

**THE DEVELOPMENT OF
STATE LEGISLATION
CONCERNING THE FREE
NEGRO**

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The development of state legislation concerning the free negro by Franklin Johnson

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FRANKLIN JOHNSON

**THE DEVELOPMENT OF
STATE LEGISLATION
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NEGRO**

The Development of State Legislation Concerning the Free Negro

By
FRANKLIN JOHNSON

Submitted in partial fulfilment of the requirements for the
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Political Science in Columbia University

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PREFACE

This monograph deals with the laws, enacted by each of the states of the United States and by the Federal government prior to 1917, which in terms have related specifically to the negro. All laws of this character are included except those relating to slaves and to negroes freed prior to the Civil War, and so-called "private" and "local" laws, and appropriation acts. No attention is paid to laws which in terms do not relate to the negro even though some of the statutes of this character, such as the acts restricting the suffrage and containing a "grandfather" clause, were undoubtedly passed with the purpose of affecting the status of the negro very materially. No attempt has been made to review court decisions. Where, however, laws have been declared void or unconstitutional, such court action has been noted. Various other limitations of the field, for the most part of minor importance, are discussed in the opening chapter. Within this field the aim has been to present a complete record of all enactments, including every amendment no matter how unimportant, and every repeal no matter how small.

The original aim of the author was to review all legislation that had ever in any way affected the negro in this country, in the hope that the material, thus rendered available, might aid in an intelligent understanding of the status of that race. The overwhelming magnitude of the task soon became evident, however, and the scope of the work was limited in the ways already indicated.

It is evident that complete generalizations concerning the general trend of legislation affecting the negro cannot be based on the laws dealt with in this volume alone. Only the carrying out of the original plan would have made possible a valid general summary of the trend of legislation concerning the negro in this country. It is the author's hope, however, that a complete review of the field indicated will prove more valuable than the possible results of an attempt to deal in an incomplete manner with the whole field.

The thorough treatment undertaken has involved much labor and difficult investigation. It would have been impossible except for the libraries of the New York Bar Association and the New York Law Institute, where the larger part of the investigation was done.

Many difficulties arose in the course of the minute and detailed work, which are mentioned more fully later. They include on the one hand difficulties in discovering legislative enactments, and on the other hand difficulties in making sure of the absence of such enactments. Thoroughness and accuracy have been sought and it is hoped have been substantially achieved. Wherever possible each reference has been verified. In a few cases laws have necessarily been accepted as referred to in later statute books, or elsewhere than the original, the latter being no longer available. Many inaccuracies and errors have been found in the statute records themselves.

In addition to the source book value of Part II of this volume it is the hope of the author that the summaries of certain parts of the material, as presented in Part I, will prove useful. These summaries relate mainly to the most important phases of the legislation under review, namely, intermarriage, education, transportation, civil rights and segregation.

This opportunity cannot be passed without a tribute of appreciation to Professor Franklin H. Giddings, who first suggested this line of research and interested the writer in it, and whose high scholarship and broad outlook and vision inspire all who have come into contact with him.

PART I

THE GENERAL DEVELOPMENT OF THE LEGISLATION

CHAPTER I. *The Negro Problem in Legislation*

Among the most fundamental social problems affecting the organization of a society are those which concern its constitution and homogeneity. The presence in the social structure of different portions of the population, with different interests, different functions, and developing along different lines, is a fact of primary significance where it exists. The reactions of one such population group toward another, or of the larger body toward an included group, give rise to phenomena of great importance.

In the United States the negroes form a population group which demands most thoughtful consideration. Their numbers are great and increasing. They have been intertwined vitally into the development and history of the country. Many difficult problems of adjustment have arisen concerning them. Obviously also they cannot in a generation or two be absorbed and disappear as a separate group.

The object of this study is to investigate such phenomena as appear in a special field of the problem of the negro population group. This field in general is the development of legislation concerning the negro in the United States and its commonwealths. Specifically, however, this essay covers but a portion of this general field, as will appear presently when its exact scope is discussed.

Laws may become obsolete or dead letters. Nevertheless, they tend to show the crystallization of public opinion at the time of their enactment, and the method of treatment of a subject by the sentiment of the population as a whole. They also indicate a situation requiring attention, and what is regarded as necessary to meet it. The significance of laws, therefore, is not found only in their complete or continued enforcement. It is also found in their indication of the viewpoint of the governing group in the population and the ideals held by them, which though not always entirely put into