitution. Of course, there was no other provision to which such laws could be contrary after the Supreme Court had whittled away the war amendments.

In the case of *Plessy* v. *Ferguson*[36] the most inexcusable inconsistency of the court was shown when the persons of color aggrieved attacked the separate car law of Louisiana on the ground that it conflicted with the Fourteenth Amendment. Giving the opinion of the court, Justice Brown said: "So far, then, as a conflict with the Fourteenth Amendment is

[35] 163 U. S., 317.

[36] *Ibid.*, 537.

concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned or the corresponding acts of State legislatures."

Justice Harlan dissented, saying that he was of the opinion that the Statute of Louisiana is inconsistent with personal liberty of white and black in that State and hostile to both in the letter and spirit of the Constitution of the United States. Justice Harlan rightly contended that laws can have no regard to race according to the Constitution. If they do, they conflict with the rights of State and national citizenship and with personal liberty. The Thirteenth and Fourteenth Amendments removed race from our governmental system. But what has the court to do with the policy or expediency of legislation? "A statute may be valid, and yet upon grounds of public policy, may well be characterized as unreasonable." Accordingly Mr. Sedgwick, a distinguished

authority, says: "The Courts have no other duty to perform than to execute the legislative will, without regard to their views as to the wisdom or justice of the particular enactment." "Statutes," said Justice Harlan, "must always have a reasonable construction. Sometimes they are to be construed strictly; sometimes, liberally, in order to carry out the legislative will. But, however construed, the intent of the legislature is to be respected."

The decisions in the cases of *M. K. and T. Railway* v. *Haber*[37] and *Crutcher* v. *Kentucky*,[38] are of some importance. In these cases the court reiterated the doctrine that the regulation of the enjoyment of the relative rights and the performance of the duties, of all persons within the jurisdiction of a State belong primarily to such a State under its reserved power to provide for the safety of all persons and property within its limits; and that even if the subject of such regulations be one that may be taken under the exclusive control of Congress, and be reached by national legislation, any action taken by the State upon that subject that does not directly interfere with rights secured by the Constitution of the United States or by some valid act of Congress, must be respected until Congress intervenes.[39] The court by this time, however, had all but held that the Constitution

[37] 169 U. S., 613, 645.

[38] 141 U. S., 61.

[39] In *Pa. R. R. Co.* v. *Hughes* (191 U. S., 489), Justice White says:"In the absence of Congressional legislation upon the subject an act of the Alabama legislature to require locomotive engineers to be examined and licensed by a board to be appointed by the governor for that purpose was sustained in *Smith* v. *Alabama*" (124 U. S., 465).

secured to the Negro no civil or political rights except that of exemption from involuntary servitude, and that law for the Negro is the will of the white man.

Further development of the doctrine as to the right of the State to deprive a Negro of citizenship is brought out in the *Lauder Case*.[40] The case was this: Lauder's wife purchased a first class ticket from Hopkinsville to Mayfield, both places within the State of Kentucky. She took her place in what was called the "ladies' coach" and was ejected therefrom by the conductor and assigned a seat in a smoking car, which was alleged to be small, badly ventilated, unclean and fitted with greatly inferior accommodations. This road ran from Evansville, Indiana, to Hopkinsville, Kentucky. It was held in the Court of Appeals that the decision of the United States Supreme Court in *Louisville, New Orleans and Railway* v. *Mississippi*[41] and *Plessy* v. *Ferguson*[42] was conclusive of the constitutionality of the act so far as the plaintiffs were concerned; and that the mere fact that the railroad extended to Evansville, in the State of Indiana, could in no wise render the statute in question invalid as to the duty of the railroad to respect it.

In the case of *Chesapeake and Ohio Railway Company* v. *Kentucky*,[43] this doctrine was carried to its logical conclusion.

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[40] 179 U. S., 393.

[41] 133 U. S., 587.

[42] 163 U. S., 537.

[43] 179 U. S., 388, 391.

The question was whether a proper construction of the separate car law confines its operation to passengers whose journeys commence and end within the boundaries of the State or whether a reasonable interpretation of the act requires Negro passengers to be assigned to separate coaches when traveling from or to points in other States. In other such cases the Supreme Court of the United States had interpreted the local law as applying only to interstate commerce. The language of the first section of the Kentucky statute made it very clear that it applied to all carriers. The first section of the Kentucky law follows:

> "Any railroad company or corporation, person or persons, running or otherwise operation of railroad cars or coaches by steam or otherwise, in any railroad line or track within this State, and all railroad companies, person or persons, doing business in this State, whether upon lines or railroads owned in part or whole, or leased by them; and all railroad companies, person or persons, operating railroad lines that may hereafter be built under existing charters, or charters that may hereafter be granted in this State; and all foreign corporations, companies, person or persons, organized under charters granted, or that may be hereafter granted by any other State, who may be now, or may hereafter be engaged in running or operating any of the railroads of this State, whether in part or whole, are hereby required to furnish separate coaches or cars for travel or transportation of the white and colored passengers on their respective lines of railroad."

Any sane man can see that this law undertook to regulate interstate commerce. Justice Brown, however, tried to square the opinion with that of the Kentucky Supreme Court, upholding the law on the grounds that it was constitutional in as much as it applied only to intrastate passenger traffic, although the law plainly applies also to interstate traffic.

Speaking further for the court, Justice Brown said: "Indeed we are by no means satisfied that the Court of Appeals did not give the correct construction to this statute in limiting its operation to domestic commerce. It is scarcely courteous to impute to a legislature the enactment of a law which it knew to be unconstitutional and if it were well settled that a separate coach law was unconstitutional, as applied to interstate commerce, the law applying on its face to *all* passengers should be limited to such as the legislature were competent to deal with. The Court of Appeals has found such to be the intention of the General Assembly in this case, or at least, that if such were not its intention, the law may be supported as applying alone to domestic commerce. In thus holding the act to be severable it is laying down a principle of construction from which there is no appeal."

"While we do not deny the force of the railroad's argument in this connection, we cannot say that the General Assembly would not have enacted this law if it had supposed it applied only to domestic commerce; and if it were in doubt on that point, we should unhesitatingly defer to the opinion of the Court of Appeals, which held that it would give it that construction if the

case called for it. In view of the language above quoted it would be unbecoming for us to say that the Court of Appeals would not construe the law as applicable to domestic commerce alone, and if it did, the case would fall directly within the *Mississippi Case*.[44] We, therefore, feel compelled to give it that construction ourselves and so construe it that there can be no doubt as to its constitutionality." Here we have a plain case of the United States Supreme Court declaring an act severable because thereby it could apparently justify as constitutional a measure depriving the Negroes of civil and political rights, whereas in some other cases it has held other acts not severable to reach the same end.

The court continued its reactionary course. In *Chiles* v. *Chesapeake and Ohio R. R. Company*[45] the court reiterated that "Congressional inaction is equivalent to a declaration that a carrier may, by its regulations, separate white and Negro interstate passengers. In *McCabe* v. *Atchinson, Topeka and Santa Fe Railway Company*,[46] Justice Hughes giving the opinion of the court, followed the *Plessy* v. *Ferguson* decision. He did not believe, moreover, "that the contention that an act though fair on its face may be so unequally and oppressively administered by the public authorities as to amount to an unconstitutional discrimination by the State itself, is applicable where it is the administration of the provisions of a separate coach law by

[44] 133 U. S., 588.

[45] 218 U. S., 71.

[46] 235 U. S., 151.

carriers, which is claimed to produce the discrimination. The separate coach provisions of Oklahoma[47] apply to transportation wholly intrastate in absence of a different construction by State courts and do not contravene the commerce clause of the Federal court. The court held, however, that so much of the Oklahoma separate coach law as permits carriers to provide sleeping cars, dining cars, and chair cars for white persons, and to provide no similar accommodations for Negroes, denies the latter the equal protection of the laws guaranteed by the Constitution.

The most recent case, that of the *South Covington and Cincinnati Street Railway, Plaintiff in error* v. *Commonwealth of Kentucky* shows another step in the direction of complete surrender to caste. This company was a Kentucky corporation, each of the termini of the railroad of which was in Kentucky. The complainant hoped to prevent the segregation of passengers carried from Ohio into Kentucky. The decision was that a Kentucky street railway may be required by statute of that State to furnish either separate cars or separate compartments in the same car for white and Negro passengers although its principal business is the carriage of passengers in interstate commerce between Cincinnati, Ohio, and Kentucky across the Ohio River. Such a requirement affects interstate commerce only incidentally, and does not subject it to unreasonable demands. In other words, this inconvenience to the carrier is not very much and the humiliation and burden which it entails upon persons of

[47] U. S., 18, 1907 Revised Statutes, 1910, Section 860, *et seq.*

color thus segregated should not concern the court, although they are supposed to be citizens of the United States.

Justice Day dissented and Justices Van DeVanter and Putney concurred on the ground that the attachment of a different car upon the Kentucky side on so short a journey would burden interstate commerce as to cost and in the practical operation of the traffic. The provision for a separate compartment for the use of only interstate Negro passengers would lead to confusion and discrimination. The same interstate transportation would be subject to conflicting regulation in the two States in which it is conducted. They believed that it imposed an unreasonable burden and according to the dissentients was, therefore, void.

Justice in the Courts

One of the most important constitutional rights denied the Negroes is that of justice in the courts. In as much as their former masters felt enraged against the freedmen because of their sudden release from bondage, they too often perpetrated upon the freedmen crimes for which the Negro had no redress in courts, for white persons constituted the accusers, the prosecutors, the judges, and the juries. Immediately following the Civil War, before the amendments of the Constitution enacted in the special behalf of the race were effected, Negroes were by the Black Codes deprived of all of the rights of citizens and nothing bore more grievously upon them than the deprivation

of the right to serve on juries. Some States had special laws carrying out this prohibition. The first case of consequence requiring an interpretation of the State law to this effect was that of *Strauder* v. *West Virginia*,[48] already mentioned above. In this case the court took high constitutional ground. It was held that "a law of West Virginia limiting to white persons, twenty-one years of age and citizens of the State, the right to sit upon juries, was a discrimination which implied a legal inferiority in civil society, which lessened the security of the right of the colored race, and was a step toward reducing them to a condition of servility." The right of a man of color that, in the selection of jurors to pass upon his life, liberty, and property, there shall be no exclusion of his race and no discrimination against them because of color, was asserted in a number of cases, to wit: *Virginia* v. *Rives*,[49] *Neal* v. *Delaware*,[50] *Gibbons* v. *Kentucky*.[51]

In the case of *Bush* v. *The Commonwealth of Kentucky*[52] the Negro faced an additional difficulty in that the court held that wherein there was no specific law excluding persons from service upon juries because of their race or color, that the petitioner would have to show evidence to that effect. In the case of *Smith* v.

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[48] 100 U. S., 303.

[49] *Ibid.*, 313.

[50] 103 U. S., 370.

[51] 162 U. S., 565.

[52] 107 U. S., 110.

The State of Mississippi[53] it was held that the omission or refusal of officers to include Negro citizens in the list from which jurors might be drawn is not, as to a Negro subsequently brought to trial, a denial of equal protection of laws. In the case of *Murray* v. *The State of Louisiana*[54] the decision was that the fact that a law confers on the jury commissioners judicial power in the selection of citizens for jury service, does not involve a conflict with the Fourteenth Amendment of the Constitution of the United States, although in the exercise of such power they might not select Negroes for jury service.

The case of *Williams* v. *Mississippi* was more interesting. The law of that State prescribed the qualifications of voters and of grand and petit juries and invested the administrative officers with a large discretion in determining what citizens have the necessary qualifications. As it appeared that in the use of their discretion they would exclude Negroes from such juries it was contended that the act of Mississippi was a violation of the Fourteenth Amendment. The court held, however, that the Mississippi law could not be held repugnant to the Fourteenth Amendment merely on a showing that the law might operate as a discrimination against the Negro race, in absence of proof of an actual discrimination in the case under consideration. This ground has often proved convenient for the Supreme Court of the United States in dodging the question whether or not the

[53] 162 U. S., 592.

[54] 163 U. S., 101.

Negroes must be protected in the rights guaranteed them by the Constitution.

This case was decided in 1897 and two years later Mr. Justice Gray, giving the opinion of the court in the case of *Carter* v. *Texas*,[55] said that the exclusion of all persons of African race from a grand jury which finds an indictment against a Negro in a State court, when they are excluded solely because of their race or color denies him the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States, whether such exclusion is done through the action of the legislature, through the courts, or through the executive or administrative officers of the State. This was substantially the position taken in the case of *Strauder* v. *West Virginia* twenty years earlier.

The Negroes received some encouragement, too, from the decision of *Rogers* v. *Alabama*.[56] It was held that there had been a denial of the equal protection of the laws by a ruling of a State court upon the motion to quash an indictment on account of the exclusion of Negroes from the grand jury list, which motion, though because of its being in two printed octavos, was struck from the files under the color of local practice for prolixity, contained an allegation that certain provisions of the newly adopted State constitution, claimed to have the effect of disfranchising Negroes because of their race, when such action

[55] 167 U. S., 442.

[56] 192 U. S., 226.

worked as a consideration in the minds of the jury commissioners in reaching their decision. The court held in *Martin* v. *The State of Texas*, however,[57] that a discrimination against Negroes because of their race in the selection of grand or petit jurors as forbidden by the Fourteenth Amendment is not shown by written motion to quash, respectively, the indictment of the panel of petit jurors, charging such discrimination where no evidence was introduced to establish the facts stated in the omissions. It is not sufficient merely to prove that no persons of color were on the jury.

As certain States wished to make the government further secure in the elimination of Negroes from juries, after making the qualifications for voters unusually rigid so as to exclude persons of African descent, they easily established the same qualifications for jurors, to relieve persons of color also from that service. In the case of *Franklin* v. *South Carolina*[58] the court held that there was no discrimination against Negroes because of their race in the selection of the grand jury made by the laws of South Carolina,[59] giving the jury commissioner the right to select electors of good moral character such as they may deem qualified to serve as jurors, being persons of sound mind and free from all legal exceptions. A motion, therefore, to quash an indictment against a Negro for disqualification of the grand jurors who must be electors, because of a change in the State constitution of

[57] 200 U. S., 316.

[58] 218 U. S., 161.

[59] Laws of South Carolina, 1902, page 1066, section 2.

South Carolina respecting the qualifications of electors, did not violate the Act of Congress, June 25, 1868, and, therefore, did not present to the Supreme Court of the United States a question of a denial of Federal right where there is nothing in the record to show that the grand jury as actually impaneled contained any person who was not qualified as an elector under the earlier State constitution, which was, according to the allegation, so made up as to exclude Negroes on account of their color. The Supreme Court of the United States then took no account of the intent or the spirit of the law maker as this tribunal had been accustomed to do in cases of constitutional import and left upon the Negro the burden of performing the difficult task of showing that he had been discriminated against on account of his color when the discrimination could be easily effected without the possibility of his actually producing any evidence that on the face of itself could convince the court.

Suffrage

As already mentioned above the Negroes during this period were struggling to retain the right of suffrage and, of course, were attacking in the courts those restrictions primarily directed toward the elimination of the Negroes from the electorate. The Supreme Court of the United States generally shrank from these cases by disclaiming jurisdiction. In *Ex Parte Siebold*,[60] *Ex Parte*

[60] 100 U. S., 371.

Yarborough,[61] and *In re Coy*,[62] however, the general jurisdiction of Federal courts over matters involved in the election of national officers was affirmed. The court held that it had jurisdiction in the election case in *Wiley* v. *Sinkler*,[63] when there was brought an action to recover damages of an election board for wilfully rejecting a citizen's vote for a member of the House of Representatives. In *Swafford* v. *Templeton*[64] a suit was brought for damages for the alleged wrongful refusal by the defendants at an election of officers to permit the plaintiff to vote at a national election for a member of the House of Representatives. It was held that the court had jurisdiction.

From the Supreme Court of the United States, however, the Negroes received little encouragement, in as much as the right of suffrage, with its requirements of property ownership and the literacy test, could be withheld from the Negro without specifically discriminating against any one on account of race or color. In *Southy* v. *Virginia*, 181 U. S., Revised Statutes, of the United States, Cont. St. 1901, pages 37-42, providing that every person who prevents, hinders, controls or intimidates another from exercising the right of suffrage, to whom that right is guaranteed by the Fifteenth Amendment of the Constitution of the United States, by means of bribery, etc., shall be

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[61] 110 U. S., 651.

[62] 127 U. S., 731.

[63] 179 U. S., 58.

[64] 185 U. S.

punished, was held invalid as it was considered to be beyond the constitutional power of Congress to act in such a case except in that of race discrimination. If the discrimination is in a State or municipal election, however, Congress may intervene, if the discrimination is shown, but not until then.

In the case of *Giles* v. *Harris*[65] there was brought to the Supreme Court a bill in equity, complaining that Negroes qualified to vote for members of Congress had been refused on account of their color by virtue of the Alabama constitution, whereas white men were registered to vote at such an election. Relief was asked for on the basis of the Revised Statutes, Sec. 1979, praying that the Supreme Court should order that the petitioner be registered and declare null and void the special clause of the Alabama constitution. The court answered this petition with certain observations disclaiming jurisdiction largely for "want of merit in the averments which were made in the complaint as to the violation of Federal rights."

The court held that if the registrars acting at this election in Alabama had no authority under the new constitution, which the petitioner prayed that the court might declare null and void, they could not legally register the plaintiff. If they had authority, they were within their right to use their discretion. If this clause in the constitution should be struck down according to the prayer of the plaintiff, there would be no board to which the mandamus could be issued. The Supreme Court, therefore, held

[65] 189 U. S., 475.

that no damage had been suffered because no refusal to register by a board constituted in defiance of the Federal Constitution could disqualify a legal voter otherwise entitled to exercising the electorate franchise, since this amounts to a decision upon an independent non-Federal ground sufficient to sustain the judgment without reference to the Federal question presented. It observed, moreover, that the bill imported that the great mass of the white population intended to keep the blacks from voting. To meet such an intent something more than ordering the plaintiff named to be inscribed upon the lists of 1902 would be needed.

Giving his dissenting opinion in this case, Justice Brewer showed that "although the statute and these decisions thus expressly limit the range of inquiry to the question of jurisdiction, it was held that there is a constitutional question shown in the pleadings. The certificate, therefore, might be ignored and the entire case presented to the court for consideration.... Hence every case coming up on a certificate of jurisdiction may be held to present a constitutional question and be open for full inquiry in respect to all matters involved." Brewer would not assent to the proposition that the case presented was not a strictly legal one and entitling a party to a judicial hearing and decision. "He is a citizen of Alabama entitled to vote. He wanted to vote at an election for a Representative in Congress. Without registration he could not, and registration was wrongfully denied him. That many others were thus treated does not deprive him of his right or deprive him of relief." Justice

Harlan dissented also giving practically the same argument as that of Justice Brewer. He observed: "The court in effect says that although it may know that the record fails to show a case within the original cognizance of the Circuit Court, it may close its eyes to that fact, and review the case on its merit." In view of the adjudged cases, he could not agree that the failure of parties to raise a question of jurisdiction relieved this court of its duty to raise it upon its own motion.

There was thereafter presented a petition for modification of judgment and for a rehearing June 1, 1903. The court ordered the decree of affirmance changed adding these words: "So far as such decree orders that the petition be dismissed, but without prejudice to such further proceedings as the petitioner may be advised to make."

The case of *Giles* v. *Teasley*[66] was, to some extent, of the same sort. A Negro of Alabama who had previously been a voter and who had complied with the reasonable requirements of the board of registration, was refused the right to vote, for, as he alleged, no reason other than his race and color, the members of the board having been appointed and having acted under the provision of the State constitution of 1901. He sued the members of the board for damages and for such refusal in an action, and applied for a writ of mandamus to compel them to register him, alleging in both proceedings the denial of his rights under the Federal Constitution and that the provisions of the State Constitution

[66] 193 U. S., 146.

were repugnant to the Fifteenth Amendment. The complaint had been dismissed on demurrer and the writ refused, the highest court of the State holding that if the provisions of the constitution were repugnant to the Fifteenth Amendment, they were void and that the board of registers appointed thereunder had no existence and no power to act and would not be liable for a refusal to register him, and could not be compelled by writ of mandamus to do so; that if the provisions were constitutional, the registrars had acted properly thereunder and their action was not reviewable by the courts.

"The right of the Supreme Court to review the decisions of the highest court of a State," said the national tribunal, "is even in cases involving the violations by the provisions of a State constitution of the Fifteenth Amendment, circumscribed by rules established by law, and in every case coming to the court on writ of error or appeal the question of jurisdiction must be answered whether propounded by the counsel or not. Where the State court decided the case for reasons independent of the Federal right claimed its action is not reviewable on writ of error by the United States Supreme Court." It was held that the writs of error to this court should be dismissed, as such decisions do not involve the adjudication against the plaintiff in error of a right claimed under the Federal Constitution but deny the relief demanded on grounds wholly independent thereof." In *Wiley* v. *Sinkler*, and *Swafford* v. *Templeton*, the registrars were legally averred to be

qualified.[67]

In the Maryland case of *Pope* v. *Williams*[68] the court further explained its position. While the State cannot restrict suffrage on account of color, the privilege is not given by the Federal Constitution, nor does it spring from citizenship of the United States. While the right to vote for members of Congress is derived exclusively from the law of the State in which they are chosen but has its foundation in the laws and Constitution of the United States, the elector must be one entitled to vote under its statute. A law, therefore, requiring a declaration of intention to become citizens before registering as voters of all persons coming from without Maryland is not a violation of the Constitution.

In the case of *Guinn* v. *United States*[69] the court held that the

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[67] The Constitution of Mississippi prescribing the qualifications for electors conferred upon the legislature the power to enact laws to carry those provisions into effect. Ability to read any section of the Constitution or to understand it when read was made a qualification necessary to a legal voter. Another provision made the qualifications for grand or petit jurors that they should be able to read and write. Upon the complaint of Negroes thus disabled the court held that these provisions do not on their face discriminate between white and Negro races and do not amount to a denial of the equal protection of the law secured by the Fourteenth Amendment of the Constitution. It had not been shown that their actual administration was evil, but that only evil was possible under them.In Washington County, Mississippi, Williams had been indicted for murder by a grand jury composed of white men altogether. He moved that the indictment be quashed because the law by which the grand jury was established was unconstitutional. (*Williams* v. *Mississippi.*)

[68] 193 U. S., 621.

[69] 238 U. S., 347.

literacy test was legal and not subject to revision but in this clause of the constitution that part of a section providing for literacy was closely connected with the so-called grandfather clause that the United States Supreme Court declared both unconstitutional as it did in the case also of *Myers* v. *Anderson*,[70] coming from Annapolis, Maryland, and in the case of *The United States* v. *Mosely*, from Oklahoma.[71] The clause referred to follows:

> "No person shall be registered as an elector of this State or be allowed to vote in any election herein, unless he be able to read and write any section of the Constitution of the State of Oklahoma; but no person who was on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to read and write sections of such constitution. Precinct election inspectors having in charge the registration of electors shall enforce the provisions of this section at the time of registration, provided registration be required. Should registration be dispensed with, the provisions of this section shall be enforced by the precinct officer when electors apply for ballots to vote."

The court held that this was a standard of voting which on its face was in substance but a revitalization of conditions which when they prevailed in the past had been destroyed by the self-

[70] *Ibid.*, 368.

[71] *Ibid.*, 763.

operative force of the Thirteenth Amendment.

Educational Privileges

These suffrage laws left the Negroes in an untoward situation for the reason that there was little hope that, with the educational facilities afforded them, that they would soon be able to meet the same requirement of literacy as that which might not embarrass the whites offering themselves as jurors and electors. The States upheld in their action by the United States Supreme Court, had shifted from their shoulders the burden of the uplift of the Negro by the ingenious doctrine that equal accommodations did not mean identical accommodations and that the spirit and the letter of the law would be complied with by providing separate accommodations for Negroes. In the end, however, separate accommodations turned out to be in some cases no accommodations at all.

This was the situation as it was brought out in the case of *Cumming* v. *The Board of Education of Richmond County*.[72] It appeared that a tax for schools had been levied in this district. The Negroes objected to paying that portion of the tax which provided for the maintenance of a high school, the benefits of which they were denied, when there was no high school provided for them. The board of education of Richmond County had maintained a high school for Negroes but abolished it. The

[72] 175 U. S., 528.

petitioner prayed, therefore, that an injunction be granted against the collection of such portion of the school tax as was used for the maintenance of said high school. The defendant set up the plea that it had not established a white high school, but had merely appropriated some money to assist a denominational high school for white children, saying "that it had to choose between maintaining the lower schools for a large number of Negroes and providing a high school for about sixty." The board of education, declared, moreover, that the establishment of a Negro high school was merely postponed.

The opinion of the court was that a decision by a State court, denying an injunction against the maintenance by a board of education of a high school for white children, while failing to maintain one for Negro children also, for the reason that the funds were not sufficient to maintain it in addition to needed primary schools for Negro children, does not constitute a denial to persons of color of the equal protection of the law or equal privileges of citizens of the United States. The court held that under the circumstances disclosed it could not say that this action of the State court was, within the meaning of the Fourteenth Amendment, a denial by the State to the plaintiffs and to those associated with them of the equal protection of the laws, or of any privileges belonging to them as citizens of the United States. While the court admitted that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, it held that the

education of people in schools maintained by State taxation is a matter belonging to the respective States, and any interference on the part of Federal authority with the management of such schools cannot be justified except in case of a clear unmistakable disregard of rights secured by the supreme law of the land.

This is downright sophistry. To any sane man it could not but be evident that this was an "unmistakable disregard of rights secured by the Supreme law of the land." The school authorities had separated white and Negro children for purposes of education on account of race and had, moreover, refused to grant the Negro children the facilities equal to those of the white. The State, in the first place, in establishing separate schools on the basis of race, violated a right guaranteed the Negro race by the Constitution of the United States, and the board of education of Richmond County violated still another in failing to provide for the Negroes the same facilities for high school education as those furnished the whites while taxing all citizens without regard to race. It is true that the Federal Government cannot generally interfere in matters of police regulation of persons and property in the States but when the matter of race is introduced the national authority is thoroughly competent within the Constitution to restrain such local government or any group of persons so authorized by such government. It would have been unwise for the court to enjoin the collection of such a tax but it could have on the constitutional points raised in this case declared invalid laws separating the races for purposes of

education.

The sophistry of the Supreme Court in seeking to justify its refusal to maintain the rights of the Negro to education is still more evident from its opinion in the case of *Berea College* v. *The Commonwealth of Kentucky*, decided in 1908. Berea College was established in 1856 by a group of antislavery Kentucky mountaineers, led by John G. Fee, desiring to bring up their children in the love of free institutions. There were no Negro students prior to the Civil War but a few Negro soldiers were admitted on returning home from the front in their uniforms and members of the race were thereafter welcomed at Berea. In the course of time, however, this coeducation of the races became very distasteful to the State of Kentucky with its decided increase in race prejudice necessitating in their economy a thorough proscription of the Negro race. In 1904, therefore, the State of Kentucky enacted a law against persons and corporations maintaining schools for both white persons and Negroes.

Feeling that its charter was violated by this law and also that it infringed upon the rights guaranteed the Negro in the Constitution of the United States, Berea College attacked the validity of this measure in the inferior courts and finally in the Supreme Court of the United States. The plaintiff unanswerably contended that this Kentucky law abridged one's privileges and immunities, in violation of the Fourteenth Amendment of the Constitution of the United States, which was a limitation on the police power of the State when it brings in the matter of race.

It further contended that the Constitution makes no distinction between races and that the Fourteenth Amendment is not only to protect Negroes but to protect white persons in the enjoyment of their rights. The plaintiff admitted that social equality could not be enforced by legislation but contended that voluntary social equality of persons cannot be constitutionally prohibited, unless it is shown that such is immoral, disorderly, or for some other reason so palpably injurious to the public welfare as to justify direct interference with the personal liberty of the citizens.

Evidently wishing to find some ground upon which it could base its opinion upholding the Supreme Court of Kentucky which had sustained this statute, the Supreme Court of the United States fell back upon various principles of interpretation. The court said it would not disturb the judgment of the State court resting on Federal or non-Federal grounds, if the latter was sufficient to sustain the decision in as much as the State court determines the extent of the limitations of powers conferred by the State on its corporations. It directed attention to the fact that a corporation is not entitled to all the immunities to which individuals are entitled and a State may withhold from its corporations privileges and powers of which it cannot constitutionally deprive individuals. A State statute limiting the powers of corporations and individuals may be constitutional as to the former, although unconstitutional as to the latter; and if separable it will not be held unconstitutional in the instance of a corporation unless it clearly appears that the legislature would

not have enacted it as to corporations separately. "The same rule," continues the court, "which permits separable sections of a statute to be declared unconstitutional without rendering the entire statute void applies to separable provisions of a section of a statute. In coming to the assistance of the Supreme Court of Kentucky the national tribunal said the prohibition of Kentucky against persons and corporations maintaining schools for both white persons and Negroes is separable and, even if an unconstitutional restraint as to individuals, is not unconstitutional as to corporations, it being within the power of the State to determine the powers conferred upon its corporations.

The court conceded that the reserve power to alter, or amend charters is subject to reasonable limitations but insisted that the Kentucky law includes no alteration or amendment which defeats or substantially impairs the object of the grant of vested rights. The court then went almost out of its way to say that "a general statute which in effect alters or amends a charter is to be construed as an amendment for all even if not in terms so designated. The court conceded that a statute which permits the education of both whites and Negroes at the same time in different localities, although prohibiting their attendance in the same place, does not defeat the object of a grant to maintain the college for all persons and is not violative of the contract clause of the Federal Constitution, the State law having reserved the right to repeal, alter and amend charters.

Justice Harlan dissented. He referred to the fact that the court

held also, in *Huntington* v. *Werthen*,[73] that if one provision of a statute be invalid the whole act will fall, where "it is evident the legislature would not have enacted one of them without the other." Harlan meant to say here that to construe this law as applying only to corporations and not to individuals would give it an interpretation that the legislature never had in mind. The intention of the State legislature was to prevent all coeducation of Negroes and whites whether it should be done by persons or corporations. The whole law, therefore, should fall. Justice Harlan conceded that a State reserved the right to repeal the charter but it was not repealed by this act. The statute did not purport even to amend the charter of any particular corporation but assumed to establish a certain rule applicable alike to all individuals, associations, or corporations that teach the white and black races together in the same institution. This decision of the United States Supreme Court was then nothing more than "fine sophistry" to sanction an arbitrary invasion of the rights of liberty and property guaranteed by the Fourteenth Amendment.

Justice Harlan contended that if the giving of instruction is not a property right, it is one's liberty. Exposing the sophistry of the court he remarked that if the schools must be subjected to such segregation, why not also the Sabbath Schools and Churches? "If States can prohibit the coeducation of the whites and blacks it may prohibit the association of the Anglo-Saxons and Latins; of the Christians and the Jews. Have we become so inoculated with

[73] 120 U. S., 102.

prejudice of race," continued Justice Harlan, "that an American government, professedly based on the principles of freedom, and charged with the protection of all citizens alike, can make distinctions between such citizens in the matter of their voluntary meeting for innocent purposes simply because of their respective races? Further if the lower court be right, then a State may make it a crime for white and colored persons to frequent the same market places, at the same time, or appear in an assembly of citizens convened to consider questions of a public or political nature in which all citizens without regard to race, are equally interested."

The Right to Labor

Although the Negro by these various decisions of the Supreme Court of the United States had been deprived of rights essential to freedom and citizenship in matters of voting, service upon juries, education, and the use of common carriers, there remained even another right which was to be infringed upon without the hope of any redress from the United States Supreme Court. This was the right to contract, to labor. Every honest man should live by his own labor and it is a well established principle of democratic government, that in the exercise of this right the individual should be free not only from interference on the part of the government but should enjoy protection from individuals subject to the government. Because of the development of race

prejudice into a flame of bitter antagonism among the laboring men during the period of commercial expansion in the United States since the Reconstruction period, the country has been all but thoroughly organized through trades unions, so as to restrict the Negro to menial service by written constitutions in keeping with the caste which has so long figured conspicuously in American institutions.

Negroes sought redress in the courts and finally in the United States Supreme Court, the best case in evidence being that of *Hodges* v. *United States*.[74] In this case came a complaint from certain Negroes in Arkansas laboring in the service of an employer according to a contract. Because of their color certain criminals in that community conspired to injure, oppress, threaten and intimidate them, resulting in the severance of their connection with this employer and the consequent economic loss resulting therefrom. The Negroes thus complaining brought this case to the United States Supreme Court contending that a remedy for this evil was to be found in the revised statutes of the United States Senate, Sections 1977, 1979, 5508, and 5510. These sections follow in the order of their importance:

> *Section 5508.* If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two

[74] 202 U. S., 1.

or more persons go in disguise on the highway, or on the premises of another, with intent to hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit or trust created by the Constitution or laws of the United States.

Other statutes referred to but not so vital were:

Section 1977. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue the parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Section 1978. All citizens of the United States shall have the same right in every State and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Section 1979. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

> *Section 5510.* Every person who, under color of any law, statute, ordinance, regulation, or custom, subjects or causes to be subjected, any inhabitant of any State or Territory to the deprivation of any right, privilege, or immunities, secured or protected by the Constitution and laws of the United States or to different punishments, pains or penalties, on account of such inhabitants being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be punished by a fine of not more than one thousand dollars or by imprisonment not more than one year, or by both.

The decision in this case was in substance that Congress cannot make it an offense against the United States for individuals to combine or conspire to prevent even by force, citizens of African descent, solely because of their race, from earning a living, although the right to earn one's living in all legal ways and to make lawful contracts in reference thereto is a vital point of freedom established by the Constitution. Section 5508 had been upheld in *Ex Parte Yarborough*,[75] and in the case of *Logan* v. the *United States*[76] the court referred to this section as having been upheld in *Ex Parte Yarborough*. In *United States* v. *Reese*, moreover,[77] Justice Waite said in 1875, speaking for the court, "The rights and immunities created by or dependent upon the Constitution of the United States can

[75] 110 U. S., 651.

[76] 144 U. S., 236, 286, 293.

[77] 92 U. S., 214, 217.

be protected by Congress. The form and the manner of the protection may be such as Congress in the legitimate exercise of its legislative discretion shall provide. This may be varied to meet the necessities of the particular right to be protected."

"The whole scope and effect of this series of decisions," continued the court, "was that, while certain fundamental rights recognized and declared but not granted or created, in some of the amendments to the Constitution are thereby guaranteed only against violation or abridgement by the United States, or by the States, as the case may be, and cannot, therefore, be affirmatively enforced by Congress against unlawful causes of individuals; yet that every right created by, arising under, or dependent upon the Constitution of the United States may be protected and enforced by Congress by such means and in such manner as Congress in the exercise of the correlative duty of protection, or of the legislative powers conferred upon it by the Constitution, may in its discretion deem most eligible and best adopted to attain the object." This doctrine was sustained also by the decision in the case of *United States* v. *Waddell*,[78] and *Motes* v. *United States*.[79] Here it was emphatically stated that Congress might pass any law necessary or proper for carrying out any power conferred upon it by the Constitution.

The court here, however, evaded the real question as before, dodging behind the doctrine that while a State or the United

[78] 110 U. S., 651.

[79] 178 U. S., 458, 462.

States could not abridge the privileges and immunities of citizens, individuals or groups of individuals may do so and Congress has no power to interfere in such matters since these come within the police power of the State. In other words, the government cannot discriminate against the Negro itself, but it can establish agencies with power to do it. It is not surprising that Justice Harlan dissented, feeling as he had on former occasions that this decision permitted the States and groups of individuals supposedly subject to the government of those States to fasten upon the Negro badges or incidents of slavery in violation of the civil rights guaranteed him by the Thirteenth and Fourteenth Amendments. He believed that Congress had the right to pass any law to protect citizens in the enjoyment of any right granted him by Congress. The duty of the Federal government as Justice Harlan saw it was very clear in that the State had caused the race question to be injected therein and in such a case Congress always has power to act.

On the whole, however, the United States Supreme Court has not yet had the moral courage to face the issue in cases involving the constitutional rights of the Negro. Not a decision of that tribunal has yet set forth a straightforward opinion as to whether the States can enact one code of laws for the Negroes and another for the other elements of our population in spite of the fact that the Constitution of the United States prohibits such iniquitous legislation. In cases in which this question has been frankly put the court has wiggled out of it by some such declaration as that

the case was improperly brought, that there were defects in the averments, or that the court lacked jurisdiction.

In the matter of jurisdiction the United States Supreme Court has been decidedly inconsistent. This tribunal at first followed the opinion of Chief Justice John Marshall in the case of *Osborn* v. *United States Bank*,[80] that "when a question to which the judicial power of the United States is extended by the Constitution forms an ingredient of the original cause it is in the power of Congress to give the Circuit Courts the jurisdiction of that cause, although other questions of fact or of law may be involved." Prior to the rise of the Negro to the status of so-called citizenship the court built upon this decision the prerogative of examining all judicial matters pertaining to the Federal Government until it made itself the sole arbiter in all important constitutional questions and became the bulwark of nationalism. After some reaction the court resumed that position in all of its decisions except those pertaining to the Negro; for in the recent commercial expansion of the country involving the litigation of unusually large property values, the United States Supreme Court has easily found grounds for jurisdiction where economic rights are concerned; but just as easily disclaims jurisdiction where human rights are involved in cases in which Negroes happen to be the complainants.

The fairminded man, the patriot of foresight, observes, therefore, with a feeling of disappointment this prostitution of

[80] 9 Wheaton, 738.

an important department of the Federal Government to the use of the reactionary forces in the United States endeavoring to whittle away the essentials of the Constitution which guarantees to all persons in this country all the rights enjoyed under the most progressive democracy on earth. Since the Civil War the United States Supreme Court instead of performing the intended function of preserving the Constitution by democratic interpretation, has by its legislative decisions practically stricken therefrom so many of its liberal provisions and read into the Constitution so much caste and autocracy that discontent and radicalism have developed almost to the point of eruption.

C. G. Woodson

REMY OLLIER, MAURITIAN JOURNALIST AND PATRIOT [81]

It is of interest to the Negro to know the patriots of the race who have blazed the path of social progress in the various lands in which their lots have been cast. Not to all men is it given to be great as the world counts greatness. Each of us, however, may have a task which, if well done, may leave its impress upon the life of the community in which we live. These, although obscure, efforts of the talented and persevering are the monuments which silently mark the progress of the race. Remy Ollier was one of these obscure personalities; but yet, a man whose career made such contributions to the life of Mauritius that he is regarded by its people as one of the great figures in its political history. He was an educator, a journalist, a patriot, and in some respects a liberator of his people.

Mauritius is an island under British control situated in the

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[81] This sketch is drawn largely from a pamphlet, presented to the Association for the study of Negro Life and History by the author A. F. Fokeer. The author states that he has not had access to all the material which he desired to use, for when he applied to the municipality for one of the books concerning Ollier, he received an answer stating "that books written by Mauritians, and published in the colony are by no means to be lent to anybody." Therefore, the source from which most of our information is secured is *A Biographical Sketch of the Life, Work and Character of Remy Ollier* by A. F. Fokeer, published by the General Printing and Stationery Cy. Ld., 23 Church Street, Mauritius. 1917.

Indian Ocean. It is 550 miles east of Madagascar, which lies off the east coast of Africa. Under the control of the French, it was known as Ile de France. It is mountainous in character and its scenery is most beautiful and picturesque. Its inhabitants may be divided into two main divisions: Europeans, chiefly French and British; and African and Asiatic peoples. French appears to be more commonly spoken than English, which accounts for the fact that the writings of Remy Ollier were in French.

The island was discovered by the Portuguese navigator, Mascarenhas in 1505. Until the sixteenth century the island remained under the control of Portugal. In 1598, the Dutch seized it and named it "Mauritius" in honor of its stadholder, Count Maurice of Nassau. The Dutch built a fort there, introduced slaves and convicts, but they made no permanent settlements and, in 1710, it was abandoned. For a short time the island passed into the hands of the French East India Company, and later it became a crown colony. During the colonial wars between France and Great Britain, Mauritius was a source of much conflict. It was finally captured by the British in 1810; and by the Treaty of Paris in 1814, the British were definitely granted control of the island. Great Britain agreed, however, that the inhabitants should retain their own laws, customs, religion and language, all of which were of French origin.

In 1833 slavery was abolished in the British possessions. The Reformed Parliament forced by the denunciation of antislavery orators led by William Wilberforce, Thomas Clarkson, and

Granville Sharp, enacted a bill providing that Negro slavery should gradually cease in the colonies, and that a compensation of £20,000,000 should be paid to the slaveholders. There were then enacted laws removing proscription and the Negroes were supposed to enjoy the same political rights as the whites; but the latter sought to make themselves the dominant element in Mauritius. In 1834 there were about 66,000 Negroes on the island, which ten years later had a population of 158,462.[82] Indian coolies were brought in to take the place of Negro slaves and many evils attended their introduction. The situation was then as it was later in the United States when the adjustment of freedmen to their new life was accompanied by painful experiences on the part of both freedmen and their former masters. The planters resented the presence of the freedmen and as far as possible their privileges were curtailed.[83] Militant agitators arose then among the Negroes demanding justice for the oppressed. Among these leaders thus promoting the march of the Negro population of Mauritius toward freedom were Adrien d'Epinay, whose prominence is attested by a monument to be

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[82] Earlier figures are not available.

[83] General information concerning the island may be obtained from the following: Martin, *The British Possessions in Africa*, Vol. IV.; Unienville, *Statistique de l'île Maurice et ses dépendances*; Epinay, *Renseignements pour servir à l'histoire de l'île de France*; Decotter, *Géographie de Maurice et de ses dépendances*; Chalmers, *A History of Currency in the British Colonies*; Anderson, *The Sugar Industry of Mauritius*; Keller, *Madagascar, Mauritius, and other East African Islands*; *The Mauritius Almanac*; *The Mauritius Civil Lists*; and *Annual Colonial Reports*.

erected in his memory, and Remy Ollier, who still lives in the hearts of his countrymen.

Remy Ollier was born at Grand Port on the island of Mauritius, October 16, 1816, six years after the conquest of the island by the English. He was the fourth child of Benoit Ollier, an artillery officer. His mother, J. Guillemeau, was a daughter of Dr. Guillemeau, a physician, and formerly a member of the Legislative Council of the island. When eight years of age, Ollier was sent to a private school taught by Captain Rault, a seaman who had served under Louis XVI. This work was supplemented by lessons every Saturday under the Reverend Father Rock, who was impressed with the boy's ability, and with the consent of his parents taught him the elements of English and Latin. Allowed to use the library of Mr. Rault, Ollier early became acquainted with the best literature. It is said that he had a very retentive memory and that he could repeat and write at will long passages from his favorite authors.

About 1832, an unexpected reverse in fortune reduced Ollier's father to abject poverty, and he died of a broken heart. Ollier, now scarcely sixteen, went to work as a clerk in a merchant's office; but his mother, thinking that his future in a clerkship was limited, secured him a place as an apprentice to a harness-maker. With a book in one hand and an awl in the other, Ollier prepared himself for his future career. Opportunities in the larger fields of life were closed to the Negro population as stated in the words of Ollier "that young men of the present generation could but

become handicraftsmen. This is the only field open to us. But we must try to educate ourselves by all means; perseverance is the only key that opens the door to success. At whatever social rank man may be placed, education alone may confer upon him a superiority."

In 1833 there occurred an incident which proved to be a turning point in his life. Several members of the white population were charged with forming a conspiracy against British rule in the island. Rumor had it further that they had gathered arms and ammunition, that they expected to attack the British officials and restore the island to France. They were imprisoned and were denied the writ of habeas corpus. Young Ollier had developed a keen interest in politics and asked the permission of his employer to pay the men a visit. Later, he spent many of his working hours at the court trials to which he seemed irresistibly drawn. His employer wrote his mother stating that her son would never make a harness-maker; for he spent most of his time either in study when in the shop or at the courts when he should have been at work. His mother, whom he always loved, burned his books and reprimanded him for his conduct. For some time, he remained at the harness shop, but finally gave up the work in order to pursue the study he desired. Through his former friend, Mr. Rault, he obtained many books to replace the ones which he had lost by the hasty action of his mother.

By tutoring the children in the village of Petite Riviere and in the town of Port Louis, he managed to obtain a living. In 1837,

he opened a private school in St. George street. It appears that this venture was not successful, for he soon accepted a position in a "boarding school conducted by Mr. Louis Barthelemy Raynaud, a white Mauritian Professor who did not scruple to teach the young generations of the white as well as of the colored population." When not engaged in tutoring at this school and the neighboring schools for young ladies, Ollier might be found devouring books on metaphysics, morals, criticism and politics. He was asked by several private institutions to give lessons in English, French and Geography; but while teaching others, he himself was studying with Mr. H. N. D. Beyts, who twice filled the post of officer administering the government. Ollier continued his work as a teacher until 1839. At the end of the school year, prizes were distributed, and he had the pleasure of presenting a prize to Miss Louis Sidonie Ferret whom he married in December, 1840.

About a year before his marriage, he bought the school from Mr. Raynaud, with the idea of enlarging it according to his own plans; but this project failed for some unknown reason. He then undertook a trip to India, which seems to have been successful. On his return, he entered business, opening two large stores. His associate did not agree with him in his business plans and the business was dissolved by legal process. He then resumed his position as a teacher in the boarding schools. In 1841, he and his wife opened a school in the western suburb of Port Louis where the Negro population could bring their children for a liberal

education upon the payment of a moderate fee. This helped him for a time to solve some of his financial problems but finally failed.

Ollier remained an insatiable reader. He took an active part in a literary club in Port Louis, *Le Société d'Emulation Intellectuelle*, and this association helped greatly to increase his knowledge of the literary world. He read literature, history, travels, philosophy, politics and such authors as Lamennais, Montesquieu, Diderot, Rousseau, Voltaire, Adam Smith, Horace Say, Ricardo and the like. He read not only because of his love of reading but because he was ambitious to prepare himself for larger duties. The largest duty as he seemed to see it was the freedom of his people from insult and injustice, and the recognition of his people upon the same level as other Mauritians. Before the edict of emancipation, the Legislative Council on June 22, 1829, had granted the free population of color the same civil rights and privileges as other Mauritians possessed, but the local government had failed to carry out the enactment. Remy Ollier felt that this was a blot on the fair name of his country, as well as an affront to his people and longed to do his part in bringing about a change, which he believed could be effected by a newspaper.

An unusual incident translated into action his idea of founding a newspaper. Alexander Dumas had written a play entitled "Anthony," which is composed especially "to castigate morals by exposing vice in opposition to virtue." A contributor to one of the two papers, *Le Mauricien*, attacked the production of the

play, and held up to ridicule the police authorities, who were supposed to be vested with censorial powers. He also criticized the author as a Negro glorifying adultery. The Negroes of the island became indignant and several answers were evoked. Remy Ollier presented a strong defense for Dumas. Another vigorous defense was prepared by Evénor Hitie, a writer of history. These articles were sent to the two papers of the island: *Le Cerneen* and *Le Mauricien*, both of which refused to publish them. An Englishman, Mr. Edward Baker, the owner of a printing plant, printed the two answers and circulated them in tract form.

The need of a newspaper became evident to the Negro population. In the time of Ollier, the press was used chiefly for political purposes rather than for the dissemination of information. Policies and parties were aided or hindered by the press, and this was its principal function. *Le Balance* had been the champion for the government and the rights of the weaker groups; but the editor, Mr. Berquin, was deported in 1833 because of utterances which were considered inimical to the policies of the colonial government. Since 1833, there had been no paper to champion the rights of the Negroes.

After the publication of the answers to the contributor of *Le Mauricien*, certain influential members of the Negro population, among whom was Remy Ollier, called to see Sir Lionel Smith, G.C.B., Baronet and Governor of the island of Mauritius. It is said that they were warmly received, and that he was astonished to learn that the Negroes, a majority of whom were "the equals of

the whites by their stature, by their hearts and their intelligence," had no paper "to make known their wishes and their complaints." He advised his hearers to start a paper, and he promised to support their reasonable demands. But, dying in 1842, Sir Lionel Smith was unable to give any assistance to the new publication.

Through the assistance of Mr. Edward Baker, the printer, the paper *Le Sentinelle de Maurice* was started. The prospectus, written in French and in English appeared March 21, 1843, and on Saturday, April 8, the first number of the paper came from the press. It was a weekly publication with Ollier and Baker as the editors. The former wrote articles in French and the latter in English, the articles of each being admirably written. Each one in his own sphere spoke with great vehemence and elevation of mind for the cause of "liberty and justice." The paper was read with avidity by the middle and lower classes, and the Negroes soon regarded Ollier as their champion.

The first and most important fight which Ollier felt called upon to enter was the nomination by the Governor of members to the Legislative Council in June, 1843. Ollier noticed that no Negro member was nominated. The vacant seat was given to a white representative, Mr. Forster. Ollier observed "that although a white man whose heart is right and whose intentions are pure can represent the population of color," yet he considered the appointment "as an act that was unjust, impolitic, undemocratic and unconstitutional." He added in explanation that the act was unjust "because all the children of the mother-country, the white

colonists especially, were already represented in the Council, except the men of color, whose number is twice that of other populations of the country; their destiny more illustrious, and the high state of their experience, their education, their intelligence and their morals are the same as with others; impolitic, because it discontents and disheartens the loyal and faithful British subjects and might alienate from the government the hearts of those who have invariably remained attached to it; undemocratic, and unconstitutional because the British constitution makes no exception of any person, and because it desires that all its subjects should have an equal part in its benefits."

In 1843, Ollier determined to have his paper appear three times a week, and for this purpose he bought the printing plant of *La Balance*, the paper which had been forced to suspend its publication ten years before. On the top of the first page of the paper, the royal arms of Great Britain were placed with the motto "Honi soit qui mal y pense! Dieut et mon droit!" He dedicated the paper to a strict vigilance over the abuse of power, "to redress the grievances of the weak and to encourage merit in all classes, creed or color." Those who now assisted him in the editorial work besides Mr. Baker, who edited the English page, were his wife, Emile Sandapa, and Emile Bouchet, a lawyer, who later defended Ollier when he was sued for libel. His editorials framed in animating language aroused his countrymen from their inaction and awakened in them new hopes and aspirations.

Ollier again attacked the government and the party in power,

because no place was made for the Negro element in its civil service. In the first issue of *La Sentinelle*, he wrote, "From day to day the Maurician Press develops a system entirely dangerous and which seems to have this for a foundation—to discredit and debase English institutions and the English Government in the eyes of all. Here are the consequences of this system—the government believing that the opinions of the press are those of all the inhabitants of Maurice, has seen in us enemies rather than loyal and faithful subjects, whence this continual defiance which has driven up to now the people of color from all the public employment.... The organs of this country are all in accord in saying that the government of the United Kingdom is pernicious to us, that it long since desires and plans our ruin; and when our riches and our prosperity proclaim openly the falseness of these allegations, they wish that England, who makes possible this well-being for us, may not have a deep indignation against those who do not have even enough generosity to recognize the benefits of their mother-country.... As for us, our mission is to call all parties of our population to a united intelligence...." On October 22, 1844, he exclaimed, regarding racial distinctions: "Education levels everything. An erudite man in any class is equal to any other man having the same degree of education; he is a demi-god and is superior to kings, when the latter are immersed in the darkness of ignorance."

Ollier continued the attacks upon the government because of its discrimination against its citizens of color and yet he

remained a lover of his country. Not only did he agitate through the columns of paper, but also through other available channels. In 1843, he drafted a petition to which many signatures were attached and sent it to Queen Victoria. This action has been called the death-blow to the monopoly of the local parliament by the white population. The petition was:

> "May it please your Majesty,—On various occasions the British Throne has been approached by individual members or collective bodies of the Mauritius community in the exercise of that inestimable privilege of your Majesty's faithful subjects, the right of petition; but hitherto, never has any prayer of the great majority of your Majesty's loyal and attached subjects in this island been thus presented to your Majesty's attention.
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> "The colored classes of Mauritius, comprising a population of about 70,000, and including at least one third of the island's wealth and intelligence, although not deprived of any political right by the fundamental laws of the British realm, or by any act of Your Majesty's Parliament, actually enjoy but few privileges of British subjects; and can scarcely be said to have a political existence in the affairs of their native island.
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> "Your Majesty's petitioners will refer to the fact of no individual of the coloured classes having a seat in the Council of Government; notwithstanding that there are many in the island in every respect qualified by riches, talents, education, and moral character, to occupy a place in that assembly.

> "Whilst therefore gratefully recognizing the equity and impartiality of the British laws and institutions, in which alone repose their best hopes for themselves and their children, your Majesty's petitioners humbly and reverently approach Your Imperial Throne with the prayer that, His Excellency the Governor of Mauritius may be authorized to call to his council one or more representatives of the people of colour in this island; or otherwise to grant to the country the privilege of electing its own representatives. Your Majesty's petitioners will only add the sincere declaration of their loyal and patriotic attachment to Your Majesty's person and Throne and Government; and your petitioners will ever pray."

In 1843, the editor of *Le Cerneen*, the oldest newspaper in the colony, was prosecuted, fined and imprisoned for publishing a defamatory article against the magistrate of Port Louis. Ollier had always advocated the freedom of the press, and he protested against the law which suppressed free speech, and against the persecution of a fellow-journalist, although the latter was his political enemy. Ollier's biographer adds: "Ollier indeed was an ardent lover and a good hater. This noble heart and comprehensive mind made him understand his duty toward men. He forgot enmity when fundamental principles were not adequately observed."

In 1844, there was established a rival newspaper, *l'Esprit Public*, to combat the policies of Remy Ollier. It was edited by Mr. Bruils, who had been educated in Europe as a lawyer.

He began by finding fault with the style and grammatical form of Ollier's writing, but it is said that the subject-matter of his editorials could be rarely attacked. Ollier's writings were always hasty and he rarely took the time to polish them, while Bruil's style was more smooth and uniform. Ollier's style, however, was easy and original. He replied effectively to the invective of his enemies in prose and in verse. He seems to have had no difficulty in the composition of his sentences nor did he take the pains which would seem to be necessary for the average man to acquire the finished journalistic style. His motto was as he wrote a page "une feuille lue aujourd'hui, oubliée demain." Therefore, he gave his copies to the compositors without rereading them. Concerning the correctness of his writings, his biographer writes: "Like Carlyle, Shelly, Bossuet, Mirabeau and Moliere, the editor of *La Sentinelle* perpetrated many a small sin against the rules of grammar and certainly paid but a halting attention to the nice distinctions of punctuation. He very often did not know where to end a paragraph and begin another. On the whole, he is happily not obscure." His main effort was to state his idea and when he had made his statement, he was not as careful as he should have been regarding the construction of the statement. He consoled himself with the words, "Grammar is of man; the idea is of God."

His enemies, however, could not say that he was trying to overthrow the empire, for he was merely struggling for the liberty guaranteed by the empire. "In all the British Empire," said he, "there are no subjects more loyal than we. We are English today,

we are not a conquered people, we are English people." He was convinced that if England would give the rights of Englishmen to the Mauritians, she would find them "as devoted as any children she could count in her bosom." He added, however, "We belong to England. Why do we not possess the institutions of England? If she wishes to make us love our nationality, to endow our island with that which makes for the glory of our mother-country; this, we shall not be able to know or appreciate if we are strangers to all that which makes it cherish its children and respect its people! At the sight of our institutions, in the presence of the happenings in Mauritius, advancements ruined, individual liberty violated, human life despised, one cannot believe that we belong to an English administration, and that we are a part of the most democratic people in the world."

It was agitation of this type which brought about what may be considered the definite contributions of Remy Ollier to Mauritian life: the creation of the Municipality, the Chambers of Commerce and Agriculture, the opening of credits to the Negroes by the Mauritian Commercial Bank, the reforms at the Royal College respecting the English Scholarships, and the employment of men of color in the departments of the government. His attacks upon capital punishment and barbarous prison treatment resulted in laws which mitigated the former harsh conditions, and his criticism of the banking institutions in the crisis of 1843 led to considerable reform in that quarter. His bitter attacks on political and social conditions made many

enemies. One evening, he was waylaid by several assailants and given a whipping. He was imprisoned, but he wrote in prison as well as elsewhere.

His political activity was short, for in the early part of 1845, about two years after his appearance in journalism, he died at the early age of 28 years, after a short illness due to an inflammation of the intestines. Stoically he bore the bitter effects of his courageous utterances; and when death came to him after only a short period of endeavor, both in the interests of his own people, and also of the weaker classes of all groups, the success of his efforts had just begun to appear. The name of Remy Ollier in Mauritian history, therefore, symbolizes perseverance in the face of great obstacles, agitation as an instrument of social progress, patriotism as it relates to the island of Mauritius, and justice respecting all classes and races. In 1916, the centenary of his birth was celebrated in Port Louis. Then it was that the city and island demonstrated its love and gratitude for Ollier, because of the services which he rendered the colony in general and the population of color in particular. Remy Ollier was one of the unknown leaders in the cause of freedom.

Charles H. Wesley

A NEGRO COLONIZATION PROJECT IN MEXICO, 1895

The Negro question touched the relations of the United States and Mexico at several points. For instance, the escape of runaway slaves into Mexico where slavery was legally forbidden, was a factor in causing disturbances along the Rio Grande between 1850 and 1860.[84] Again, during the following decade when the colonization of the freedmen became a vital issue, there was at least one proposal to settle them on the border between the United States and Mexico. It was urged that a strip of land extending from the Rio Grande to the Colorado and westward to the mountains of New Mexico be set apart by the national government for this purpose. On January 11, 1864, Honorable James H. Lane of Kansas actually introduced a bill looking to this end, which received favorable consideration from the Committee on Territories, but so far as has been ascertained never came to a vote in Congress.[85]

In support of his proposal Lane urged, among other things, that the colonization of the Negroes on this frontier would prove beneficial to Mexico and tend to promote friendship between

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[84] For a brief discussion of these disorders see the present writer's "Border Troubles Along the Rio Grande, 1848-1860," in *The Southwestern Historical Quarterly*, XXIII, October, 1919, pp. 91-111.

[85] *Sen. Jour.*, 38 Cong., 1 Sess., p. 66, *passim*.

that country and the United States. "We can thus plant at the door of Mexico," he said, "four million good citizens, who can step in at any time, when invited, to strengthen the hands of that Republic."[86] In similar vein the territorial committee, of which Lane was chairman, declared: "It is desirable to cultivate friendly relations with the people of Mexico. It is known to us that among that people there are no prejudices against the black man, and that intermarriage is not prohibited either by law or custom.... It is confidently believed that the colony provided for in this bill, by intermarriage with the people of those Mexican States, and friendly intercourse with them, would so Americanize them as that they would be prepared and seek an annexation to our then glorious free republic."[87]

The project which is the subject of this paper had no official element motivating it, however. It was merely a private enterprise conducted for the profit of a Mexican land company and a member of the Negro race;[88] and not until the scheme had failed did the United States government take a hand. On December 11, 1894, H. Ellis,[89] a Negro, entered into a contract with the "Agricultural, Industrial, and Colonization Company of Tlahualilo, Limited," for the transportation from the United

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[86] *Cong. Globe*, 38 Cong., 1 Sess., p. 673.

[87] *Sen. Report* No. 8, 38 Cong., 1 Sess., p. 2.

[88] This seems to have been only one of some three or four such undertakings attempted at the time. See *House Doc.* No. 169, 54 Cong., 1 Sess., pp. 44-45.

[89] Elsewhere written W. H. Ellis.

States by February 15, 1895, of one hundred colored families between the ages of twelve and fifty. The company obligated itself to pay the passage of the colonists provided it did not exceed $20, and after they were established upon the land, to furnish them agricultural implements, stock, seed, and housing quarters, as well as $6 monthly during the first three months, and thereafter a sum later to be agreed upon. Each family was to be given sixty acres for cultivation, forty for cotton, fifteen for corn, and five for a garden.[90] The company was to receive 40% of the yield of cotton and corn, the colonists 50%, and Ellis 10%. The colonists were to have two years in which to pay for their passage; but, of course, the money advanced for sustenance was to be paid from the first crop, except in the event of an extremely lean year. The entire produce of the garden was to go to the Negroes. Stores were to be established in the colony, the colonists were to have their cotton ginned at the gins of the company at the rate of $1.50 per bale, and the company was to be given preference on all the produce sold. The contract was to endure for a period of five years.[91]

Ellis set about immediately to fulfil his agreement. Going among the Negroes of Alabama and Georgia, he issued a rather extravagant circular representing his proposition as presenting

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[90] Ellis's contract promised more than this in case of larger families.

[91] For the contract between Ellis and the company see *House Doc.* No. 169, 54 Cong., 1 Sess., pp. 46-48; for that between Ellis and the colonists see *ibid.*, pp. 4-5. There are only a few minor differences in the two.

the "greatest opportunity ever offered to the colored people of the United States to go to Mexico, … the country of 'God and Liberty.'" He declared that the land of his company would easily produce a bale of cotton and from fifty to seventy-five bushels of corn per acre; spoke of irrigation facilities which made them independent of the rain, of "fine game, such as deer, bear, duck, and wild geese, and all manner of small game, as well as opossum," and of schools and churches to be constructed; and sought especially to impress upon their minds the fact that "the great Republic of Mexico extends to all of its citizens the same treatment—equal rights to all, special privileges to none."[92]

A number of Negroes were soon attracted by the project and early in February they were ready to set out. In fact, by the 6th a party had already arrived at the hacienda of the company, situated some thirty miles east of Mapimi, Durango, in a rather "wild and inaccessible place" several miles from a railway. On the 25th of the same month another group of colonists put in their appearance, making a total of about 816.

It is interesting to note the section from which the Negroes came, and the size and composition of the families which they brought. Twelve of the number came from Griffin, Georgia; all the rest were from one of seven towns in Alabama; namely, Tuscaloosa, Gadsen, Williams, Eutaw, Carter, Johns, and Birmingham. Of these towns Tuscaloosa furnished by far the greater number, while Eutaw, Gadsen, and Birmingham came

[92] *Ibid.*, p. 59.

next. Only a comparatively small number came from Williams, Carter, and Johns. Instead of having some three or four members as apparently designed in the original contract, some of the families numbered six, eight, and even twelve; and the number of women and children was disproportionately large.

When the colonists arrived at the hacienda they found the ground covered with snow. They were crowded into small, leaky, adobe houses, without floors and with doors which could not be closed tightly. The remainder of the winter and the following spring proved unusually rainy and unpleasant; the food which they were given was probably of a somewhat inferior quality; and their tools were clumsy and dull. These factors possibly account for their homesickness and alleged indisposition to work. Moreover, the small number of able-bodied workingmen among them was disappointing to the colonization company. Naturally enough, mutual dissatisfaction led to quarrels and difficulties. As was to be expected, too, sickness soon visited the settlement, killing off large numbers and terrifying the rest. A sort of liver disease broke out among them in April causing several deaths, and this was followed early in July by the ravages of the smallpox.[93]

The first epidemic was sufficiently terrifying to cause some of the colonists to bolt their contract and attempt to return to the United States. When the smallpox broke out it proved to be too much for their sense of honor or any other restraining force.

[93] Dwyer's Report, and enclosures, *ibid.*, pp. 42 ff.

Those who were able began precipitously to desert the settlement for the United States, apparently giving no attention at all to the matter of sustenance for the journey. By the latter part of July all had left except about fifty of the most persistent and faithful who chose to stay by their crops.[94]

The sufferings of these colonists while at Tlahualilo and on their way to the Rio Grande furnished the press of the United States a sensational topic which it immediately seized upon. Indeed, the first report which reached the United States through official circles was itself sufficiently exaggerated to create excitement. On May 21, 1895, two fugitives from the colony arrived at Chihuahua City where they related stories of oppression and brutal cruelty. One of them reported that upon arriving at the colony the Negroes "found themselves in the worst form of bondage, with no hope of ever securing liberty," and that no letter informing friends of their condition and their suffering was ever permitted to reach the United States. He said he was one of a party of some fifty who had stolen away in the hope of making their escape. The other Negro declared that he was the sole survivor of a party of about forty which had likewise run away from the settlement, but had been overtaken and slain by a band of Mexican guards in the employment of the colonizing company. The consul of the United States at Chihuahua sent immediate notice of the affair to the State Department.[95]

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[94] *Ibid.*, pp. 23, 36, 42.

[95] Burke to Uhl, May 28, 1895, and enclosure, *ibid.*, pp. 2-3.

E. C. Butler, chargé of the United States in Mexico, was immediately notified and directed to call upon the Mexican government to investigate the affair.[96] Meantime the consular officers of the United States began an investigation of their own which tended to convince them that the extravagant rumors regarding the cruelties perpetrated against the Negroes were totally unfounded. On June 24, the consul at Piedras Negras, Jesse W. Sparks, forwarded a report which he respectfully suggested should be given to the public "in order to contradict the terrible stories of murder and bad treatment of these Negroes … and deter other Negroes who contemplate colonizing in Mexico." It was based upon a sworn statement made by the purported leader of the runaways, a deposition of another of the colonists, and information received through a traveller from New York City, who claimed to have visited the colony, as well as through a civil engineer who was in the employment of the Mexican International Railroad. From the information furnished by these witnesses Sparks drew the conclusion that the Mexican colonization company had lived up to its contract, that the Negroes had not been cruelly treated while at the colony, and that the report concerning the murder of a portion of the band[97] attempting to escape was absolutely false. The Mexican soldiers alleged to have slain the Negroes were in fact a relief party sent out by the company which, being acquainted with the barren and

[96] Olney to Butler, June 17, 1895, *ibid.*, p. 5.

[97] It appears that only one band had tried to escape prior to July 18 or 19.

desolate nature of the country which would have to be crossed in reaching the United States, surmised that the lives of the colonists were in danger.[98]

Those who left the settlement after the smallpox epidemic broke out really suffered severely from lack of food. Without money and without provisions, there would have been no alternative but starvation or highway robbery, if the consular agents of the United States had not come to the rescue. That they came and came effectively is evinced by the fact that very few of the colonists actually died of starvation. One hundred and twenty-five of the Negroes arrived at Mapimi about July 19 and sent a delegation from there to Torreón to appeal to the consul for aid.[99] The agent at this place wrote to the consul at Durango for advice and help, while at the same time he set about to raise funds by voluntary subscription. The consul at Durango responded immediately with financial aid and suggested that the Negroes seek employment; but the small number of the group which was able to work seemed disinclined to do so; and, to make matters worse, the smallpox continued its ravages and in a measure precluded the possibility of obtaining employment even if it had been desired.[100]

The consuls appealed at the same time to the authorities at Washington who replied at first that there was no fund available

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[98] Sparks to Uhl, June 24, 1895, and enclosure, *ibid.*, pp. 6-11.

[99] *Ibid.*, pp. 12, 16.

[100] *Ibid.*, pp. 17-20.

for the relief of the destitute citizens. As early as July 26, however, General Bliss, who commanded the department of Texas, was ordered to send a physician to help look after the sick and to place 1500 rations into the hands of Consul Sparks at Piedras Negras; and the consul at Piedras Negras was directed, in case return to the colony was not "practicable or consistent with humane considerations," to endeavor to persuade the railroad companies to transport the Negroes to their homes under the promise of receiving remuneration as soon as Congress could be prevailed upon to make an appropriation for that purpose.[101]

Meantime, the demoralized colonists were leaving their crops and making their way first to Mapimi, and later to Torreón, where most of them caught the Mexican International to Eagle Pass. Here they were received in a quarantine encampment especially prepared for them and given clothes, provisions, and medical attention until the smallpox epidemic had been subdued. This required considerable time and the expense was by no means small. Finally, by September 26, those who had been taken into quarantine first were ready to leave, and on that date the Southern Pacific took aboard 167 of them destined for New Orleans, from which point they were to be transported by the Louisville and Nashville to Birmingham, Alabama. On October 4, another group boarded the train; on October 10, another; on October 22, still another; and on November 3, the last of the encampment left Eagle Pass. The last party reached New Orleans

[101] Sparks to Uhl, June 4, 1895, and enclosure, pp. 13-14.

on the following day and perhaps arrived at Birmingham on the 5th.[102]

Thus ended the colonization scheme of Ellis and the Mexican land company. It had cost the United States Government more than twenty thousand dollars. It had cost the Tlahualilo Company about seven thousand. But the Negroes themselves had borne the greatest losses. Seventy or more of their number had found graves on the hacienda near Mapimi, 10 had died at Torreón, 8 while *en route* from that station to Eagle Pass, and 60 in the encampment there, making a total of about 148. Besides these, there were 250 not accounted for and half as many more scattered and possibly separated for years from their friends and relatives. Only 334 left Eagle Pass by train for their homes in Alabama, while the Louisville and Nashville records show that only 326 were taken aboard at New Orleans. What fate overtook the small number who chose to remain with their crops has not been ascertained.[103]

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[102] *Ibid.*, p. 65.

[103] Sparks to Uhl, June 24, 1895, and enclosure, pp. 42, 65-66.President Cleveland, in his message of December 2, 1895, urged an appropriation for the reimbursements of the railroads, and on January 27, 1896, he sent a special message to Congress with reference to the matter. Richardson, *Messages and Papers*, IX, 634, 664.An appropriation for urgent deficiencies which was passed on February 26, 1896, contained the following interesting item: "For the payment of the cost of transportation furnished by certain railway companies in connection with the failure of the scheme for the colonization of negroes in Mexico, necessitating their return to their homes in Alabama, … five thousand and eighty-seven dollars and nine cents." 29 *U. S. Statutes at Large*, p. 18.

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DOCUMENTS

JAMES MADISON'S ATTITUDE TOWARD THE NEGRO

Like most of the Revolutionary leaders, James Madison, moved by the social and political upheaval of that time thought seriously of the liberation of the slaves, largely for economic reasons. He believed that the country should depend as little as possible on the labor of slaves, knowing that their labor was not sufficiently skillful to furnish the basis for diversified industry. He considered slavery "the great evil under which the nation labors."[104] On another occasion he referred to it as a "portentous evil,"[105] and on still another "an evil, moral, political, and economic, a sad blot on our free country."[106] When, therefore, petitions for the abolition of slavery were presented to the legislature of Virginia, he did not frown upon the proposal as a mischievous agitation as did so many others. Madison looked forward to the eventual extermination of slavery through gradual methods of preparation for emancipation. Feeling that the thorough incorporation of the blacks into the community of

[104] *Letters and other Writings of James Madison*, III, 138.

[105] *Ibid.*, 170.

[106] *Ibid.*, 239.

whites would be prejudicial to the interests of the country, he had no other thought than that of deportation as a correlative of emancipation. Along with a number of others he discussed the proposal to set apart certain western public lands for the transplantation of the blacks from the slave holding States to free soil, but as the white man by his pioneering efforts so rapidly pushed the frontier to the west as to convince the country of the need of that territory for expansion, Madison soon receded from this position and advocated along with most of the leading men of his time the colonization of the Negroes in Africa.

Madison did not feel that there was any sure ground upon which Congress might participate in the emancipation and the colonization of the Negroes. He suggested that the constitution be amended. He even doubted that the Ordinance of 1787, enacted without authority, had the effect of the emancipation of the slaves and was finally of the opinion that the right of Congress to prohibit slavery in any territory during its territorial period, "depends on the clause in the constitution specially providing for the management of these subordinate establishments."[4] He was rather of the opinion that the restriction was not within the true scope of the constitution. Like Jefferson, therefore, during the later years of his life, Madison saw many difficulties in the way of abolishing slavery. He gave a sympathetic ear to the experiences of the Moravians, Hermonites, and the Shakers, but although he had to concede that slavery impaired the influence of the political example of the United States and was a blot on our republican

character, he never became what we could call an abolitionist for the reason that he found it difficult to remove the Negroes from the country when freed. That being the case, he noted with some interest the increase of the slave population, the increase in voluntary emancipation, and the progress of the Colonization Society, to the presidency of which he was elected.[107]

To Robert Pleasants
Philadelphia, October 30, 1791

Sir,—The delay in acknowledging your letter of the 6th June last proceeded from the cause you conjectured. I did not receive it till a few days ago, when it was put into my hands by Mr. James Pemberton, along with your subsequent letter of the 8th August.

The petition relating to the Militia bill contains nothing that makes it improper for me to present it. I shall, therefore, readily comply with your desire on that subject. I am not satisfied that I am equally at liberty with respect to the other petition. Animadversions such as it contains, and which the authorized object of the petitioners did not require, on the slavery existing in our country, are supposed by the holders of that species of property to lessen the value by weakening the tenure of it. Those from whom I derive my public station are known by me to be greatly interested in that species of property, and to view the matter in that light. It would seem that I might be chargeable at least with want of candour, if not of fidelity, were I to make use of a situation in which

[107] *Letters and other Writings of James Madison*, III, 168.

their confidence has placed me to become a volunteer in giving a public wound, as they would deem it, to an interest on which they set so great a value. I am the less inclined to disregard this scruple as I am not sensible that the event of the petition would in the least depend on the circumstance of its being laid before the House by this or that person.

Such an application as that to our own Assembly, on which you ask my opinion, is a subject, in various respects, of great delicacy and importance. The consequences of every sort ought to be well weighed by those who would hazard it. From the view under which they present themselves to me, I cannot but consider the application as likely to do harm rather than good. It may be worth your own consideration whether it might not produce successful attempts to withdraw the privilege now allowed to individuals, of giving freedom to slaves. It would at least be likely to clog it with a condition that the person freed should be removed from the country; there being arguments of great force for such a regulation, and some would concur in it, who, in general, disapprove of the institution of slavery.

I thank you, sir, for the friendly sentiments you have expressed towards me, and am, with respect, your obt, humble servt.[108]

To Robert Walsh[109]

Montpellier, Mar. 2d, 1819.

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[108] *Letters and other Writings of James Madison*, I, 542-543.

[109] *Ibid.*, III, 121.

Dr Sir,—I received some days ago your letter of Feby 15, in which you intimate your intention to vindicate our Country against misrepresentations propagated abroad, and your desire of information on the subject of negro slavery, of moral character, of religion, and of education in Virginia, as affected by the Revolution, and our public Institutions.

The general condition of slaves must be influenced by various causes. Among these are: 1. The ordinary price of food, on which the quality and quantity allowed them will more or less depend. This cause has operated much more unfavorably against them in some quarters than in Virginia. 2. The kinds of labour to be performed, of which the sugar and rice plantations afford elsewhere, and not here, unfavorable examples. 3. The national spirit of their masters, which has been graduated by philosophic writers among the slaveholding Colonies of Europe. 4. The circumstance of conformity or difference in the physical characters of the two classes; such a difference cannot but have a material influence, and is common to all the slaveholding countries within the American hemisphere. Even in those where there are other than black slaves, as Indians and mixed breeds, there is a difference of colour not without its influence. 5. The proportion which the slaves bear to the free part of the community, and especially the greater or smaller numbers in which they belong to individuals.

This last is, perhaps, the most powerful of all the causes deteriorating the condition of the slave, and furnishes the best scale for determining the degree of its hardship.

In reference to the actual condition of slaves in Virginia, it may be confidently stated as better, beyond comparison, than it was before the Revolution. The improvement strikes every one who witnessed their former condition, and attends to their present. They are better fed, better clad, better lodged, and better treated in every respect; insomuch, that what was formerly deemed a moderate treatment, would now be a rigid one, and what formerly a rigid one, would now be denounced by the public feelings. With respect to the great article of food particularly, it is a common remark among those who have visited Europe, that it includes a much greater proportion of the animal ingredient than is attainable by the free labourers even in that quarter of the Globe. As the two great causes of the melioration in the lot of the slaves since the establishment of our Independence, I should set down: 1. The sensibility to human rights, and sympathy with human sufferings, excited and cherished by the discussions preceding, and the spirit of the Institutions growing out of that event. 2. The decreasing proportion which the slaves bear to the individual holders of them; a consequence of the abolition of entails and the rule of primogeniture; and of the equalizing tendency of parental affection unfettered from all prejudices, as well as from the restrictions of law.

With respect to the moral features of Virginia, it must be observed, that pictures which have been given of them are, to say the least, outrageous caricatures, even when taken from the state of society previous to the Revolution; and that so far as there was any ground or colour for them then, the

same cannot be found for them now.

Omitting more minute or less obvious causes, tainting the habits and manners of the people under the Colonial Government, the following offer themselves: 1. The negro slavery chargeable in so great a degree on the very quarter which has furnished most of the libellers. It is well known that during the Colonial dependence of Virginia, repeated attempts were made to stop the importation of slaves, each of which attempts was successively defeated by the foreign negative on the laws, and that one of the first offsprings of independent republican legislation was an act of perpetual prohibition.

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With the exception of slavery, these demoralizing causes have ceased or are wearing out; and even that, as already noticed, has lost no small share of its former character. On the whole, the moral aspect of the State may, at present, be fairly said to bear no unfavorable comparison with the average standard of the other States. It certainly gives the lie to the foreign calumniators whom you propose to arraign.[110]

To Robert J. Evans (Author of the Pieces Published Under the

Name of Benjamin Rush).

Montpellier, June 15, 1819.

[110] *Letters and other Writings of James Madison*, III, 122-124.

Sir,—I have received your letter of the 3d instant, requesting such hints as may have occurred to me on the subject of an eventual extinguishment of slavery in the United States.

Not doubting the purity of your views, and relying on the discretion by which they will be regulated, I cannot refuse such a compliance as will, at least, manifest my respect for the object of your undertaking.

A general emancipation of slaves ought to be—1. Gradual. 2. Equitable, and satisfactory to the individual immediately concerned. 3. Consistent with the existing and durable prejudices of the nation.

That it ought, like remedies for other deep-rooted and widespread evils, to be gradual, is so obvious, that there seems to be no difference of opinion on that point.

To be equitable and satisfactory, the consent of both the master and the slave should be obtained. That of the master will require a provision in the plan for compensating a loss of what he held as property, guaranteed by the laws, and recognised by the Constitution. That of the slave, requires that his condition in a state of freedom be preferable, in his own estimation, to his actual one in a state of bondage.

To be consistent with existing and probably unalterable prejudices in the United States, the freed blacks ought to be permanently removed beyond the region occupied by, or allotted to, a white population. The objections to a thorough incorporation of the two people, are, with most of the whites, insuperable; and are admitted by all of them to be very powerful. If the blacks, strongly marked as they

are by physical and lasting peculiarities, be retained amid the whites, under the degrading privation of equal rights, political or social, they must be always dissatisfied with their condition, as a change only from one to another species of oppression; always secretly confederating against the ruling and privileged class; and always uncontrolled by some of the most cogent motives to moral and respectable conduct. The character of the free blacks even where their legal condition is least affected by their color, seems to put these truths beyond question. It is material, also, that the removal of the blacks to be a distance precluding the jealousies and hostilities to be apprehended from a neighboring people, stimulated by the contempt known to be entertained for their peculiar features; to say nothing of their vindictive recollections, or the predatory propensities which their state of society might foster. Nor is it fair, in estimating the danger of collisions with the whites, to charge it wholly on the side of the black. There would be reciprocal antipathies doubling the danger.

The colonizing plan on foot has, as far as it extends, a due regard to these requisites; with the additional object of bestowing new blessings, civil and religious, on the quarter of the Globe most in need of them. The Society proposes to transport to the African coast all free and freed blacks who may be willing to remove thither; to provide by fair means, and, it is understood, with a prospect of success, a suitable territory for their reception; and to initiate them into such an establishment as may gradually and indefinitely expand itself.

The experiment, under this view of it, merits encouragement from all who regard slavery as an evil, who wish to see it diminished and abolished by peaceable and just means, and who have themselves no better mode to propose. Those who have most doubted the success of the experiment must, at least, have wished to find themselves in an error.

But the views of the Society are limited to the case of blacks, already free, or who may be *gratuitously* emancipated. To provide a commensurate remedy for the evil, the plan must be extended to the great mass of blacks, and must embrace a fund sufficient to induce the master, as well as the slave, to concur in it. Without the concurrence of the master, the benefit will be very limited as it relates to the negroes, and essentially defective as it relates to the United States; and the concurrence of masters must, for the most part, be obtained by purchase.

Can it be hoped that voluntary contributions, however adequate to an auspicious commencement, will supply the sums necessary to such an enlargement of the remedy? May not another question be asked? Would it be reasonable to throw so great a burden on the individuals distinguished by their philanthropy and patriotism?

The object to be obtained, as an object of humanity, appeals alike to all; as a national object, it claims the interposition of the nation. It is the nation which is to reap the benefit. The nation, therefore, ought to bear the burden.

Must, then, the enormous sums required to pay for, to transport, and to establish in a foreign land, all the slaves in

the United States, as their masters may be willing to part with them, be taxed on the good people of the United States, or be obtained by loans, swelling the public debt to a size pregnant with evils next in degree to those of slavery itself?

Happily, it is not necessary to answer this question by remarking, that if slavery, as a national evil, is to be abolished, and it be just that it be done at the national expense, the amount of the expense is not a paramount consideration. It is the peculiar fortune, or, rather, a providential blessing of the United States, to possess a resource commensurate to this great object, without taxes on the people, or even an increase of the public debt.

I allude to the vacant territory, the extent of which is so vast, and the vendible value of which is so well ascertained.

Supposing the number of slaves to be 1,500,000, and their price to average 400 dollars, the cost of the whole would be 600 millions of dollars. These estimates are probably beyond the fact; and from the number of slaves should be deducted; 1. Those whom their masters would not part with. 2. Those who may be gratuitously set free by their masters. 3. Those acquiring freedom under emancipating regulations of the States. 4. Those preferring slavery where they are to freedom in an African settlement. On the other hand, it is to be noted that the expense of removal and settlement is not included in the estimated sum; and that an increase of the slaves will be going on during the period required for the execution of the plan.

On the whole, the aggregate sum needed may be stated at about six hundred millions of dollars.

This will require 200 millions of acres, at three dollars per acre; or 300 millions at two dollars per acre; a quantity which, though great in itself, is perhaps not a third part of the disposable territory belonging to the United States. And to what object so good, so great, and so glorious, could that peculiar fund of wealth be appropriated? Whilst the sale of territory would, on one hand, be planting one desert with a free and civilized people, it would, on the other, be giving freedom to another people, and filling with them another desert. And if in any instance wrong has been done by our forefathers to people of one colour, by dispossessing them of their soil, what better atonement is now in our power than that of making what is rightfully acquired a source of justice and of blessings to a people of another colour?

As the revolution to be produced in the condition of the negroes must be gradual, it will suffice if the sale of territory keep pace with its progress. For a time, at least, the proceeds would be in advance. In this case, it might be best, after deducting the expense incident to the surveys and sales, to place the surplus in a situation where its increase might correspond with the natural increase of the unpurchased slaves. Should the proceeds at any time fall short of the calls for their application, anticipations might be made by temporary loans, to be discharged as the land should find a market.

But it is probable that for a considerable period the sales would exceed the calls. Masters would not be willing to strip their plantations and farms of their labourers so rapidly. The slaves themselves connected, as they generally are, by tender

ties with others under other masters, would be kept from the list of emigrants by the want of the multiplied consents to be obtained. It is probable, indeed, that for a long time a certain portion of the proceeds might safely continue applicable to the discharge of the debts or to other purposes of the nation, or it might be most convenient, in the outset, to appropriate a certain proportion only of the income from sales to the object in view, leaving the residue otherwise applicable.

Should any plan similar to that I have sketched be deemed eligible in itself, no particular difficulty is foreseen from that portion of the nation, which, with a common interest in the vacant territory, has no interest in slave property. They are too just to wish that a partial sacrifice should be made for the general good, and too well aware that whatever may be the intrinsic character of that description of property, it is one known to the Constitution, and, as such could not be constitutionally taken away without just compensation. That part of the nation has, indeed, shewn a meritorious alacrity in promoting, by pecuniary contributions, the limited scheme for colonizing the blacks, and freeing the nation from the unfortunate stain on it, which justifies the belief that any enlargement of the scheme, if founded on just principles, would find among them its earliest and warmest patrons. It ought to have great weight that the vacant lands in question have, for the most part, been derived from grants of the States holding the slaves to be redeemed and removed by the sale of them.

It is evident, however, that in effectuating a general emancipation of slaves in the mode which has been hinted,

difficulties of other sorts would be encountered. The provision for ascertaining the joint consent of the masters and slaves; for guarding against unreasonable valuations of the latter; and for the discrimination of those not proper to be conveyed to a foreign residence, or who ought to remain a charge on masters in whose service they had been disabled or worn out, and for the annual transportation of such numbers, would require the mature deliberations of the national councils. The measure implies also, the practicability of procuring in Africa an enlargement of the district or districts for receiving the exiles sufficient for so great an augmentation of their numbers.

Perhaps the Legislative provision best adapted to the case would be an incorporation of the Colonizing Society, or the establishment of a similar one, with proper powers, under the appointment and superintendence of the National Executive.

In estimating the difficulties, however, incident to any plan of general emancipation, they ought to be brought into comparison with those inseparable from other plans, and be yielded to or not accordingly to the result of the comparison.

One difficulty presents itself which will probably attend every plan which is to go into effect under the Legislative provisions of the National Government. But whatever may be the effect of existing powers of Congress, the Constitution has pointed out the way in which it can be supplied. And it can hardly be doubted that the requisite powers might readily be procured for attaining the great object in question, in any mode whatever approved by the

nation.

If these thoughts can be of any aid in your search of a remedy for the great evil under which the nation labors, you are very welcome to them.[111]

To Tench Coxe.

Montpelier, March 20, 1820.

I am glad to find you still sparing moments for subjects interesting to the public welfare. The remarks on the thorny one to which you refer in the "National Recorder," seem to present the best arrangement for the unfortunate part of our population whose case has enlisted the anxiety of so many benevolent minds, next to that which provides a foreign outlet and location for them. I have long thought that our vacant territory was the resource which, in some mode or other, was most applicable and adequate as a gradual cure for the portentous evil; without, however, being unaware that even that would encounter serious difficulties of different sorts.[112]

To General Lafayette.

Montpelier, Nov. 25, 1820.

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The subject which ruffles the surface of public affairs most, at present, is furnished by the transmission of the

[111] *Letters and other Writings of James Madison*, III, 133-138.

[112] *Ibid.*, III, 170.

"Territory" of Missouri from a state of nonage to a maturity for self-Government, and for a membership in the Union. Among the questions involved in it, the one most immediately interesting to humanity is the question whether a toleration or prohibition of slavery Westward of the Mississippi would most extend its evils. The human part of the argument against the prohibition turns on the position, that whilst the importation of slaves from abroad is precluded, a diffusion of those in the Country tends at once to meliorate their actual condition, and to facilitate their eventual emancipation. Unfortunately, the subject, which was settled at the last session of Congress by a mutual concession of the parties, is reproduced on the arena by a clause in the Constitution of Missouri, distinguishing between free persons of colour and white persons, and providing that the Legislature of the new State shall exclude from it the former. What will be the issue of the revived discussion is yet to be seen. The case opens the wider field, as the Constitution and laws of the different States are much at variance in the civic character giving to free persons of colour; those of most of the States, not excepting such as have abolished slavery, imposing various disqualifications, which degrade them from the rank and rights of white persons. All these perplexities develope more and more the dreadful fruitfulness of the original sin of the African trade.[113]

[113] *Letters and other Writings of James Madison*, III, 190.

To F. Corbin

November 26, 1820.

. . . . . .

I do not mean to discuss the question how far *slavery* and *farming* are incompatible. Our opinions agree as to the evil, moral, political, and economical, of the former. I still think, notwithstanding, that under all the disadvantages of slave cultivation, much improvement in it is practicable. Proofs are annually taking place within my own sphere of observation; particularly where slaves are held in small numbers, by good masters and managers. As to the very wealthy proprietors, much less is to be said. But after all, (protesting against any inference of a disposition to undertake the evil of slavery,) is it certain that in giving to your wealth a new investment, you would be altogether freed from the cares and vexations incident to the shape it now has? If converted into paper, you already feel some of the contingencies belonging to it; if into commercial stock, look at the wrecks every where giving warning of the danger. If into large landed property, where there are no slaves, will you cultivate it yourself? Then beware of the difficulty of procuring faithful or complying labourers. Will you dispose of it in leases? Ask those who have made the experiment what sort of tenants are to be found where an ownership of the soil is so attainable. It has been said that America is a country for the poor, not for the rich. There would be more

correctness in saying it is the country for both, where the latter have a relish for free government; but, proportionally, more for the former than for the latter.[114]

To General la Fayette.

1821.

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The negro slavery is, as you justly complain, a sad blot on our free country, though a very ungracious subject of reproaches from the quarter which has been most lavish of them. No satisfactory plan has yet been devised for taking out the stain. If an asylum could be found in Africa, that would be the appropriate destination for the unhappy race among us. Some are sanguine that the efforts of an existing Colonization Society will accomplish such a provision; but a very partial success seems the most that can be expected. Some other region must, therefore, be found for them as they become free and willing to emigrate. The repugnance of the whites to their continuance among them is founded on prejudices, themselves founded on physical distinctions, which are not likely soon, if ever, to be eradicated. Even in States, Massachusetts for example, which displayed most sympathy with the people of colour on the Missouri question, prohibitions are taking place against their becoming residents. They are every

[114] *Letters and other Writings of James Madison*, III, 193-194.

where regarded as a nuisance, and must really be such as long as they are under the degradation which public sentiment inflicts on them. They are at the same time rapidly increasing from manumissions and from offspring, and of course lessening the general disproportion between the slaves and the whites. This tendency is favorable to the cause of a universal emancipation."[115]

To Dr. Morse

March 28, 1823

Queries.

1. Do the planters generally live on their own estates?

2. Does a planter with ten or fifteen slaves employ an overlooker, or does he overlook his slaves himself?

3. Obtain estimates of the culture of Sugar and Cotton, to show what difference it makes where the planter resides on his estate, or where he employs attorneys, overlookers, &c.

4. Is it a common or general practice to mortgage slave estates?

5. Are sales of slave estates very frequent under execution for debt and what proportion of the whole may be thus sold annually?

6. Does the Planter possess the power of selling the different branches of a family separate?

7. When the prices of produce, Cotton Sugar, &c., are high, do the Planters purchase, instead of raising, their corn and other provisions?

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[115] *Letters and other Writings of James Madison*, III, 239, 240.

8. When the prices of produce are low, do they then raise their own corn and other provisions?

9. Do the negroes fare better when the Corn, &c., is raised upon their master's estate or when he buys it?

10. Do the tobacco planters in America ever buy their own Corn or other food, or do they always raise it?

11. If they always, or mostly, raise it, can any other reason be given for the differences of the system pursued by them and that pursued by the Sugar and Cotton planters than that cultivation of tobacco is less profitable than that of Cotton or Sugar?

12. Do any of the Planters manufacture the packages for their product, or the clothing for their negroes and if they do, are their negroes better clothed than when clothing is purchased?

13. Where, and by whom, is the Cotton bagging of the Brazils made? is it principally made by free men or slaves?

14. Is it the general system to employ the negroes in task work, or by the day?

15. How many hours are they generally at work in the former case? how many in the latter? Which system is generally preferred by the master? which by the slaves?

16. Is it common to allow them a certain portion of time instead of their allowance of provisions? In this case, how much is allowed? Where the slaves have the option, which do they generally choose? On which system do the slaves look the best, and acquire the most comforts?

17. Are there many small plantations where the owners possess only a few slaves? What proportion of the whole

may be supposed to be held in this way?

18. In such cases, are the slaves treated or almost considered a part of the family?

19. Do the slaves fare best when their situations and that of the master are brought nearest together?

20. In what state are the slaves as to religion or religious instruction?

21. Is it common for the slaves to be regularly married?

22. If a man forms an attachment to a woman on a different or distant plantation, is it the general practice for some accommodation to take place between the owners of the man and woman, so that they may live together?

23. In the United States of America, the slaves are found to increase at about the rate of 3 P cent. P annum. Does the same take place in other places? Give a census, if such is taken. Show what cause contributes to this increase, or what prevents it where it does not take place.

24. Obtain a variety of estimates from the Planters of the cost of bringing up a child, and at what age it becomes a clear gain to its owner.

25. Obtain information respecting the comparative cheapness of cultivation by slaves or by free men.

26. Is it common for the free blacks to labour in the field?

27. Where the labourers consist of free blacks and of white men, what are the relative prices of their labour when employed about the same work?

28. What is the proportion of free blacks and slaves?

29. Is it considered that the increase in the proportion of free blacks to slaves increases or diminishes the danger of

insurrection?

30. Are the free blacks employed in the defence of the Country, and do they and the Creoles preclude the necessity of European troops?

31. Do the free blacks appear to consider themselves as more closely connected with the slaves or with the white population? and in cases of insurrection, with which have they generally taken part?

32. What is their general character with respect to industry and order, as compared with that of the slaves?

33. Are there any instances of emancipation in particular estates, and what is the result?

34. Is there any general plan of emancipation in progress, and what?

35. What was the mode and progress of emancipation in those States in America where slavery has ceased to exist?

Hon. James Madison, Esq.

New Haven, Mar. 14, 1823.

Sir.—The foregoing was transmitted to me from a respectable correspondent in Liverpool, deeply engaged in the abolition of the slave trade, and the amelioration of the condition of slaves. If, sir, your leisure will allow you, and it is agreeable to you to furnish brief answers to these questions, you will, I conceive, essentially serve the cause of humanity, and gratify and oblige the Society above named, and, Sir, with high consideration and esteem, your most obt servt,

Jed'h Morse.

Answers

1. Yes.

2. Employs an overseer for that number of slaves, with few exceptions.

3. –

4. Not uncommonly the land; sometimes the slaves; very rarely both together.

5. The common law, as in England, governs the relation between land and debts; slaves are often sold under execution for debt; the proportion to the whole cannot be great within a year, and varies, of course, with the amount of debt and the urgency of creditors.

6. Yes.

7-10. Instances are rare where the tobacco planters do not raise their own provisions.

11. The proper comparison, not between the culture of tobacco and that of sugar and cotton, but between each of these cultures and that of provisions. The tobacco planter finds it cheaper to make them a part of his crop than to buy them. The cotton and sugar planters to buy them, where this is the case, than to raise them. The term, cheaper, embraces the comparative facility and certainty of procuring the supplies.

12. Generally best clothed when from the household manufactures, which are increasing.

14, 15. Slaves seldom employed in regular task work. They prefer it only when rewarded with the surplus time gained by their industry.

16. Not the practice to substitute an allowance of time

for the allowance of provisions.

17. Very many, and increasing with the progressive subdivisions of property; the proportion cannot be stated.

18, 19. The fewer the slaves, and the fewer the holders of slaves, the greater the indulgence and familiarity. In districts composing (comprising?) large masses of slaves there is no difference in their condition, whether held in small or large numbers, beyond the difference in the dispositions of the owners, and the greater strictness of attention where the number is greater.

20. There is no general system of religious instruction. There are few spots where religious worship is not within reach, and to which they do not resort. Many are regular members of Congregations, chiefly Baptist; and some Preachers also, though rarely able to read.

21. Not common; but the instances are increasing.

22. The accommodation not unfrequent where the plantations are very distant. The slaves prefer wives on a different plantation, as affording occasions and pretexts for going abroad, and exempting them on holidays from a share of the little calls to which those at home are liable.

23. The remarkable increase of slaves, as shown by the census, results from the comparative defect of moral and prudential restraint on the sexual connexion; and from the absence, at the same time, of that counteracting licentiousness of intercourse, of which the worst examples are to be traced where the African trade, as in the West Indies, kept the number of females less than of the males.

24. The annual expense of food and raiment in rearing

a child may be stated at about 8, 9, or 10 dollars; and the age at which it begins to be gainful to its owner about 9 or 10 years.

25. The practice here does not furnish data for a comparison of cheapness between these two modes of cultivation.

26. They are sometimes hired for field labour in time of harvest, and on other particular occasions.

27. The examples are too few to have established any such relative prices.

28. See the census.

29. Rather increases.

30. –

31. More closely with the slaves, and more likely to side with them in a case of insurrection.

32. Generally idle and depraved; appearing to retain the bad qualities of the slaves, with whom they continue to associate, without acquiring any of the good ones of the whites, from whom (they) continued separated by prejudices against their colour, and other peculiarities.

33. There are occasional instances in the present legal condition of leaving the State.

34. None.

35. –[116]

To Miss Frances Wright

Montpellier, Sept. 1, 1825.

Dear Madam,—Your letter to Mrs. Madison, containing

[116] *Letters and other Writings of James Madison*, III, 310-315.

observations addressed to my attention also, came duly to hand, as you will learn from her, with a printed copy of your plan for the gradual abolition of slavery in the United States.

The magnitude of this evil among us is so deeply felt, and so universally acknowledged, that no merit could be greater than that of devising a satisfactory remedy for it. Unfortunately the task, not easy under other circumstances, is vastly augmented by the physical peculiarities[117] of those held in bondage, which preclude their incorporation with the white population; and by the blank in the general field of labour to be occasioned by their exile; a blank into which there would not be an influx of white labourers, successively taking the place of the exiles, and which, without such an influx, would have an effect distressing in prospect to the proprietors of the soil.

The remedy for the evil which you have planned is certainly recommended to favorable attention by the two characteristics: 1. That it requires the voluntary concurrence of the holders of the slaves, with or without pecuniary compensation. 2. That it contemplates the removal of those emancipated, either to a foreign or distant region. And it will still further obviate objections, if the experimental establishments should avoid the neighborhood of settlements where there are slaves.

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[117] These peculiarities, it would seem, are not of equal force in the South American States, owing, in part, perhaps, to a former degradation, produced by colonial vassalage; but principally to the lesser contrast of colours. The difference is not striking between that of many of the Spanish and Portuguese Creoles and that of many of the mixed breed.—J. M.

Supposing these conditions to be duly provided for, particularly the removal of the emancipated blacks, the remaining questions relate to the attitude and adequacy of the process by which the slaves are at the same time to earn the funds, entire or supplemental, required for their emancipation and removal; and to be sufficiently educated for a life of freedom and of social order.

With respect to a proper course of education, no serious difficulties present themselves. And as they are to continue in a state of bondage during the preparatory period, and to be within the jurisdiction of States recognizing ample authority over them, a competent discipline cannot be impracticable. The degree in which this discipline will enforce the needed labour, and in which a voluntary industry will supply the defect of compulsory labour, are vital points, on which it may not be safe to be very positive without some light from actual experiment.

Considering the probable composition of the labourers, and the known fact that, where the labour is compulsory the greater the number of labourers brought together (unless, indeed, where cooperation of many hands is rendered essential by a particular kind of work, or of machinery) the less are the proportional profits, it may be doubted whether the surplus from that source merely, beyond the support of the establishment would sufficiently accumulate in five, or even more years, for the objects in view. And candor obliges me to say that I am not satisfied either that the prospect of emancipation at a future day will sufficiently overcome the natural and habitual repugnance to labour, or that there

is such an advantage of united over individual labour as is taken for granted.

In cases where portions of time have been allowed to slaves, as among the Spaniards, with a view to their working out their freedom, it is believed that but few have availed themselves of the opportunity by a voluntary industry; and such a result could be less relied on in a case where each individual would feel that the fruit of his exertions would be shared by others, whether equally or unequally making them, and that the exertions of others would equally avail him, notwithstanding a deficiency in his own. Skilful arrangements might palliate this tendency, but it would be difficult to counteract it effectually.[118]

The examples of the Moravians, the Harmonites, and the Shakers, in which the united labours of many for a common object have been successful have, no doubt, an imposing character. But it must be recollected that in all these establishments there is a religious impulse in the members of a religious authority in the head, for which there will be no substitutes of equivalent efficacy in the emancipating establishment. The code of rules by which Mr. Rapp manages his conscientious and devoted flock, and enriches a common treasury, must be little applicable to the dissimilar assemblage in question. His experience may afford valuable aid in its general organization, and in the distribution and details of the work to be performed. But an efficient administration must, as is judiciously proposed, be in hands practically acquainted with the propensities and

[118] *Letters and other Writings of James Madison*, III, 495-498.

habits of the members of the new community.

With reference to this dissimilarity, and to the doubt as to the advantages of associated labour, it may deserve consideration whether the experiment would not be better commenced on a scale smaller than that assumed in the prospectus. A less expensive outfit would suffice; labourers in the proper proportions of sex and age would be more attainable; the necessary discipline and the direction of their labours could be more simple and manageable; and but little time would be lost; or, perhaps, time gained; as success, for which the chance would, according to my calculation, be increased, would give an encouraging aspect, to the plan, and probably suggest improvements better qualifying it for the larger scale proposed.

Such, Madam, are the general ideas suggested by your interesting communication. If they do not coincide with yours, and imply less of confidence than may be due to the plan you have formed, I hope you will not question either my admiration of the generous philanthropy which dictated it, or my sense of the special regard it evinces for the honor and welfare of our expanding, and, I trust, rising Republic.

As it is not certain what construction would be put on the view I have taken of the subject, I leave it with your discretion to withhold it altogether, or to disclose it within the limits you allude to; intimating only that it will be most agreeable to me, on all occasions, not to be brought before the public where there is no obvious call for it.

Writing to General Lafayette in 1826, Madison commented

thus on the proposal of Miss Frances Wright for the uplift of Negroes.

> You possess, notwithstanding your distance, better information concerning Miss Wright, and her experiment, than we do here. We learn only that she has chosen for it a remote spot in the western part of Tennessee, and has commenced her enterprise; but with what prospects we know not. Her plan contemplated a provision for the expatriation of her Elèves, but without specifying it; from which I infer the difficulty felt in devising a satisfactory one. Could this part of the plan be ensured, the other essential part would come about of itself. Manumissions now more than keep pace with the outlets provided, and the increase of them is checked only by their remaining in the Country. This obstacle removed, and all others would yield to the emancipating disposition. To say nothing of partial modes, what would be more simple, with the requisite grant of power to Congress, than to purchase all female infants at their birth, leaving them in the service of the holder to a reasonable age, on condition of their receiving an elementary education? The annual number of female births may be stated at twenty thousand, and the cost at less than one hundred dollars each, at the most; a sum which would not be felt by the nation, and be even within the compass of State resources. But no such effort would be listened to, whilst the impression remains, and it seems to be indelible, that the two races cannot co-exist, both being free and equal. The great *sine qua non*, therefore, is some

external asylum for the coloured race. In the mean time, the taunts to which this misfortune exposes us in Europe are the more to be deplored, because it impairs the influence of our political example; though they come with an ill grace from the quarter most lavish of them, the quarter which obtruded the evil, and which has but lately become a penitent, under suspicious appearances.[119]

To Joseph C. Cabell

Montpellier, January 5, 1829.

Dear Sir,—I have received yours of December 28, in which you wish me to say something of the agitated subject of the basis of representation in the contemplated convention for revising the State Constitution. In a case depending so much on local views and feelings, and perhaps on the opinions of leading individuals, and in which a mixture of compromises with abstract principles may be resorted to, your judgment, formed on the theatre affording the best means of information, must be more capable of aiding mine than mine yours.

What occurs to me is, that the great principle "that man cannot be justly bound by laws, in making which they have no share," consecrated as it is by our Revolution and the Bill of Rights, and sanctioned by examples around us, is so engraven on the public mind here, that it ought to have a preponderating influence in all questions involved in the mode of forming a convention, and in discharging the trust committed to it when formed. It is said that west of the Blue

[119] *Letters and other Writings of James Madison*, III, 541-542.

Ridge the votes of non-freeholders are often connived at, the candidates finding it unpopular to object to them.

With respect to the slaves, they cannot be admitted *as persons* into the representation, and probably will not be allowed any claim as *a privileged* property. As the difficulty and disquietude on that subject arise mainly from the great inequality of slaves in the geographical division of the country, it is fortunate that the cause will abate as they become more diffused, which is already taking place; transfers of them from the quarters where they abound, to those where labourers are more wanted being a matter of course.

Is there, then, to be no constitutional provision for the rights of property, when added to the personal rights of the holders, against the will of a majority having little or no direct interest in the rights of property? If any such provision be attainable beyond the moral influence which property adds to political rights, it will be most secure and permanent if made by a convention chosen by a general suffrage, and more likely to be so made now than at a future stage of population. If made by a freehold convention in favour of freeholders, it would be less likely to be acquiesced in permanently.[120]

To General la Fayette

Feb. 1, 1830.

[120] *Letters and other Writings of James Madison*, III, 2-3.

. . . . . .

Your anticipation with regard to the slavery among us were the natural offspring of your just principles and laudable sympathies; but I am sorry to say that the occasion which led to them proved to be little fitted for the slightest interposition on that subject. A sensibility, morbid in the highest degree, was never more awakened among those who have the largest stake in that species of interest, and the most violent against any governmental movement in relation to it. The excitability at the moment, happened, also, to be not a little augmented by party questions between the South and the North, and the efforts used to make the circumstance common to the former a sympathetic bond of co-operation. I scarcely express myself too strongly in saying that any allusion in the Convention to the subject you have so much at heart would have been a spark to a mass of gunpowder. It is certain, nevertheless, that time, the great "Innovator," is not idle in its salutary preparations. The Colonization Society are becoming more and more one of its agents. Outlets for the freed blacks are alone wanted for a rapid erasure of the blot from our Republican character.[121]

To – –

June 28, 1831.

But the title in the people of the United States rests

[121] *Letters and other Writings of James Madison*, IV, 60.

on a foundation too just and solid to be shaken by any technical or metaphysical arguments whatever. The known and acknowledged intentions of the parties at the time, with a prescriptive sanction of so many years consecrated by the intrinsic principles of equity, would overrule even the most explicit declarations and terms, as has been done without the aid of that principle in the slaves, who remain such in spite of the declarations that all men are born equally free.[122]

To Matthew Carey

Montpelier, July 7, 1831.

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If the States cannot live together in harmony under the auspices of such a Government as exists, and in the midst of blessings such as have been the fruits of it, what is the prospect threatened by the abolition of a common Government, with all the rivalships, collisions and animosities inseparable from such an event? The entanglements and conflicts of commercial regulations, especially as affecting the inland and other non-importing States, and a protection of fugitive slaves substituted for the obligatory surrender of them, would, of themselves, quickly kindle the passions which are the forerunners of war.[123]

To R. R. Gurley, a promoter of colonization, Madison wrote

[122] *Ibid.*, IV, 188.

[123] *Letters and other Writings of James Madison*, IV, 192.

the following December 28, 1831:

> *Dear Sir*,—I received in due time your letter of the 21 ultimo, and with due sensibility to the subject of it. Such, however, has been the effect of a painful rheumatism on my general condition, as well as in disqualifying my fingers for the use of the pen, that I could not do justice "to the principles and measures of the Colonization Society, in all the great and various relations they sustain in our country and to Africa." If my views of them could have the value which your partiality supposes, I may observe, in brief, that the Society had always my good wishes, though with hopes of its success less sanguine than were entertained by others found to have been the better judges; and that I feel the greatest pleasure at the progress already made by the Society, and the encouragement to encounter the remaining difficulties afforded by the earlier and greater ones already overcome. Many circumstances at the present moment seem to concur in brightening the prospects of the Society, and cherishing the hope that the time will come when the *dreadful calamity which has so long afflicted our country, and filled so many with despair, will be gradually removed, and by means consistent with justice, peace, and the general satisfaction; thus giving to our country the full enjoyment of the blessings of liberty, and to the world the full benefit of its great example*. I have never considered the main difficulty of the great work as lying in the deficiency of emancipations, but in an inadequacy of asylums for such a growing mass of population, and in the great expense of removing it to its new home. The spirit of private maunmission, as the

laws may permit and the exiles may consent, is increasing, and will increase, and there are sufficient indications that the public authorities in slaveholding States are looking forward to interpretations, in different forms, that must have a powerful effect.

With respect to the new abode for the emigrants, all agree that the choice made by the Society is rendered peculiarly appropriate by considerations which need not be repeated, and if other situations should not be found as eligible receptacles for a portion of them, the prospect in Africa seems to be expanding in a highly encouraging degree.

In contemplating the pecuniary resources needed for the removal of such a number to so great a distance, my thought and hopes have long been turned to the rich fund presented in the western lands of the nation, which will soon entirely cease to be under a pledge for another object. The great one in question is truly of a national character, and it is known that distinguished patriots not dwelling in slaveholding States have viewed the object in that light, and would be willing to let the national domain be a resource in effectuating it.

Should it be remarked that the States, although all may be interested in relieving our country from the coloured population, are not equally so, it is but fair to recollect that the sections most to be benefited are those whose cessions created the fund to be disposed of.

I am aware of the constitutional obstacle which has presented itself; but if the general will be reconciled to

an application of the territorial fund to the removal of the coloured population, a grant to Congress of the necessary authority could be carried with little delay through the forms of the Constitution.

Sincerely wishing increasing success to the labours of the Society, I pray you to be assured of my esteem, and to accept my friendly salutations.[124]

To Thomas R. Drew

Montpellier, Feby 23, 1833

Dear Sir,—I received, in due time, your letter of the 15th ult. with copies of the two pamphlets; one on the "Restrictive System," the other on the "Slave Question."

The former I have not yet been able to look into, and in reading the latter with the proper attention I have been much retarded by many interruptions, as well as by the feebleness incident to my great age, increased as it is by the effects of an acute fever, preceded and followed by a chronic complaint under which I am still labouring. This explanation of the delay in acknowledging your favor will be an apology, also, for the brevity and generality of the answer. For the freedom of it, none, I am sure, will be required. In the views of the subject taken in the pamphlet, I have found much valuable and interesting information, with ample proof of the numerous obstacles to a removal of slavery from our country, and everything that could be offered in mitigation of its continuance; but I am obliged to say, that in not a few of the data from which you reason, and

[124] *Letters and other Writings of James Madison*, IV, 213-214.

in the conclusion to which you are led, I cannot concur.

I am aware of the impracticability of an immediate or early execution of any plan that combines deportation with emancipation, and of the inadmissibility of emancipation without deportation. But I have yielded to the expediency of attempting a gradual remedy, by providing for the double operation.

If emancipation was the sole object, the extinguishment of slavery would be easy, cheap, and complete. The purchase by the public of all female children, at their birth, leaving them in bondage till it would defray the charge of rearing them, would, within a limited period, be a radical resort.

With the condition of deportation it has appeared to me, that the great difficulty does not lie either in the expense of emancipation, or in the expense or the means of deportation, but in the attainment—1, of the requisite asylums; 2, the consent of the individuals to be removed; 3, the labour for the vacuum to be created.

With regard to the expense—1, much will be saved by voluntary emancipations, increasing under the influence of example, and the prospect of bettering the lot of the slaves; 2, much may be expected in gifts and legacies from the opulent, the philanthropic, and the conscientious; 3, more still from legislative grants by the States, of which encouraging examples and indications have already appeared; 4, nor is there any room for despair of aid from the indirect or direct proceeds of the public lands held in trust by Congress. With a sufficiency of pecuniary means,

the facility of providing a naval transportation of the exiles is shewn by the present amount of our tonnage and the promptitude with which it can be enlarged; by the number of emigrants brought from Europe to N. America within the last year, and by the greater number of slaves which have been, within single years, brought from the coast of Africa across the Atlantic.

In the attainment of adequate asylums, the difficulty, though it may be considerable, is far from being discouraging. Africa is justly the favorite choice of the patrons of colonization; and the prospect there is flattering —1, in the territory already acquired; 2, in the extent of coast yet to be explored, and which may be equally convenient; 3, the adjacent interior into which the littoral settlements can be expanded under the auspices of physical affinities between the new comers and the natives, and of the moral superiorities of the former; 4, the great inland regions now ascertained to be accessible by navigable waters, and opening new fields for colonizing enterprises.

But Africa, though the primary, is not the sole asylum within contemplation; an auxiliary one presents itself in the islands adjoining this continent, where the coloured population is already dominant, and where the wheel of revolution may from time to time produce the like result.

Nor ought another contingent receptable for emancipated slaves to be altogether overlooked. It exists within the territory under the control of the United States, and is not too distant to be out of reach, whilst sufficiently distant to avoid, for an indefinite period, the collisions to be

apprehended from the vicinity of people distinguished from each other by physical as well as other characteristics.

The consent of the individuals is another pre-requisite in the plan of removal. At present there is a known repugnance in those already in a state of freedom to leave their native homes, and among the slaves there is an almost universal preference of their present condition to freedom in a distant and unknown land. But in both classes, particularly that of the slaves, the prejudices arise from a distrust of the favorable accounts coming to them through white channels. By degrees truth will find its way to them from sources in which they will confide, and their aversion to removal may be overcome as fast as the means of effectuating it shall accrue.

The difficulty of replacing the labour withdrawn by a removal of the slaves, seems to be urged as of itself an insuperable objection to the attempt. The answer to it is—1, that notwithstanding the emigrations of the whites, there will be an annual and by degrees an increasing surplus of the remaining mass; 2, that there will be an attraction of whites from without, increasing with the demand, and, as the population elsewhere will be yielding a surplus to be attracted; 3, that as the culture of tobacco declines with the contraction of the space within which it is profitable and still more from the successful competition in the West, and as the farming system takes the place of planting, a portion of labour can be spared without impairing the requisite stock; 4, that although the process must be slow, be attended with much inconvenience, and be not even certain in its result, is

it not preferable to a torpid acquiescence in a perpetuation of slavery, or an extinguishment of it by convulsions more disastrous in their character and consequences than slavery itself?

In my estimate of the experiment instituted by the Colonization Society, I may indulge too much my wishes and hopes, to be safe from errors. But a partial success will have its virtue, and an entire failure will leave behind a consciousness of the laudable intentions with which relief from the greatest of our calamities was attempted in the only mode presenting a chance of effecting it.

I hope I shall be pardoned for remarking, that in accounting for the depressed condition of Virginia, you seem to allow too little to the existence of slavery, ascribe too much to the tariff laws, and not to have sufficiently taken into view the effect of the rapid settlement of the Western and Southwestern country.

Previous to the Revolution, when, of these causes, slavery alone was in operation, the face of Virginia was, in every feature of improvement and prosperity, a contrast to the Colonies where slavery did not exist, or in a degree only, not worthy of notice. Again, during the period of the tariff laws prior to the latter state of them, the pressure was little, if at all, regarded as a source of the general suffering. And whatever may be the degree in which the extravagant augmentation of the Tariff may have contributed to the depression, the extent of this cannot be explained by the extent of the cause. The great and adequate cause of the evil is the cause last mentioned, if that be indeed an evil

which improves the condition of our migrating citizens, and adds more to the growth and prosperity of the whole than it subtracts from a part of the community.

Nothing is more certain than that the actual and prospective depression of Virginia is to be referred to the fall in the value of her landed property, and in that of the staple products of the land. And it is not less certain that the fall in both cases is the inevitable effect of the redundancy in the market of land and of its products. The vast amount of fertile land offered at 125 cents per acre in the West and S. West could not fail to have the effect already experienced, of reducing the land here to half its value; and when the labour that will here produce one hogshead of tobacco and ten barrels of flour will there produce two hhd and twenty barrels, now so cheaply transportable to the destined outlets, a like effect on these articles must necessarily ensue. Already more tobacco is sent to New Orleans than is exported from Virginia to foreign markets; whilst the article of flour, exceeding for the most part the demand for it, is in a course of rapid increase from new sources as boundless as they are productive. The great staples of Virginia have but a limited market, which is easily glutted. They have in fact sunk more in price, and have a more threatening prospect, than the more southern staples of cotton and rice. The case is believed to be the same with her landed property. That it is so with her slaves is proved by the purchases made here for the market there.

The reflections suggested by this aspect of things will be more appropriate in your hands than in mine. They are also

beyond the tether of my subject, which I fear I have already overstrained. I hasten, therefore, to conclude, with a tender of the high respect and cordial regards which I pray you to accept.[125]

To Henry Clay

June, 1833.

It is painful to observe the unceasing efforts to alarm the South by imputations against the North of unconstitutional designs on the subject of the slaves. You are right, I have no doubt, in believing that no such intermeddling disposition exists in the body of our Northern brethren. Their good faith is sufficiently guarantied by the interest they have as merchants, as ship-owners, and as manufacturers, in preserving a union with the slaveholding States. On the other hand, what *madness* in the South to look for greater safety in disunion. It would be worse than jumping out of the frying-pan into the fire; it would be jumping into the fire for fear of the frying-pan. The danger from the alarm is, that the pride and resentment exerted by them may be an overmatch for the dictates of prudence, and favor the project of a Southern Convention, insidiously revived, as promising, by its councils, the best securities against grievances of every sort from the North.[126]

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[125] *Letters and other Writings of James Madison*, IV, 274-279.

[126] *Letters and other Writings of James Madison*, IV, 301.

ADVICE GIVEN NEGROES A CENTURY AGO

The following addresses to the free people of color, taken from the *Minutes of the American Convention of Abolition Societies* active in this country during the first fifty years of the republic of the United States, show the method employed by these early friends of the Negroes to effect their social uplift while this organization was working for the abolition of the slave trade and the destruction of slavery. The advice to the Negroes as to how they should conduct themselves is very interesting. After 1820 the American Convention of Abolition Societies paid less attention to such advice to the people of color and concerned itself primarily with appeals to others in their behalf. The free Negro made so much moral progress during the period that they ceased to be a cause of anxiety.

To The

Free Africans and other free People of color

in the

UNITED STATES

The Convention of Deputies from the Abolition Societies in the United States, assembled at Philadelphia, have undertaken to address you upon subjects highly interesting to your prosperity.

They wish to see you act worthily of the rank you have acquired as freemen, and thereby to do credit to yourselves, and to justify the friends and advocates of your color in the eyes of the world.

As the result of our united reflections, we have concluded to call your attention to the following articles of Advice. We trust, they are dictated by the purest regard for your welfare, for we view you as Friends and Brethren.

In the first place. We earnestly recommend to you, a regular attention to the important duty of public

worship; by which means you will evince gratitude to your CREATOR, and, at the same time, promote knowledge, union, friendship, and proper conduct amongst yourselves.
Secondly,

Secondly, We advise such of you, as have not been taught reading, writing, and the first principles of arithmetic, to acquire them as early as possible. Carefully attend to the instruction of your children in the same simple and useful branches of education. Cause them, likewise, early and frequently to read the holy Scriptures. They contain, among other great discoveries, the precious record of the original equality of mankind, and of the obligations of universal justice and benevolence, which are derived from the relation of the human race to each other in a COMMON FATHER.

Thirdly, Teach your children useful trades, or to labor with their hands in cultivating the earth. These employments are favorable to health and virtue. In the choice of masters, who are to instruct them in the above branches of business, prefer those who will work with them; by this means they will acquire habits of industry, and be better preserved from vice, than if they worked alone, or under the eye of persons less interested in their welfare. In forming contracts, for yourselves or children, with masters, it may be useful to consult such persons as are capable of giving you the best advice, who are known to be your friends, in order to prevent advantages being taken of your ignorance of the laws and customs of our country.

Fourthly, Be diligent in your respective callings, and

faithful in all the relations you bear in society, whether as husbands, wives, fathers, children or hired servants. Be just in all your dealings. Be simple in your dress and furniture, and frugal in your family expenses. Thus you will act like Christians as well as freemen, and, by these means, you will provide for the distress and wants of sickness and old age.

Fifthly, Refrain from the use of spirituous liquors. The experience of many thousands of the citizens of the United States has proved, that these liquors are not necessary to lessen the fatigue of labor, nor to obviate the extremes of heat or cold; much less are they necessary to add to the innocent pleasures of society.

Sixthly, Avoid frolicking, and amusements which lead to expense and idleness; they beget habits of dissipation and vice, and thus expose you to deserved reproach amongst your white neighbors.

Seventhly, We wish to impress upon your minds the normal and religious necessity of having your marriages legally performed; also to have exact registers preserved of all the births and deaths which occur in your respective families.

Eighthly, Endeavour to lay up as much as possible of your earnings for the benefit of your children, in case you should die before they are able to maintain themselves—your money will be safest and most beneficial when laid out in lots, houses or small farms.

Ninthly, We recommend to you, at all times and upon all occasions, to behave yourselves to all persons in a civil and respectful manner, by which you may prevent

contention and remove every just occasion of complaint. We beseech you to reflect, it is by your good conduct alone, that you can refute the objections which have been made against you as rational and moral creatures, and remove many of the difficulties, which have occurred in the general emancipation of such of your brethren as are yet in bondage.

With hearts anxious for your welfare, we commend you to the guidance and protection of that BEING who is able to keep you from all evil, and who is the common Father and Friend of the whole family of mankind.[127]

To the Free Africans and other free People of color in the

UNITED STATES

The Convention of Delegates from the Abolition Societies in the United States, having again assembled for the purpose of promoting your happiness, consider it their duty, once more to call your attention to the advice which was addressed to you by the Convention of last year; and which we subjoin to the present address, in order that you may at one view be able to profit by these collected advices of your sincerest friends. The oftner we

[127] American Convention Abolition Societies. Minutes, 1796, pp. 12, 14.

review that advice, the more we are impressed with its importance, and the more anxious we are to urge your strict and faithful observance of it. We shall only add thereto, at present, one other request, and that is, that you would avoid gaming in all its varied forms—the ruinous and miserable consequences of this most pernicious evil, are so notorious, and so generally acknowledged, that we cannot too forcibly endeavour to guard you against it. It subjects you to the control of the most degrading passions, and too generally leads to the loss of fortune, reputation, and of every good principle.

We can with peculiar satisfaction inform you, that schools and places of worship have been established, and that they are well attended by people of your color, in New-York, New-Jersey, Pennsylvania, Maryland, Virginia, and other places; and we are happy to find, that many of you have evinced, by your prudent and moral conduct, that you are not unworthy of the freedom you enjoy.

Go on in these paths of virtue:—By persevering in them you will justify the solicitude and labors of your friends in your behalf, and furnish an additional argument for the emancipation of such of your brethren as are yet in bondage in the United States and in other parts of the world.[128]

[128] American Convention of Abolition Societies, Minutes of, 1797, pp. 16 and 17.

To the free Blacks, and other free People of Colour, in

the United States

The American Convention for promoting the Abolition of Slavery and improving the Condition of the African Race, believe it proper to address you, on subjects highly interesting to your well being.

You can have no doubt but that our views are disinterested, and we therefore think ourselves entitled to your attention, whilst we speak of matters in which you are greatly concerned.

As you are free men, we wish you to place a proper estimate on your privileges, and to act in a manner becoming your character; that, by your worthy conduct, you may destroy the prejudices which some persons entertain against you, and relieve your friends from the censures which they incur in consequence of your errors; we beseech you, reflect seriously and endeavor to remove these reproaches; and it is our earnest and affectionate advice, that you remember your great and good Creator, who has placed you in this life, in order that you may, by acting well your part here, be qualified for everlasting happiness hereafter —Can you expect that happiness, if instead of attending

places of divine worship, there to pray for his holy aid, you spend the Sabbath, as well as much of the other parts of your time, in rolicking, drinking, or other evil practices, which destroy your own comfort, give cause of offense to your neighbours, and above all greatly displease that all-seeing God, before whom you must appear to give an account for all your conduct? Let us prevail upon you to refrain from the use of spirituous liquors, which have occasioned misery to thousands—from gaming, a vice which will bring poverty upon your families, and from frolicking and amusements, which lead to idleness and expence; these habits of dissipation, can in no wise add to your comfort. Be industrious, diligent in your business, frugal in your expences, and endeavour to lay up part of your earnings against a time of need. Some of you can read, such know the advantages of it; you who cannot, strive to acquire that knowledge.—Surely this knowledge is an object of great importance, were it only for the opportunity it affords of becoming acquainted with that best of books, the Bible. The holy Scriptures of the old and new testament, contain invaluable treasures of instruction, and of comfort. It would give us much satisfaction, could we oftener see them in the hands of those who are able to read them, and that an increasing anxiety to become possessed of their contents, and to profit by their precepts, might be more and more observable among you.

Very much depends upon the right education of your children, endeavour to have them brought up to labour, and taught to read and write; early place them apprentice with

suitable masters, and whether they be tradesmen or farmers, be always particularly careful to prefer such, as by their example, will encourage them in industry and sobriety.

In all your dealings be just and honest, give no cause of offence to any, and if any dispute, either among yourselves, or with others, should unhappily arise, in which you find difficulty, apply to such persons in your neighborhoods as you know to be your friends, and able to give you advice and assistance. Be assured you will find this practice contributes much more to your peace and interest, than the settling of your differences at law.

Be careful to observe your marriage covenants, remembering that those who violate them, will fall under the displeasure of the Almighty. We wish also to impress your minds, the necessity of having your marriage ceremonies legally performed, and that the births and deaths in your respective families, be carefully registered. In the words of an address heretofore made, we recommend you at all times, and upon all occasions, to behave yourselves in a civil and respectful manner, by which you may prevent contention and remove many causes of complaint: we beseech you to reflect, that you may, by your good conduct, refute the objections which have been made against you as rational and moral creatures and lessen many of the difficulties which now occur in the emancipation of such of your brethren, as are yet in bondage.

In all your communications with those of your brethren who remain in slavery, we desire you unceasingly to impress them with the necessity of contentment with their situations,

submission to their masters, and fidelity to their interests—that they be not merely eye-servants, but carefully perform the labours assigned them, and manage everything intrusted to their care, with as much faithfulness as if it were their own. By this conduct they will excite in their masters, a disposition to treat them with humanity and gentleness, and to increase the number of their privileges and comforts; and contribute to the peace of their own minds.

Console them with the reflection, that unmixed happiness in a future life, will be the portion of all good men, whatever may have been their lot here below.[129]

To the free Blacks and other free people of colour in the

United States

The American Convention for promoting the Abolition of Slavery, and improving the Condition of the African Race, having again assembled for the purpose of advancing your best interest, and the welfare of your offspring; deem it expedient, once more to address you as children of one Almighty Parent, and members of the same extended family. The objects we have so long, and so

[129] American Convention Abolition Societies, Minutes, 1804, pp. 30-33.

assiduously pursued, are highly interesting to society at large, and infinitely important to you in particular.... For their attainment, we therefore claim your zealous and uniform co-operation. This demand we make with much confidence, as we are persuaded many of you have already verified, in your own experience, the propriety of former recommendations. You have found that industry and economy have procured for you, independence; that temperance has greatly promoted, if not absolutely secured to you, health; and that the cultivation of the faculties of the mind, has enlarged the capacity for discharging your various duties, and for enjoying the numerous benefits you have received. On the contrary, you have seen that idleness, gambling, and dissipation, have uniformly produced poverty and disgrace; that intemperance has generally been the parent of loathsome disease, and the cause of premature death; and that the consequences of ignorance are too frequently, contention and loss. Trusting then, that we can with confidence appeal to your own experience, for a test of the truth of precepts so often inculcated, we beseech you with anxious and tender solicitude to bear them constantly in remembrance, and, with a steady zeal, put them in practice. We are well aware that human nature is frail, and prone to depart from the strait path of rectitude. On this weakness let us not however rely for a justification of our deviations, but rather let it operate as an inducement to double our diligence and increase our caution. Then while we are conscious of having honestly and earnestly endeavored to discharge the duties we owe to our

Maker and to each other, we can look with more confidence to our great Creator for pardon of our past transgressions and strength to preserve us from a repetition of them.

In our observations thus far we have chiefly endeavoured to convince you, that on your own conduct depends your prosperity and happiness, but be assured the consequences do not rest there. The greater portion of your brethren still remains in bondage. One great obstacle to their release, it is in your power and it is eminently your duty to remove; the enemies of your liberty have loudly and constantly asserted that you are not qualified to enjoy it, that your proneness to dissipation, your inattention to your particular concerns, and your disregard of the interests of each other, will ever produce your own wretchedness and lasting mischief to those among whom you dwell: in what degree the imputations may be just we leave to your own candour to decide; but we cannot leave the subject without conjuring you to remove, by the utmost circumspection of conduct, the causes that have been and continue to be urged against you; and thereby contribute your part towards the liberation of such of your fellow men as yet remain in the shackles of slavery.

The education of your offspring is a subject of lasting importance, and has obtained a large portion of our attention and care. In this too we call upon you for your aid; many of you have been favoured to acquire a comfortable portion of property, and are consequently enabled to contribute in some measure to the means of educating your offspring. While you thus benefit your own,

you will also confer a favor on the children of those who are indigent; in as much as there will remain a large proportion of other funds to be applied to their improvement.

Having thus fully communicated our sentiments on subjects the most important to your present and eternal welfare, we beg you to give them your close attention, and sincerely wish you that happiness which is consistent with the will of an all-wise and protecting Providence.[130]

To the free people of colour and descendants of the African

Race, in the United States

The American Convention composed of Delegates from several Abolition and Manumission Societies in the United States, being assembled in Philadelphia, for the purpose of promoting the great cause of emancipation, and for the melioration of the condition and the general improvement of the descendants of the African race; have deemed it their duty to address you, on some subjects intimately connected with your future welfare and prosperity. They perform this duty the more willingly, from a conviction that such counsel and advice as they may communicate, will be received

[130] Minutes of Proceedings of Tenth American Convention for promoting the Abolition of Slavery, 1805, pp. 36-39.

and listened to with attention, from the circumstance of its proceeding from those who have long had your best interests at heart.

Vain will be the desire on the part of the friends of abolition, to behold their labours crowned with success, unless those colourd people who have obtained their freedom, should evince by their morality and orderly deportment, that they are deserving the rank and station which they have obtained in society: unavailing will be the most strenuous exertions of humane philanthropists in your behalf, if you should not be found to second their endeavours, by a course of conduct corresponding with the expectations and the wishes of your friends.

We intreat you therefore by the ties which bind us together as children of one common Creator;—by the obligation imposed upon us, as joint objects of redeeming love; as heirs alike with us, of the rewards and benedictions which rest upon all who perform the religious and social obligations of life with fidelity;—by the sacred duties which you owe to yourselves, and to the Author of your existence; seriously to consider the great responsibility which rests upon you as Freemen, so to order and regulate your conduct and deportment in the world and amongst men, that your example may exhibit a standing refutation of the charge, that you are unworthy of freedom. And let us impress it upon YOU, whose opportunities of information have been greater than the generality of your colour, to use the influence which your superior knowledge may have given you among your brethren, to dissuade *them* from

the commission and practice of those vices which degrade and disgrace them in the eyes of mankind; particularly let it be your constant endeavour to repress among them dram drinking, frequenting of tippling shops and places of diversion, idleness and dissipation of every description, and to promote and encourage as much as possible, habits of sobriety, industry and economy, punctual attendance on places of religious worship, particularly on the day appointed for rest from labour, and for the exercises of devotion; avoiding noisy and disorderly conduct on those days, as well as at other times; and to demean themselves peaceably and respectfully, towards all those with whom they have intercourse. This will do more, towards advancing your cause in the earth, than the labours of your friends can effect in your behalf.

The great work of emancipation is not to be accomplished in a day;—it must be the result of time, of long and continued exertions: it is for you to show by an orderly and worthy deportment that you are deserving of the rank which you have attained. Endeavour as much as possible to use economy in your expences, so that you may be enabled to save from your earnings, something for the education of your children, and for your support in time of sickness, and in old age: and let all those who by attending to this admonition, have acquired means, send their children to school as soon as they are old enough, where their morals will be an object of attention, as well as their improvement in school learning; and when they arrive at a suitable age, let it be your especial care to have them

instructed in some mechanical art suited to their capacities, or in agricultural pursuits; by which they may afterwards be enabled to support themselves and a family. Encourage, also, those among you who are qualified as teachers of schools, and when you are of ability to pay, never send your children to free-schools; this may be considered as robbing the poor, of the opportunities which were intended for them alone.

Keep out of all contentions and law-suits with each other; by which your valuable time, which should be spent in useful occupations, is grievously misapplied, your money wasted, and your character in the world, is unhappily injured and degraded:—it is a mortifying sight to your friends, to see the coloured people bringing each other before the civil officers and in courts of justice for trifling causes of contention, which by exercising an amiable and forbearing disposition might be easily settled, without going to law, and spending their time and money, in useless disputations.

Be faithful to the obligations of the marriage covenant. Be diligent in your respective callings, so that you may not disappoint the expectations of those who have confided in you, and in the capacity of domestics or hired servants, shew yourselves faith-ful; remembering that no situation in life is disgraceful in itself, but that upon your own conduct, will depend the estimation in which you will be held by others; and if you perform your duty with fidelity, you will be respected and esteemed. Be just in all your dealings, and strictly punctual in the performance of all your promises; so shall you gain the approbation and the confidence of your

white neighbours, and justify the conduct of those who have laboured for your emancipation.

Let an especial attention be had to keep a regular record of your marriages, and of the births of your children, by which their ages may at any time be legally established;—this will be of essential service to you in placing them out as apprentices and prevent impositions being practised upon you. Finally—be sober; be watchful over every part of your conduct, keeping constantly in view, that the freedom of many thousands of your colour, who still remain in slavery, will be hastened and promoted by your leading a life of virtue and sobriety.[131]

[131] Minutes of the American Convention Abolition Societies, 1818. Pages 43 and 47.

SOME UNDISTINGUISHED NEGROES

Juan Bautista Cesar

A few years ago a bookseller handed me a book of MSS. papers for classification. I noted that they belonged to some military court or the archives of a Spanish Audiencia having jurisdiction in New Spain. Most of them had something to do with Texas when it was part of Mexico and belonged to the kingdom of Spain. These papers were of the highest historical value in so far as Texas was concerned. My curiosity was aroused by the original transcript of a court martial called upon to judge the transgressions of the Anglo-Americans, as they were called in those days. From these papers Philip Nolan, around whom a halo of false patriotism still lingers, was nothing more or less in the judgment of the court martial than a horse thief. It was the practice of Nolan, Bean, Fero and others to make periodical incursions across the State and stampede home, domestic, and wild horses for their mutual benefit. On this occasion the Spaniards were prepared for the malefactors and when surrounded in their provisional fort they refused at first to surrender, but the killing of Nolan put an end to all resistance and Elias Bean, David Fero and the Negro Cesar were put in St.

Charles jail to await the slow machinery of the Spanish courts. Bean and Fero attempted to escape from the jail. One of these patriots became intimate with the jailer's wife and his intercepted notes showed him a depraved specimen of humanity. Among the papers examined was a deposition of Nolan's slave known in the histories of Texas by the name of Cesar, under the Spanish correct form he takes the proper name of Juan Bautista Cesar, a native of Grenada, when the island belonged to France. He was a professed Christian belonging to the Roman Catholic faith. So that during the dawn of the incipient difficulties surrounding Texas, therefore, when becoming part of the United States, there figured a Negro the tool of his master, in common with Nolan and others, reputed horse thieves, the patriots whose depredations were as annoying to the Mexicans in 1804 as Villa's bandit incursions (during 1914-20) are reprehensible to Americans.

The manuscript follows:

> *Juan Bautista Cesar.*
>
> En el referido Presidio de San Carlos en el mismo dia, mes y año arriba citado el nominado Sr. Capitán hizo comparecer ante si al Interprete José Jesús de los Santos y al Negro Juan Bautista, conocido con el nombre de Cesar á quienes juramento en debida forma ante mí el Escribano y bajo lo cual prometió el primero traducir fielmente lo que declara et expresáda Juan Bautista y este decir verdad en lo que supiere y fuere preguntado y siendo por su Nombre, y Patria y Religión. Dijo que se llama Juan Bautista Cesar,

que es natural de las islas Francesas que llaman la Granada y que es Católico Apostolico Romano.

Preguntado si sabe porqué está preso: dijo. Que sabe se haya preso por haber acompañado á su amo Dn. Felipe Nolan en la entrada que hizo á la Provincia de Texas.

Preguntado si no ha habido algun noevo motivo para que la prision se le agrave; Dijo que no sabe si habia habido algun motivo para tenerlo en el calabozo en donde ahora existe privandolo del alivio que ántes disfrutaba de tener todo el Presidio por Cárcel.

Preguntado que es lo que sabe de la fuga que intentaron hacer los Anglo-Americanos compañeros de Nolan. Dijo; Que la fuga si la intentaron los, Anglo Americanos se la han ocultado al declarante pues jámas le han comunicado cosa alguna relativa á ella y antes bien ha observado que cuando hablan entre sí los expresados Anglo-Americanos y el declarante se presenta, luega callan y solo continuan hablando cosas diferentes: que el diá que pusieron al que declara en el calabozo en union de Elias Bean y David Fero oyo el declarante que David pregunto a Elias que si habia escrito alguna carta á Chihuahua y respondiendole Elias que si, le contestó David ya verás como por eso nos ponen en el calabozo y te apostara una oreja que es asi; que nada mas has oido ni visto nunca sobre la fuga de que se trata: Que el declarante desde que se murió su amo Nolan siempre ha sido mirado con desprecio por los Anglo-Americanos compañeros de aquel y por lo mismo le ha quadrado mas alojarse siempre con los Españoles como se verificó cuando lo pusieron en el calabozo que dormia con

tres de los Españoles.

Preguntado si sabe o ha oíds que lesl Anglo-Americanos tuviesen prevenidas Armas y municiones de boca y guerra para meditar su fuga intentarla: Dijo que nada sabe sobre lo que contiene la Pregunta, no ha oido cosa alguna sobre el particular.

Preguntado si tiene algo mas que declarar sobre el particular: Dijo que no tiene mas que declarar sobre el particular y que lo dicho es la verdad a cargo del juramento que lleva hecho en que se afirmó y ratificó despues de enterado por el Interprete de lo que contiene esta su declarencion y por no saber escribir pusieron ambos la señar de cruz firmando dicho señor y el presente Escribano.

(Firmado) Texada X X Ante mi Jose Cano

Provincia de la Nueve Vizcaya Año de 1804. Diligencias practicadas de órden del Sr. Comandants General en la Fuga que intentaron hacer los Anglo-Americanos. Comisionado el Capiten Dn Antonio Garcia de Texada.

Arthur A. Schomburg.

A Benevolent Slaveholder of Color

John Barry Meachum, a free man of color, became prominent as pastor of the African Baptist Church at St. Louis. Meachum was born a slave, but obtained his liberty by his own industry. By his hard earnings he purchased his father, a slave, and Baptist preacher in Virginia. He was then a resident of Kentucky, where he married a slave, and where he professed religion.

Soon thereafter his wife's master removed to Missouri, and Meachum followed her, arriving at St. Louis, with three dollars, in 1815. Being a carpenter and a cooper, he soon obtained employment, purchased his wife and children, commenced preaching, and was ordained in 1825. During subsequent years he purchased, including adults and children, about twenty slaves, but he never sold them again. His method was to place them in service, encourage them to form habits of industry and economy, and when they had paid for themselves, he set them free. In 1835 he built a steamboat, which he provided with a library, and from which he excluded the use and sale of intoxicating drinks. He was then worth about $25,000.

He was not less enterprising in religious matters. The church of which he was pastor, consisted of about 220 members of whom 200 were slaves. A large Sabbath school, a temperance society, a deep-toned missionary spirit, good order and correct habits among the slave population in the city, strict and regular discipline in the church, were among the fruits of his arduous, persevering labor.[132]

[132] *The Liberator*, December, 10, 1836.

BOOK REVIEWS

The Republic of Liberia. By R. C. F. Maughan, F.R.G.S. and F.Z.S., etc., H. B. M., Consul-General at Monrovia. New York, Charles Scribner's Sons, 1919. Pp. 299. Price $6.50.

This work is a general description of the Negro Republic, with its history, commerce, agriculture, flora, fauna, and present methods of administration. The book contains several maps and thirty-seven illustrations. The more interesting topics as to history and administration appear first and those of the statistically scientific and commercial order come nearer to the end.

The book was written in 1918 before the United States took sufficient interest in the republic to bring about certain epoch-making changes. The United States has since offered the country a loan of five million dollars and with the approval of Great Britain and France and with the request of the Liberian Government has consented to become the sole adviser in Liberian affairs. Since then Hon. C. D. B. King, who became President of Liberia in January 1920, has participated in the world's peace conference and visited Europe and America, where the heads of nations have assured him of deeper interest in Liberia than they have heretofore manifested.

This book was written from a point of view decidedly different from that of most writers on Liberia, whose tone is that of

"gentle melancholy," descanting "upon the country and the people to whom it belongs as with a pen dipped in sighs." Instead of criticising he has in most cases merely described. Where criticisms have crept in they have been given in a spirit of sympathetic friendship. He finds in the country, therefore, much to admire and praise and an economic situation "which will assuredly bid fair, when normal conditions shall have returned to us once more, to attain to a measure of gratifying expansion and progress." He believes that Liberia will then be in a position "of having her feet placed firmly upon the ladder which should bring her in time to great heights. The author concedes that the rung which Liberia has already reached is not a high one perhaps, "but the way before her seems plain and unmistakable." He believes that the present guidance from the outside guarantees these most sanguine expectations in as much as the foreigners controlling the financial policy of the little republic are hard-working men who have already set the house somewhat in order. This, supplemented by a liberal policy of internal improvements, will result in the prosperity of the whole land.

In discussing this phase of the administration of Liberian affairs, the author does not bring out any particular resentment on the part of the natives as to foreign interference. The native officials welcome helpful advice and when not given they sometimes seek it. The author himself came into contact with a number of functionaries who frankly asked him to tell them what he thought of their methods. Except so far as such foreign

guidance may bring financial relief, however, it is doubtful that these natives so easily yield to this sort of domination; for many Liberians are to-day endeavoring to get rid of the American loan which they fear may lead to conquest like that in Haiti. On the whole, however, this work comes nearer to the true portraiture of the Liberian situation than most volumes in this field.

The United States in Our Own Times, 1865-1920. By Paul Haworth, Ph.D. New York, Charles Scribner's Sons, 1920. Pp. vii, 563.

The publication of this volume is justified by the author on the ground that in as much as an important object of history study is to enable one to understand the present, greater emphasis than hitherto must be laid on the period since the Civil War. Hoping then to supply the need of students who desire to know our own country in our own times the author has directed his attention to the problems of the new day, to social and industrial questions which have attained importance since the Civil War, and which, as the author views it, served as a break between these two distinct periods in our history.

Briefly stated, the author covers a little better than usually the field in which many others have recently written. There appears the aftermath of the Rebellion, then the drama of Reconstruction followed by national development making possible a new era, the changing order, the revival of the Democratic Party, hard times, free silver, troubles with Spain, imperialism, Roosevelt and the Panama Canal, the New West, Progressivism, the "New

Freedom," "Watchful Waiting," the World War, and the Peace Conference. The book is well illustrated with useful maps showing the West in 1876, the Cuba and Porto Rican campaigns, the Philippines, Mexico, West Indies, and Central America, the percentage of foreign-born whites in the total population in 1910, the percentage of Negroes in the total population in 1910, the Western Front in 1918, and the United States in 1920.

Discussing thus a period during which the most important problems before the American people has been how to segregate the Negroes within the law, the author touched here and there the so-called Negro question. While Dr. Haworth has not shown all of the breadth of mind expected in an historian he has been much more liberal than the pseudo-historians who endeavor merely to justify the proscription of the freedmen on the basis of so-called racial inferiority. Dr. Haworth does occasionally mention a Negro as having said or done something worthy of notice. In the average Reconstruction history there is no personal mention of the Negro except for the purpose to condemn him and to advise him how to make himself acceptable to his so-called superiors.

In his last chapter which he calls "A Golden Age in History" he says some things which we do not find in the works of the would-be historians of this period. On page 509 he writes: "A historian ought not to suppress uncomfortable facts, and it is undeniable that the treatment of the Negroes forms a blot on America's fair name. In parts of the South they are kept in a state of practical serfdom; in all cities they are herded into unsanitary

districts; they are denied equal opportunities for advancement; and not infrequently they are maltreated and murdered by brutal mobs. It is true that individual Negroes, by fiendish assaults on white women, now and then rouse men to frenzy, but statistics show that only about a fifth of the lynchings of Negroes are because of the 'usual crime.' Burning at the stake is never justifiable under any circumstance, and it is undeniable that in race riots scenes of horror have been enacted that are a disgrace to American civilization. Such scenes are sadly out of place in a nation that proclaims itself the special champion of liberty and justice and which enlists in a crusade 'to make the world safe for democracy.'"

The American Colonization Society, 1817-1840. By Early Lee Fox, Ph.D., Professor of History in Randolph-Macon College. Baltimore. The John Hopkins Press, 1919. Pp. viii, 231.

This is another study made under the direction of the Johns Hopkins University faculty of Historical and Political Science and like many others of this order lies in the field of southern history and is written from the ex parte point of view. It does not cover the whole history of the American Colonization Society but restricts itself to that period when it was largely a southern enterprise primarily interested in getting rid of the Negro. Throughout the story there is too much effort to evade eloquent facts, too much effort to excuse the sins of the South by showing that the North itself was once slaveholding and slavetrading. On the whole, however, the author has in the use of such valuable

material as the manuscripts and especially the letters of the American Colonization Society brought to light significant facts which the historian will be glad to use more advantageously.

After a brief introduction the book treats of the free Negro and the slave. Then comes the chapter on the organization, purpose, and early record of the Society. Attention is next directed to the conflict between the colonizationists and the abolitionists. Colonization is afterward discussed in connection with emancipation and finally with the African slave trade. Throughout the whole treatise there is a defense of the "lofty" motives of the men who labored so hard for the expatriation of the Negroes. As the author sees it, although the Society did not send many Negroes to Africa, it was after all a success; for it had a bearing on the emancipation of slaves, and on the suppression of the African slave trade. Abolitionists, attacking this undertaking based upon national sentiment, were endangering the union by their propaganda founded upon sectional sentiment. Colonization, therefore, was just because it was "born out of a desire to unite the North and the South in the settlement of the Negro problem." The purpose of the treatise then is to (page 127) "set forth the true aims of orthodox Colonizationists, or from another point to demonstrate that their aims were as sincerely expressed as sound policy would admit, and that, where motives were concealed, they were concealed in order to secure the freedom of the slaves."

Written from this point of view the dissertation becomes

too much of a polemic to be accepted as a scientific treatise. Too much space is devoted to the task of unifying the widely different views of the colonizationists, too much effort is made to contrast the methods of the colonizationists with those of the abolitionists. The author does not seem to realize or at least fails to admit that the abolitionists were radical reformers seeking to eradicate the cause of social disease whereas the colonizationists were merely treating the symptoms of the malady in undertaking the impossible task of transplanting a whole race.

The general argument of the author in favor of the beneficence of colonization is not convincing. There is no authority for the contention that colonization promoted emancipation when the records show that the majority of slaveholders who supported it had in mind the expatriation of the free Negroes who among the bondmen were a living testimony against slavery. To say that colonization might check the slave trade by establishing one small colony in Africa is about as unsound, contended some free Negroes in 1831, as to argue that "a watchman in the city of Boston would prevent thievery in New York; or that the custom house officers there would prevent goods being smuggled into any other part of the United States." It is an insult to the intelligence of men who have seriously considered history to say that colonization was so built upon national sentiment as to have a direct bearing on the preservation of the Union when the colonizationists differed widely among themselves in the very beginning and finally divided just as the abolitionists, who at

one time had also a national standing, in that most anti-slavery societies were once found in the South. Until Negro history, therefore, has been removed from the hands of those using it to whitewash their ancestors the world must still lack knowledge as to how the progress of mankind has been influenced by the Negro.

The Voice of the Negro. By Robert T. Kerlin, Professor of English at the Virginia Military Institute. New York, E. P. Dutton and Company, 1920. Pp. xii, 188.

The purpose of this book may best be expressed in the words of the author himself, when he says, in the preface: "The following work is a compilation from the colored press of America for the four months [July 1st to November 1st, 1919] immediately succeeding the Washington riot. It is designed to show the Negro's reaction to that and like events following, and to the World War and the discussion of the Treaty. It may, in the Editor's estimation, be regarded as a primary document in promoting a knowledge of the Negro, his point of view, his way of thinking upon race relations, his grievances, his aspirations, his demands." A book of such purport, especially when coming from the pen of a white man, must attract attention, and if the newspapers and periodicals from which the various extracts are chosen may be called truly representative, as in this case they are, the compiler has performed a distinct service in the field of American History.

Professor Kerlin has culled his clippings from eighty current

Negro periodicals, published from Massachusetts to Georgia, and ranging from the startlingly radical to the most hide-bound conservative type. He has used only articles written by Negroes in Negro publications, has sorted them and grouped them under ten heads, entitled respectively: The Colored Press, The New Era, The Negro's Reaction to the World War, The Negro's Grievances and Demands, Riots, Lynchings, The South and the Negro, The Negro and Labor Unionism and Bolshevism, Negro Progress, and The Lyric Cry,—a remarkable assortment of first-hand information concerning Negro thought with regard to each topic.

Professor Kerlin makes no attempt to interpret the material of his book; he merely presents it. It is for him who reads also to read between the lines. It is doubtless impossible to choose any one expression that will accurately represent Negro thought as caught in these pages, yet four lines of poetry included in the book will serve as well as any:

> "We would be manly—proving well our worth,
> Then would not cringe to any *god* on earth.
> .....
> "We would be peaceful, Father,—but when we must,
> Help us to thunder hard the blow that's just!"

This is the Voice of the Negro which Professor Kerlin intimates cannot go unheeded.

The book might have been made more useful by the addition of an alphabetical and topical index of the periodicals used.

D. A. Lane.

NOTES

The following account of the centenary celebration of St. Philip's Episcopal Church from the *New York World* of November 14, 1920, will be interesting to all persons interested in Negro history:

"The Right Rev. Charles Sumner Burch, D.D., Bishop of New York, and the Right Rev. Henry Beard Delany, D.D., Suffragan Bishop of North Carolina, will participate in the centennial celebration at St. Philip's Church, No. 212 West 134th Street, the Rev. H. C. Bishop, rector, which will begin to-day.

"One hundred years ago Nov. 14 St. Philip's Church was incorporated under the laws of the State of New York. The event is significant, for it antedated the Civil War by forty-one years and the Emancipation Proclamation of Abraham Lincoln by forty-five years. It is not only, nor primarily, an ecclesiastical event, but a political and social one as well, inasmuch as this act of Legislature recognized and confirmed the citizenship of the petitioners, showing that these colored Episcopalians were an integral part of the body politic.

"It was in 1809, under the leadership of Mr. McCoombs, a lay reader, that a mission for colored people was opened in a school room on the corner of Frankfort and William Streets, where they remained until 1812, and after the death of Mr. McCoombs removed to a room in Cliff Street with Peter Williams, Jr., a

colored man, as lay reader, where they remained five years, moving from there to a school room on Rose Street.

"In 1819 three lots were obtained on the west side of Collect, now Centre Street, and upon this site a wooden building was erected at a cost of $5,000. It was consecrated by Bishop John Henry Hobart, July 19, 1819, and was named St. Philip's Church. After its incorporation in 1820 Mr. Williams, who had been ordained to the Deaconate in October, was appointed minister in charge, Dec. 24, 1821, the building was destroyed by fire, but was rebuilt the following year of brick at a cost of $8,000.

"Mr. Williams was advanced to the priesthood in 1827, and became the first rector of the church. He died in 1840. In 1853 the parish was received into union with the Convention of the Diocese of New York. At that time the church was at No. 305 Mulberry Street, and the Rev. William Morris LL.D., rector of Trinity School, was the officiating minister.

"The parish was without a rector from 1840 to 1872, when the Rev. William J. Alston, trained at Kenyon College, Gambier, O., was called to the rectorship. He continued in office until 1874, and there was a vacancy until 1875, when the Rev. Joseph J. Atwell, a native of Barbados, British West Indies, was elected rector. His death in 1882 again left the office vacant until 1886, when the present incumbent, the Rev. Hutchens C. Bishop, was elected.

"During Mr. Atwell's incumbency the Parish House for Aged Women was founded. The long years of vacancy retarded the

growth of the parish so that in 1885 there were but 284 communicants after a group existence of seventy-six years.

"In 1886 the congregation made another journey, locating at No. 161 West 125th Street, where it remained until 1910, when, following the migration northward, lots running from 133d to 134th Street were obtained and a commodious church and parish house were erected. The growth of the parish since that time has been phenomenal. There are now over 2,500 communicants and not room enough in the parish house to accommodate the various activities.

"At the present time St. Philip's may be said to be the only church in the neighborhood in any way equipped to serve the colored people of the community. Churchmen point out that if there is one place in Manhattan where there should be buildings adapted for indoor recreation and entertainment for the young colored people, it is that particular part of the city. They claim there should be day nurseries, gymnasiums, beneficial societies and forums for the discussion of industrial problems, where employer and employee might meet and each present his side.

"The centennial celebration will extend over a week. Bishop Burch will preach at the special thanksgiving service to-day at 11 o'clock, while Bishop Delany and one of the two negro Bishops in the Episcopal Church will make an address at the evening service.

"There will be an historical pageant to-morrow night. A public meeting with the pastors of St. Mark's, Olivet, Mother, A. M.

E. Zion, St. Cyprian, George Foster Peabody and James Weldon Johnson as the speakers will take place Tuesday night. Following this meeting there will be a reception and parish supper in the basement of the church. Wednesday night is set apart for a praise service, when the Rev. Dr. Manning, Dr. Stires, Dr. Grant and Dr. Bragg will deliver addresses.

"The newly organized Provincial Conference of Church Workers Among Colored People will hold its sessions Thursday and Friday, when representative ministers and lay workers will participate. The conference will be addressed Friday night by Dr. Harry T. Ward of Union Theological Seminary and Dr. Robert Russa Moton, Principal of Tuskegee Institute."

PROCEEDINGS OF THE ANNUAL MEETING, WASHINGTON, D. C., NOVEMBER 18, AND 19, 1920

The annual meeting of the Association for the Study of Negro Life and History was called to order by Dr. C. G. Woodson, the Director of Research and Editor of the *Journal of Negro History*. After a few preliminary remarks, President John W. Davis of the West Virginia Collegiate Institute was asked to open the meeting by the invocation of divine blessing. Professor William Hansberry of Straight College was introduced to deliver a lecture on the Ancient and Mediaeval Culture of the People of Yorubuland. This was a most informing disquisition on the achievements of these people prior to the time when they came into contact with the so-called more advanced Asiatic and European races. On the whole, Professor Hansberry made a strong argument in behalf of the contention that the culture of these people was indigenous and that brought into comparison with that of the ancient Greek and Roman it does not materially suffer.

Mr. A. O. Stafford, the principal of the Lincoln School of Washington, D. C., then read a very illuminating and informing paper on African folk lore. He discussed briefly the various authorities producing works in this field and indicated sources

of information which have not yet been explored. He then made a general survey of African folk lore, showing how the Negro mind from the very earliest periods of African history exhibited independent thought and philosophical tendency.

At the conclusion of these addresses there followed a general discussion in which participated Principal D. S. S. Goodloe of the Maryland State Normal and Industrial School, Mr. John W. Cromwell, President of the American Negro Academy, Mr. Monroe N. Work, Director of Research and Records, Tuskegee Institute, and President John W. Davis of the West Virginia Collegiate Institute.

At two o'clock the Association held a business session. The general routine of business was followed. There being no unfinished business or reports of special committees, the Association heard the reports of the officers of last year. The Director read his report and the report of the Secretary-Treasurer was presented by his assistant, Miss A. H. Smith. They follow:

The Report of the Director

During the year 1919-1920 the Association has made steady progress in spite of the difficulties resulting from the increasing cost of labor and supplies. There has been some difficulty in raising additional funds adequate to the needs of the Association and for this reason the organization is now suffering from a deficit of about $2500. Persons of

means, however, have from time to time volunteered so as to give sufficient relief to keep the work going. Efforts are now being made to remove this deficit in the near future through the increase in the contributions annually received and gifts from other friends who will be asked to make sacrifices for the cause.

The study of Negro history has not extended by leaps and bounds but the progress of the work is in every way encouraging. The number of subscribers to the Journal of Negro History has not increased because of the necessity to double the subscription price in keeping with the demands of high prices, but the influence of the work has considerably expanded. This magazine is now being used as collateral reading in most of the leading white and Negro institutions of the country and the number of classes thus engaged are increasing every year. There is also a healthy public opinion in favor of prosecuting the study of Negro history more vigorously. Almost any book setting forth facts as to what the Negro has thought and felt and done now has considerable demand among persons in this country and abroad. While this Association does not claim credit for all which has been accomplished in this field, it has certainly given a decided stimulus to the work.

It will be interesting to report, moreover, the number of institutions closely cooperating with the Association in prosecuting the study of the Negro. Among these may be mentioned special classes in this work at Howard University, conducted by the Director himself last year, and at the West Virginia Collegiate Institute, where he is

now engaged. In Lincoln Institute, Missouri, considerable good has been accomplished among students even of a high school grade, whereas at the State Normal and Industrial Institute at Frankfort, Kentucky, the work has interested a larger number of more advanced students. Institutions like Straight College, Fisk, Atlanta, Morehouse, Wilberforce, and Lincoln are laying a good foundation in this field.

Report of the Secretary-Treasurer

The Association for the Study of Negro Life and History, Incorporated, Washington, D. C.

Gentlemen: I hereby submit to you a report of the amount of money received and expended by the Association for the Study of Negro Life and History, Incorporated, from September 30, 1919 to September 30, 1920, inclusive:

Receipts		Expenditures	
Subscriptions	$ 778.32	Printing and Stationery	$2,733.54
Memberships	160.00	Petty Cash Expenses	551.26
Contributions	3,331.00	Rent and Light	250.30
News Agents	69.47	Stenographic Service	901.80
Advertisements	264.05	Miscellaneous Expenses	269.98
Books	19.63	Total Expenditures	$4,706.88
Rent	15.00	Balance September 30, 1920.	48.86
			$4,755.74
Total Receipts, Sept. 30, 1919, to Sept. 30, 1920	$4,637.47		
Balance Sept. 30, 1919	118.27		
	$4,755.74		

Respectfully submitted,
Alethe H. Smith
Assist. to the Secretary-Treasurer.

After a brief discussion these reports were accepted and approved. The Association then spent some time in discussing the advisability of holding annual meetings at strategic points and there prevailed a motion to the effect that the Executive Council be requested to hold the next annual meeting of the Association in Atlanta, Georgia. The meeting adjourned after electing the following as officers: Robert E. Park, President, Jesse E. Moorland, Secretary-Treasurer, Carter G. Woodson, Director of Research and Editor; who with Julius Rosenwald, George Foster Peabody, James H. Dillard, John R. Hawkins, Emmett J. Scott, William G. Willcox, Bishop John Hurst, Albert Bushnell Hart, Thomas Jesse Jones, A. L. Jackson, Moorfield Storey, and Bishop R. E. Jones, were made members of the Executive Council.

Конец ознакомительного фрагмента.