The Case for Reparations: From Reconstruction to the Movement for Black Lives

Katherine Franke
Columbia Law School

Abstract:

Renewed attention today to a demand for reparations for Black people in this country invites us to turn our attention to the historical context from which that demand originates. This article takes up that invitation, offering a detailed account of the circumstances that surrounded the emancipation of enslaved people in two unique contexts, the Sea Islands of South Carolina and Davis Bend, Jefferson Davis’ former plantation outside Vicksburg, Mississippi.

The distribution of land to newly freed people was undertaken in these two contexts as an explicit form of reparation, yet the land was redistributed back to former slave-owners when the Johnson administration assumed control of post-War operations after the murder of Abraham Lincoln. The tragic failure of both these experiments in land-based reparation provide an example of what it would have meant to take repair seriously. Instead, Johnsonian politicians structured Black freedom around contract labor and legally mediated relationships with white people. Government and white enterprise were not only complicit but directly responsible for the failure of an approach to Black freedom that would have set upwards of 4 million newly freed people on an entirely different course of self-sufficiency, wealth accumulation, and full citizenship. This article shows the extent of that complicity but also the means by which reparations might still be made. It is both the promise and the failure of land-based reparation in the 1860s that should animate a return to reparations today, not in the form of individual cash grants but rather in the form collective land redistribution.

I. Introduction

In the summer of 2016 the Movement for Black Lives issued a Platform containing a specific, ambitious, and comprehensive roadmap for racial justice in the United States.\(^1\)

Reparations figures centrally in the Platform’s programmatic demands. Reparations not only for the enslavement of Black people, but Jim Crow segregation, systematic housing discrimination,
environmental racism, inferior educational opportunities, mass incarceration, and long-term disinvestment in the Black community all of which makes up the legacy of slavery in this country.²

The Movement for Black Lives Platform’s call for racial reparations appeared at a time of renewed attention to this issue. Ta-Nehisi Coates wrote in the Atlantic in June of 2014, “Two hundred fifty years of slavery. Ninety years of Jim Crow. Sixty years of separate but equal. Thirty-five years of racist housing policy. Until we reckon with our compounding moral debts, America will never be whole.”³ Professor Charles Ogletree Jr. notes, “The reparations movement has experienced ebbs and flows through periods of both forceful repression and abject depression.”⁴ The movement for reparations in now clearly experiencing a flow.

Renewed attention today to a demand for reparations for Black people in this country invites us to turn our attention to the historical context from which that demand originates. This article takes up that invitation, offering a detailed account of the circumstances that surrounded the emancipation of enslaved people in two unique contexts, the Sea Islands of South Carolina and Davis Bend, Jefferson Davis’ former plantation outside Vicksburg, Mississippi. I choose to focus not on the horrors of enslavement, but rather on the conditions of emancipation, for an appreciation of how justice for formerly enslaved people that fell short can powerfully justify the call for reparations today.

The distribution of land to newly freed people was undertaken in these two contexts as an explicit form of reparation, yet the land was redistributed back to former slave-owners when the

2 Id.
4 Charles J. Ogletree, Jr., Repairing the Past: New Efforts in the Reparations Debate in America, 30
Johnson administration assumed control of post-War operations after the murder of Abraham Lincoln. The tragic failure of both these experiments in land-based reparation provide an example of what it would have meant to take repair seriously. Instead, Johnsonian politicians structured Black freedom around contract labor and legally mediated relationships with white people. Government and white enterprise were not only complicit but directly responsible for the failure of an approach to Black freedom that would have set upwards of 4 million newly freed people on an entirely different course of self-sufficiency, wealth accumulation, and full citizenship. This article shows the extent of that complicity but also the means by which reparations might still be made. It is both the promise and the failure of land-based reparation in the 1860s that should animate a return to reparations today, not in the form of individual cash grants but rather in the form collective land redistribution.

* * *

While the sources of contemporary Black poverty, disenfranchisement, and systematic disadvantage are complex, the original sin from which the poison of structural racism has grown is clear. It is chattel slavery: the unrelentingly vicious, sadistic, torturous, enslavement and exploitation of Black people for profit. Emancipation put an end to the formal system of slavery, but as a prospective legal reform emancipation did nothing to repair the whip, shackle, cane, rape, torture, death, and destruction of millions of human souls through the institution of chattel slavery.

Whatever notion of justice one might embrace, emancipation was surely a necessary, but

not sufficient, component of its fulfillment in the American context. The disestablishment of the institution of slavery lifted a state of abjection and the legal structure that supported it, but did little to repair or redress the horror of enslavement itself. That horror stretch both backward to cover the loss of dignity, humanity, and theft that enslavement entailed, and forward in the form of an afterlife that left a mark, or badge, of inferiority on Black people as enslaveable. This was what the enslaved people got when they were emancipated: a status of having been freed but not free. The dangling “d” at the end of “free” stood as a kind of residue of enslavement that bound freed people to a past, and marked their future as freed, not free, people. It served as a mark, a racial mark, that structured the kind of freedom they enjoyed as something different from that with which white people were endowed as a matter of natural, or god’s, law.

Structural, comprehensive, and ongoing repair, or reparation, was required to address the wounds of the past and ameliorate an enduring social, political, economic and legal identity of freed people as something less, something other, than white people.

In these two places radical experiments in freedom promised to pair emancipation directly to reparations. While ultimately unsuccessful, they offer forceful examples of what repair might have looked like for newly freed people if the abolition of slavery was seen as an opportunity to deliver full justice to Black people. Because of their failures, they impress us with the strength of the moral demand for reparations today. So often the claim for reparations is lost in the cul de sac of debates about intergeneration responsibility, intervening causation, white innocence, and complex actuarial calculations. Yet, the story of the Black families on the Sea Islands and Davis Bend and the manner in which their abjection was denied adequate repair sidesteps these dead end diversions and invigorates the moral potency of the demand for
reparations. In the end, the exhortation of the underlying facts of injustice that characterized the end of slavery may be more successful in motivating a recognition today of ongoing collective responsibility for that injustice. The call for reparations is premised on the notion that the past has enduring moral relevance today, and that we should face and know that past. This article offers us that opportunity: to face the past and recognize the moral claims it makes on us today.

This particular history — the history of Black landownership in the Sea Islands and in Davis Bend — carries special normative force today given the call by the Movement for Black Lives and other racial justice advocates for land redistribution as a form of reparations through the creation of Community Land Trusts, Limited-Equity Housing Cooperatives, Zero-Equity Cooperatives, Mutual Housing Associations, and Deed Restricted Housing — sometimes referred to as “Third Sector Housing”.

This article seeks to link the history of land ownership by formerly enslaved people at the end of the civil war with calls today for racial repair mobilized by the redistribution of land to low income black people. The turn to land trusts and creative financing of collective black property ownership in the contemporary context echoes experiments in land redistribution to black people in the Sea Islands and Davis Bend in the 1860s, experiments that while successful were sabotaged by white supremacists seeking to lock formerly enslaved people in a permanent

---

5 The Platform makes specific calls for land trusts and alternative, collective land ownership in Reparations Demand #3, Divest-Invest Demand #7, and Economic Justice Demand #8. See also National Economic and Social Rights Initiative, Community + Land + Trusts: Tools for Development Without Displacement, January 28, 2016, available at: https://www.nesri.org/sites/default/files/C%2BL%2BT_web%20copy_0.pdf; Michelle Chen, Can Community Land Trusts Solve Baltimore’s Homelessness Problem?, The Nation, October 2, 2015. Mayor Chokwe Lumumba supported the development of community land trusts as a form of reparations for former sharecroppers in Jackson, Mississippi. See, Nathan Schneider, The Revolutionary Life and Strange Death of a Radical Black Mayor, Vice Magazine, April, 2016, available at:
inferior status of being freed, not free. This article undertakes a return to this history in order to underscore the injustice that inhered in mere emancipation unaccompanied by meaningful reparation for the crimes of enslavement. This history renders today’s call for repair through the use of third sector housing mechanisms all the more powerful, and all the more normatively compelling.

Part II returns us to the tragic conditions of emancipation. Relying as much as possible on primary sources that give voice to people for whom being freed is a new, exhilarating, and often exasperating experience, this part of the article traces the complex ways in which formally enslaved people negotiated a radical transformation in their lives and horizons of well-being.

It begins with the story of a utopian experiment in Black freedom and landownership at Port Royal, South Carolina. These islands were captured by northern forces early in the war, and were inhabited by between eight and ten thousand Black refugees. Federal officials, working closely with private northern aid societies, sought to set up a radical free labor project at Port Royal in the hopes of demonstrating that freed labor was as, if not more, efficient than enslaved labor. At Port Royal, Black people were able to work, if not purchase, their own land for the first time in a way that provided a model for what a free Black agrarian society might look like after the end of the war. The Port Royal experiment provides an example of what Reconstruction could have looked like had it not taken a Johnsonian turn in 1865. What is more, it offers a radically different approach to humanitarianism, one that refused to treat freed-dom as something inferior to freedom.

The article then moves to the tale of a different radical experiment in Black self-
governance that took place just outside of Vicksburg, Mississippi at Davis Bend, the plantation owned by Jefferson Davis’ eldest brother Joseph. Like Port Royal, Davis Bend served as the testing ground for an experiment in Black independence that some federal officials hoped would serve as a model for reconstruction. Unlike in Port Royal where the discipline of law was imposed on Black people largely by white missionaries and government agents as part of a wider project designed to civilize newly freed people, at Davis Bend ex-slaves were left alone to govern themselves free from white oversight. While the Davis Bend project offered a more radical and autonomous approach to Black self governance than that tried at Port Royal, in the end it too could not withstand the overwhelming pressure to structure Black freed-dom in legally mediated relationships with white people rather than in autonomous zones, free from white oversight, judgment and discipline.

Part III concludes the analysis by linking the historical case made by formerly enslaved people for property ownership to today’s property-based demands for reparation.

II. Land and The Question of Reparative Justice

To best appreciate the distinction I seek to draw in this article between being freed and being free, and how the badge of being freed has produced intergenerational forms of disadvantage for which reparation remains unsatisfied, some preliminary structural framing is in order. The following first-hand description of the living conditions of newly freed people bears witness to the bare life that characterized the condition of being freed by military occupation:

In a cattle shed without any siding, there huddled together were 35 helpless people, one man who had lost one eye entirely, and the sight of the other fast going, he could do...
nothing. Five women, all mothers, and the residue of 29 children, all small and under 12 years of age. One of the women had the small pox, her face a perfect mass of scabs, her children were left uncared for except what they incidentally received. Another woman was nursing a little boy about 7 whose earthly life was fast ebbing away, she could pay but little attention to the rest of her family ... I inquired how they slept, they collect together to keep one another warm ... There is no wood for them nearer than half a mile which these poor children have to toat ... and the same with water, this has to be carried the same distance and the only vessel they had to carry it was a heavy two gallon stone jug, a load for a child when empty.⁶

This was the circumstance of a group of Black people found by a northern observer just outside Vicksburg, Mississippi in April 1864. Emancipated yet not free, they sought refuge behind northern lines as U.S. troops moved through Mississippi. Federal troops set up “contraband” camps throughout the South to receive the ex-slaves as they fled their owners’ violence, dominion, and control. Military leaders had not anticipated that one of the projects collateral to their defeat of the confederate army was the care and feeding of destitute escaped slaves. From the start of the Northern conquest of the Confederacy, the federal government was waging parallel military and humanitarian campaigns. The humanitarian was enabled by the military campaign and threatened to bring it down if the swelling Black population that attached itself to U.S. troops weren’t disposed of in some way that would free up the troops to fight without being encumbered by the humanitarian needs of Black people who sought safety in their care.

⁶ Agency Civ. Cont. Relief Comm., Jeff Davis Mansion, 4 mos 13, 1864, Record Group (hereinafter RG)
No longer enslaved, what was the status of the Black people once under the protection of the U.S. government? While enslaved they were legally considered property,7 but their civil, legal and moral status was transformed instantly when they were brought within the wide arms of the U.S. military. But transformed how? It was easier to say what they were not - enslaved - than what they were: free men and women, captured chattel, spoils of war? Some officials regarded them unhesitatingly as savages, others took the view that they were men and women, that they were humans for whose welfare they were now responsible. Today we would consider them refugees. But they weren’t citizens and they weren’t freemen, instead they came to be called freed men and women.

In the 19th century, a freeman was understood as the opposite of a slave, as a man8 with robust civil and political rights and status.9 A freedman by contrast was not a slave, but was also not the opposite of a slave.10 The experience of the newly freed people during the Civil War and

---

7 As property they were not understood by white people to be fully human. Here, as is so often the case, Mark Twain put it best in *Huckleberry Finn* when Huck explains to Aunt Sally why he was delayed in visiting her. He tells her that the steamboat “blowed a cylinder-head”. “Good gracious! anybody hurt?” Asked Aunt Sally. “No’m. Killed a nigger,” Huck responded. “Well, it’s lucky; because sometimes people do get hurt,” Aunt Sally replied with relief. Mark Twain, *ADVENTURES OF HUCKLEBERRY FINN* at 279 (Finn, ed. Walter Blair and Victor Fischer University of California Press: Berkeley, 1988).

8 Of course, at this time freedom was not something enjoyed by white women to the same degree as white men.

9 In debates concerning the adoption of the Thirteenth Amendment, Senator Howard remarked, “Its intention was to make him the opposite of a slave, to make him a freeman. And what are the attributes of a freeman according to the universal understanding of the American people? Is a freeman to be deprived of the right of acquiring property, of the right of having a family, a wife, children, home? What definition will you attach to the word "freeman" that does not include these ideas?” Cong. Globe, 38th Cong., 1st Sess. 1364 (1864) p. 504.

10 “Freeman” connoted a particular meaning in the mid 19th century, a meaning quite distinct from the status of being freed. Legal dictionaries at the time defined a freeman as “One who is in the enjoyment of the right to do whatever he pleases, not forbidden by law. One in the possession of the civil rights enjoyed by the people generally.” “Freedman” was “the name formerly given by the Romans to those persons who had been released from a state of servitude.” A Law Dictionary, adapted to the Constitution and
in its immediate aftermath make clear that slavery and freedom were not a binary, but were instead graded categories with ample middle ground between them - an uncomfortable middle occupied by freed men, women, and children. The “d” bore witness to their immanent enslavability, enjoined for the moment by questionable operation of law, but ever present in a way that distinguished them from free men. The freedman was a refugee from slavery occupying a precarious place, the significance of which was entirely unclear to any of the players - Black or white - during and in the immediate aftermath of the Civil War.

Early on in the war, federal officials settled on the legal category “contraband” to describe the ex-slaves. Contraband goods, under their reading of the term, were items of personal property that could not be imported into enemy territory and could be seized lawfully when found in the enemy’s possession. Strong northern abolitionists abjured this term as it retained the notion that Black people were property, but at such an early stage in the war northern military officials did not want to unsettle the powerbrokers in Washington and Boston who did not yet regard the Civil War as a mission to emancipate the slaves. Edward Pierce, a young lawyer from Boston who had been assigned the task of overseeing the first “contraband camp” at Fortress Monroe, Virginia in 1861, was met by his charges with disbelief that they were still being treated like chattel. When they learned that they were being held in “contraband camps” they asked Pierce “Why d’ ye call us that for?”

Pierce quickly came to agree with the ex-slaves in his charge that “contraband” was an offensive term. On his next assignment at the Sea Islands of South Carolina he refused to call

---

his charges “contrabands,” adopting instead the more dignified term “freedmen.”

In 1861 it was not clear, nor indeed knowable, what would lie on the other side of slavery for Black people. Repatriation back to Africa, the Caribbean or some territory in the West? Settlement of the freed men and women on land confiscated from white planters? Full citizenship on a par with white people? Or some variation on any of these or other possibilities? Of course the Confederacy had to be defeated first before full attention could be paid to these post-victory questions.

During the period from 1861-1865 military and civilian, public and private, religious and secular men and women from the North came south to offer aid and comfort to the newly freed Black people. At the same time, ex-slaves took care of themselves and each other and began to dream about a life that was unimaginable a few months earlier. While all the rights and privileges enjoyed by freemen remained a distant horizon, freed-dom was exhilarating for the men, women and children liberated by Northern troops. For the first time families did not face the prospect of separation by sale to parts unknown, never to see one another again. Freed men and women did not wake to a fear of the lash for the slightest infraction, or for no infraction at all. The “contraband” camps may have been slap dash, short on provisions, and full of disease, but freedmen were safe there from the daily violence, degradation, and exploitation that characterized enslavement.

No sooner had the “contraband” camps been set up, than visionary military officers and abolitionists from the north set out to experiment with Black freed-dom. Starting in late 1861 and continuing throughout the war, utopian experiments in Black emancipation were begun in

---

12 Id.
places like the Sea Islands of South Carolina and Vicksburg, Mississippi. These experiments in freed-dom had multiple objectives: proving that freed labor was more efficient than slave labor; seizing the lucrative cotton crop for the benefit of the Union treasury with freed rather than enslaved labor; exploring methods of reparation for the indignity and theft of Black peoples’ labor while enslaved; teaching the freed men, women and children to read and write; “civilizing” the ex-slaves to respect the marriage sacrament, honesty, loyalty to nation, and keeping one’s word; preparing newly freed Black people for a life in the not too distant future as citizens; and exploring whether freed men might make suitable soldiers in the Union army should President Lincoln be persuaded to muster them. Not all these goals were compatible with one another, and not every benevolent actor was committed to all of them. But each of them was a stage in the humanitarian project that sought to recover a kind of humanity from the wrecked lives of enslaved people. Law figured centrally in this recovery project, framing the very terms of freed-dom, the human, and the tactics of uplift and social “improvement” that were brought to bear on freed-people.

The Port Royal Experiment:

The largest attack fleet ever to sail under the U.S. flag was amassed to undertake the capture of Port Royal, South Carolina in November 1861. The choice was an obvious one given its strategic location midway between Savannah and Charleston, with easy inland passage to both, and its deep and well protected harbor. It would make a key coal depot for U.S. naval ships fighting in the Atlantic. The Sea Islands were comprised of six large islands - Edisto, St. Helena, Ladies, Port Royal, Hilton Head and Paris - and a number of smaller islands. St. Helena
Island was the largest and most populated island, measuring fifteen miles long and seven miles wide and containing fifty plantations and approximately three thousand Black people when the U.S. fleet arrived. Beaufort, located on Port Royal Island, was the largest town, having been settled first by the Scots in 1682, then the Spanish, and then later the British. Its first Episcopal Church was built in 1720, the library was founded in 1802, and by the time the northern troops arrived it had about 3,500 volumes. Beaufort was most likely named after Henry, Duke of Beaufort, one of the lord proprietors while Carolina was a province of Great Britain.\textsuperscript{13}

Besides the strategic military value of Port Royal, the rich cotton and rice fields on and adjacent to the Islands could be harvested to finance the northern war efforts. Cotton prices in 1861 were better than many planters had ever dreamed, thus floating very extravagant and opulent lives for the planters and their families of the Sea Islands.\textsuperscript{14}

Late in the afternoon on Sunday, November 4, 1861 Admiral Samuel F. DuPont’s fleet arrived at Port Royal with General Thomas W. Sherman’s troops aboard the Navy’s vessels ready for the ground invasion of the Islands. They were met by an enthusiastic defense from the locals, the St. Helena Riflemen, aided by over a thousand reinforcements from the German Artillery from Charleston, the Charleston Artillery Battalion, the South Carolina Infantry and the South Carolina Volunteers. Almost immediately it was obvious that the Islanders were outgunned and outmanned, and by Wednesday nearly all of the local whites had packed their wives, children and a few favorite “servants” into boats and rowed to the mainland.\textsuperscript{15} Many of

\textsuperscript{13} Edward L. Pierce, \textit{THE FREEDMEN AT PORT ROYAL}.

\textsuperscript{14} Cotton prices increased 63\% in 1861. See David G. Surdam, \textit{King Cotton: Monarch or Pretender? The State of the Market for Raw Cotton on the Eve of the American Civil War}, 51 \textit{The Economic History Review} 113, 122 (1998).

\textsuperscript{15} “Beaufort has been taken by the gunboats, the town having been abandoned by the whites.” Letter
these families had lived at Port Royal for upwards of 140 years, and most of them left quite reluctantly. More than a few of them tried unsuccessfully to get their slaves to leave with them, telling them that the Yankees would either kill them or sell them to Cuba. When cajoling failed, friends and relatives had to physically remove a prominent planter, Captain William O. Fripp. He “exhorted his Negroes to watch out for themselves and to obey the white strangers who would soon be telling them what to do ... Thomas B. Chaplin told Robert, Isaac, and Jack to take care of the plantation in his absence, until normal life could resume.” One Black man later explained to Charlotte Forten, a Black missionary from Philadelphia, why he chose to stay on the island: His master told him that the Yankees would shoot him, “Berry well sur,” he replied, “if I go wid you I be good as dead, so if I got to dead, I might’s well dead here as anywhere. So I’ll stay and wait for the Yankees.” The Flag-Officer of the invading Union Naval fleet reported that “The negroes are wild with joy and revenge. They have been shot down, they say, like dogs, because they would not go off with their masters.” Many Black people who remained reported

from Captain John Rogers, U.S. Steamer Bienville, Port Royal Harbor, Off Port Walker, Saturday, November 9, 1861, in Rebellion Records: A Diary of American Events, vol. 3, Document 36, p. 112 (Frank Moore ed., 1871); “We are informed that the families on the mainland as well as this group on the sea islands have fled to the interior, in some cases taking their negroes.” Another Account, By An Officer of the Frigate Pawnee, Steam-Frigate Pawnee, Port Royal Bay, November 11, 1861, in Rebellion Records, vol. 3, Document 137, p. 320.

17 Theodore Rosengarten, Tombee: A Portrait of a Cotton Planter 218 (1986). Edward Pierce reported that upon his first contact with the former Fripp slaves on St. Helena Island, the spoke kindly of “the good William Fripp” well as his brother Dr. Clarence Fripp, “but that they all denounced the cruelty of Alvira Fripp, recounting his inhuman treatment of both men and women.” Clarence Fripp, while beloved by some of his slaves, acknowledged that before 1860 he had fathered two children by his slave and housekeeper Rachel. Theodore Rosengarten, TOMBEE: PORTRAIT OF A COTTON PLANTER: WITH THE JOURNAL OF THOMAS B. CHAPLIN (1822-1890) 723 (1992).
18 Rosengarten, supra not 16, at 218.
20 Letter from Flag-Officer Samuel F. DuPont to the Assistant Secretary of the Navy, Wabash, Port Royal,
that as white planters fled the islands they turned to shoot “negroes who refused to accompany them into the woods.” No sooner had the white planters left, than the “loyal” Black people set about to “take care of things until normal life resumed,” but not exactly in ways their owners’ had expected. They moved into their former masters’ grand homes, smoked their cigars and tried out the billiard tables. “Clothes were the first items taken, and when the clothes gave out, women made dresses out of lace curtains and men cut suits from ‘gaudy carpeting just torn up from the floor.’ The very floors were ripped up, recut, and laid down in the Negro cabins.”

Barnard K. Lee, Jr., one of the first civilians to arrive at Port Royal who came down from Boston in November of 1861 to work as a plantation superintendent and described the same scene: “they had taken up their master’s old carpets from the floor and were clothed in it, presenting a grotesque appearance.”

When General Sherman landed on Hilton Head Island on November 8th, he immediately issued a proclamation - addressed not to the people he found there, the freed slaves, but to the imagined audience of white planters who had fled. To this fictional audience he announced:

“Citizens of South Carolina, the civilized world stands appalled at the course you are pursuing; appalled at the crime you are committing against your mother – the best, most enlightened, and

November 9, 1861, in Rebellion Records, vol. 3, Document 36, p. 112; see also, Letter from Captain John Rogers, U.S. Steamer Bienville, Port Royal Harbor, Off Port Walker, Saturday, November 9, 1861, in Rebellion Records, vol. 3, Document 36, p. 113 “Negroes are pouring in; they believe their condition is to be bettered. The white men have all fled ... They said the whites were shooting them right and left, in order to drive them back into the interior.”; “They had been worked up to a pitch of frenzy by their masters, who had shot several negroes who refused to accompany them into the woods, and away from the village.” A Correspondent of the New York Herald, Fort Walker, Port Royal Harbor, S.C., November 11, 1861, in Rebellion Record, vol. 3, Document 137 ½, p. 319.

21 Rosengarten, at 254.
22 Testimony of B.K. Lee, Jr. to the American Freedmen’s Inquiry Commission, M 619, Roll 200, NA. For a description of Lee’s arrival at Port Royal as well as his work assignment, see Edward L. Pierce to
heretofore most prosperous of nations.”

While there were no “Citizens of South Carolina” to receive this proclamation, there were approximately 10,000 Black people living on the islands on 189 abandoned plantations. They were neither free nor enslaved, and they presented both a burden and an opportunity to northern military officials who occupied the Sea Islands. As the Northern whites would later describe it, the Black people they found were destitute, degraded, illiterate, child-like, and uncivilized, and clothed in carpets they had salvaged from their masters’ abandoned plantations. The Black population of Port Royal was liberated by northern troops into what Giorgio Agamben would call “a bare life.” They occupied a middle ground between slave and citizen - that of “contraband” - property liable to being confiscated from the enemy at time of war. Of course, this dubious status was concocted to placate the sensitivities of

Samuel P. Chase, February 3, 1862, RG 366, Entry 574 NA, College Park, MD, hereinafter “Port Royal Correspondence”.

23 General Sherman’s Proclamation to the People of South Carolina, November 8, 1861, The Rebellion Record: A Diary of American Events, Volume 3, p. 111.

24 In June 1862 Pierce reported to Chase that there were 9,050 people living on all the plantations. Letter from Edward L. Pierce to Salmon P. Chase, June 2, 1862, Port Royal Correspondence. The numbers of refugees at Port Royal varies depending upon the source. Willie Lee Rose marks it at 10,000, while Edwin Hoffman reports that 15,000 slaves were liberated in November 1861. See Rose, Rehearsal for Reconstruction, Edwin D. Hoffman, From Slavery to Self Reliance: The Record of Achievement of the Freedmen of the Sea Island Region, 41 J. of Negro Hist. 8, 9 (1956). The population of the refugees at Port Royal bulged again in December 1864 when General William T. Sherman concluded his famous march to the sea, accompanied by more than 30,000 refugees from Georgia who regarded Sherman’s troops as an army of liberation, and had accompanied Sherman’s forces as they moved eastward. They needed to be relocated to some territory under Union control - Port Royal was that territory. Report of Brev. General Rufus Saxton to Major General O.O. Howard, December 6, 1865, Sen Exec. Docs. 27, 39th Cong. 1st Sess. (1865-66) at 141 (“some forty thousand destitute freedmen, who followed in the wake of and came in with [Sherman’s] army”); Hoffman, From Slavery to Self-Reliance at 20.


26 Notwithstanding the fact that the Fugitive Slave Act remained good law until mid-1864, Act of June 28, 1864, ch. 166, 13 Stat. 200 (repealing “the Fugitive Slave Act of eighteen hundred and fifty, and all Acts and Parts of Acts for the Rendition of Fugitive Slaves”), it was federal policy well before that time to treat escaped slaves as “contrabands” recognizing their status in-between confiscated property and human refugees. In May 1861, General Benjamin Butler declared fugitive slaves “contrabands,” on the ground that the Fugitive Slave Act did not apply in a foreign country—Virginia. See Edward L. Pierce, The Contrabands at Fortress Monroe, 8 Atlantic Monthly 626, 627 (1861); see also Leon F. Litwack, Been in
abolitionists and more conservative supporters of the northern war effort. As one federal official put it: “The venerable gentleman who wears gold spectacles and reads a conservative daily, prefers confiscation to emancipation. He is reluctant to have slaves declared ‘freemen,’ but has no objection to their being declared ‘contrabands.’”

This political/legal status prohibited their re-enslavement, but it was unclear what it enabled and to what their new status and identity entitled them. What kinds of demands could they make on the authorities who now asserted control over them? To whom could they appeal if they felt their treatment was unjust? Were they entitled to be treated justly or fairly? Against what norm would these claims to justice or fairness be measured? Surely not the Constitution, as they were neither citizens nor persons. Of course, the Federal authorities and the northern missionaries who followed on their heels had no ready answers to these difficult questions either.

Here as elsewhere, what it meant to be a contraband, indeed what it meant to be freed yet not free, was being made up on the fly by people with complex and demanding interests that did not necessarily coincide with the interests of the Sea Islands’ Black people. The military was interested in the profits that could be generated from the agricultural work the freed people could undertake - otherwise they wanted them out of their way; the northern missionaries were determined to save the souls and educate the minds of these innocent creatures who had been subjected to a life of barbarism; and northern land speculators were soon to arrive and were hungry for a cheap source of labor. What assurance did the refugees have that their treatment by a new set of white men would be any better than what they had suffered in their prior condition


27 Pierce, The Contrabands at Fortress Monroe.
of enslavement? None. Thus began the experiment in freed-dom at Port Royal.

* * *

Management and control of abandoned property, including the cotton plantations and the refugees who had worked them, was the responsibility of the Department of the Treasury, headed by Secretary Salmon P. Chase, who held among the strongest antislavery views of anyone in Lincoln’s cabinet. Chase saw the seizure of the Sea Islands as a tremendous opportunity to demonstrate the value and productivity of freed Black labor. Yet as winter set in, and the former slaves faced near starvation and the cold without adequate clothing, Chase had to deal with a desperate situation. These problems were compounded by the fact that some refugees believed (not unreasonably) that freedom meant that they no longer had to work. Thus the cotton fields, a potential source of significant income to the federal government, laid untended. In Chase’s view these fields could not remain ignored past mid February, as the Federal government was counting on the income from the cotton produced there to finance the costs of feeding and providing for the more than 10,000 Black men, women and children who either remained on the islands or fled there once the word of Union occupation spread to the plantations on the mainland.

As a first step, in December Chase dispatched William H. Reynolds to Port Royal, as chief resident cotton agent, to take custody of the harvested cotton, oversee the employment of 28 See Albert Bushnell Hart, SALMON P. CHASE 262 (1899). Edward Pierce later reported that the only well placed officials that took any interest in the gravity of the situation at Port Royal were Chase and Frederick Law Olmsted, who served as the executive secretary of the United States Sanitary Commission, a private agency formed to advise and supply the Medical Bureau. Edward L. Pierce, The Freedmen at Port Royal, Atlantic Monthly (September 1863) 291, 296. Even President Lincoln, less than a year before issuing the Emancipation Proclamation, was disinterested in the fate of the freedmen who sought safety behind Union lines. Pierce attributed Lincoln’s distraction and indifference, in significant part, to
Black people to harvest what remained in the fields and to pay them for their work in rations and clothing. Reynolds seemed the right man for the job, having had ample experience in the cotton business in Rhode Island. Shortly thereafter Chase wired Edward L. Pierce to enlist him to oversee the entire Port Royal refugee project and to make recommendations about the ongoing management of cotton production. Pierce, a young attorney in Boston who had worked in Chase’s Cincinnati law office, and later as his secretary in Washington, held strong antislavery views and unlike most northerners, had had some experience with Black refugees, having overseen their care at Fort Monroe, Virginia when he was a private in the Third Massachusetts Regiment. He agreed to visit Port Royal and to provisionally oversee the refugee population there. Like Chase, he viewed the experiment at Port Royal as of vital importance to the antislavery cause, for neither of them believed that this population would be returned to slavery.\(^{29}\) Instead, they could concentrate all their efforts on showing the benefits and utility of free labor and “the success of a productive colony that would serve as a womb for the emancipation at large.”\(^{30}\) “Port Royal, in Chase’s eyes, would become the scene of a social experiment of importance to the entire South.”\(^{31}\) One signal of Pierce’s commitment to the humanity of the Black people at Port Royal was the fact that here, unlike at Fortress Monroe, he declined to refer to the ex-slaves as “contrabands,” instead insisting on using the term “freedmen.”\(^{32}\)

Word got out quickly to northern entrepreneurs that Port Royal’s abandoned plantations

---

Lincoln’s grief about his son Harry’s fatal illness. Id.  
\(^{29}\) Pierce, The Freedmen of Port Royal at 297; Rose, Rehearsal for Reconstruction at 22-23.  
\(^{30}\) Rose, Rehearsal for Reconstruction at 31.  
\(^{31}\) Journal of Charlotte Forten at 29.  
\(^{32}\) Pierce, The Freedmen at Port Royal, The Atlantic, September 1863.
might offer a fantastic investment opportunity. As early as mid-December Chase began to get inquiries from investors in New Jersey and Vermont suggesting that they be allowed to lease Sea Island plantations and oversee the continuation of cotton production using paid Black labor. Reynolds was of a similar mind, suggesting “whether it would not be well to consider the plan of leasing Plantations in our possession to loyal citazens [sic] at a fair rate, under proper restrictions, the Negroes to be paid a fair compensation for their services.” Pierce, having gotten wind of these proposals, strongly counseled Chase against them. He felt it unwise to turn the project over to “doubtful men” who would exploit the beleaguered Black people of Port Royal in order to gain “a speedy fortune.” Pierce cautioned:

No man, not even the best of the guardians of these people, should be put in a position where there would be such a conflict between his humanity and his self-interest – his desire, on the one hand, to benefit the laborer, and on the other, the too often stronger desire to reap a large revenue, perhaps to restore broken fortunes in a year or two. Such a system is beset with many of the worst vices of the slave system with one advantage in favor of the latter, that it is in the interest of the planter to look to permanent results. Let the History of British East India, and of all communities where a superior race has attempted to build up speedy fortunes on the labor of an inferior race occupying another region be remembered, and no just man will listen to the proposition of leasing, fraught as it is with such dangerous consequences.

In these early observations Pierce was astutely prescient, anticipating the wrong turn that this project would later take. At this early juncture, however, Pierce was able to convince Chase that the Port Royal experiment required the enlistment of philanthropic, rather than capitalist,

34 See Letter from Sam’l H. Terry to Honorable S.P. Chase, December 18, 1861, Port Royal Correspondence; Letter from Ellis, Britton, & Eaton to Hon. Samuel P. Chase, February 3, 1862, Port Royal Correspondence.
35 William H. Reynolds to Samuel P. Chase, January 1, 1862, Port Royal Correspondence.
36 Edward L. Pierce to Samuel P. Chase, February 3, 1862, Port Royal Correspondence.
enterprise. The challenge, for him, was telling the difference.

Realizing that an enormous project lay well beyond the capacities of a federal government with its hands full fighting the war, Sherman wrote the War Department in January 1862 asking “that suitable instructors be sent to the Negroes, to teach them all the necessary rudiments of civilization, and ... that agents properly qualified, be employed and sent here to take charge of the plantations and superintend the work of the Blacks until they be sufficiently enlightened to think and provide for themselves.”³⁷ Key to both Chase and Pierce’s plans for Port Royal was an unofficial collaboration with northern missionaries who would be engaged as teachers and moral guides for the refugees on their path to citizenship. Once he accepted Chase’s invitation to join the Port Royal experiment, Pierce turned not to capitalists in Vermont and New Jersey who had already expressed an interest in running the Port Royal cotton plantations, but to antislavery religious leaders in Boston, New York and Philadelphia. He promptly arranged meetings in the private homes of the members of the Boston Educational Commission and the National Freedmen’s Relief Association in New York, seeking volunteers to head south with him as teachers and superintendents of cotton production.³⁸ “To both the

---

³⁷ Quoted in The Journal of Charlotte Forten at 29. In February Sherman issued General Order No. 9: “Helpless condition of the blacks inhabiting the vast area in the occupation of the forces of this command, calls for immediate action on the part of a highly favored and philanthropic people ... Hordes of totally uneducated, ignorant and improvident blacks have been abandoned by their constitutional guardians ... To relieve the Government of a burden that may hereafter become unsupportable ... a suitable system of culture and instruction must be combined with one providing for their physical wants. In the meanwhile ... the service of competent instructors will be received whose duties will consist in teaching them, both young and old, the rudiments of civilization and Christianity.” New York National Freedmen’s Relief Association, Annual Report 1866 at 5-6.

³⁸ The Boston Education Committee, later known as the New England Freedmen’s Aid Society was founded on February 7, 1862, and the Port Royal Relief Committee, later named the Pennsylvania Freedmen’s Relief Association began work on March 5, 1862. See Pierce, The Freedmen at Port Royal at 297. The National Freedmen’s Relief Association of New York formed on February 22, 1862. Brief History of the New York National Freedmen’s Relief Association (1866) at 5.
Boston and New York Committees,” he wrote Chase in early March of 1862, “I have said that
persons accepted must have in the first place profound humanity – a belief that the negro is a
human being and capable of elevation and freedom ... These qualities being found, a knowledge
of cotton culture was not expected and a knowledge of farming not required, though the last
would be of value; what was most needed was the moral power of the presence of a white man
on the plantations to guide and direct, and the laborers themselves understanding their work
better than the master or overseer generally did.”39 He sought their aid in order to teach the
“fundamental lessons of civilization, voluntary industry, self-reliance, frugality, forethought,
honesty and truthfulness, cleanliness and order. With these will be combined intellectual, moral
and religious instruction.”40 Pierce selected 48 men and 12 women for the journey, “You go to
freedmen to elevate, to purify, to fit them for the duties of American citizens,” Pierce told the
new recruits.41

The “Port Royal Experiment” was truly underway when Pierce and his group of
missionary recruits from Boston, New York and Philadelphia, set sail for the Sea Islands on
Monday, March 3rd at 11:00 in the morning. Known somewhat pejoratively in the less-friendly
northern press as the “Gideonites,” the group arrived four days later, on Friday, March 7th in the
early afternoon - having weathered very windy and rough seas as they approached their
destination.42 Seventeen more recruits from New York sailed for Port Royal on March 19th.43

---

39 Letter from Edward L. Pierce to Salmon P. Chase, March 2, 1862, Port Royal Correspondence.
40 Report of Edward L. Pierce to Salmon Chase, February 3, 1862 at 36.
41 Austa M. French, Slavery in South Carolina and the Ex-Slaves 26 (1862), quoted by Hoffman, From
Slavery to Self-Reliance at n.1.
42 Letter of Edward L. Pierce to Salmon P. Chase, March 8, 1862, Port Royal Correspondence.
43 Letter from John W. Edmonds, President, National Freedmen’s Relief Association, to Salmon P. Chase,
March 19, 1862.
Given that President Lincoln was unwilling to commit any financial resources to the Port Royal refugee project, the missionary societies provided not only personnel but financial aid to pay the meager living expenses of recruits who headed south. At the start of the mission, the superintendents from Boston received a stipend of between $30 and $50 per month, while members of the New York contingent were paid between $5 and $25 per month. When Pierce learned of this discrepancy, he wrote to his agent in New York that they weren’t paying their people enough and that they should send fewer, or better-paid men.\footnote{Letter from Edward L. Pierce to Hiram Barney, March 27, 1862, Port Royal Correspondence.}

The men and women who undertook this work arrived to perform two principal tasks: the men largely acted as overseers of the agricultural work to be done by the freedmen, and the women served as teachers primarily of the freed children. The practical demands of the war effort mandated that the 189 plantations at Port Royal continue to produce both cotton and other edible crops to finance the war,\footnote{See Pierce, The Freedmen at Port Royal, at 299.} while more symbolic interests motivated a desire to use the Black people of the Sea Island as an example for the antislavery cause. All of the northern actors in this experiment shared one goal in this enterprise: to demonstrate to the world that Black people would work without the lash, and indeed, “to prove that free labor could grow more cotton more cheaply than slave labor.”\footnote{Rose, Rehearsal for Reconstruction at 204. The same macro economic principles motivated the white missionaries that colonized Jamaica in the 1830s. “[T]heir case against slavery was centrally linked to their economic argument that slavery was a less productive system than that of the free market.” Catherine Hall, Civilizing Subjects at 120.}

Careful stewardship of the Black people on the islands was key to accomplishing this task.\footnote{Pierce reported that the superintendents chosen to oversee the freedmen should be given authority “to enforce a paternal discipline.” Report of Edward L. Pierce to Salmon Chase, February 3, 1862 at 310.} Of course, no one in this project seemed concerned by the fact that the northern missionaries
enlisted to act as superintendents of cotton production knew almost nothing about how to raise cotton,\textsuperscript{48} nor were they very well suited for the hot, mosquito-ridden climate they would encounter.\textsuperscript{49}

Nevertheless, the most pressing problem to the Northern overseers was keeping the land in cotton production. The climate and soil of the Sea Islands made it one of the few places in the U.S. where long-staple cotton could be grown. Regular, or short-staple, cotton possessed fibres of five-eighths to one inch in length when combed, whereas the Sea Islands long-staple cotton measured one and a half to two inches long and was of strength far superior to short-staple cotton. Due to its length long-staple cotton was used for the warp or longitudinal threads in many high end woven fabrics coveted by wealthy Europeans, thus gaining prices at least double that of short-staple cotton on the markets in New York. None of the Sea Islands cotton made its way to New England mills, as all of it was shipped overseas, largely to England.\textsuperscript{50}

Pierce and other treasury agents were given the responsibility to make sure that the cotton crop was not interrupted. This entailed, quite obviously, the deployment of the freedmen as agricultural workers under a system of paid, rather than slave, labor. Pierce had suggested to his boss Secretary Chase that the plantation hands be paid 40 cents per day or $12.00 per month, however Chase thought this price too high. In January, General Sherman had issued an order

\textsuperscript{48} “A knowledge of the culture of cotton was found not necessary in a superintendent, though it would have facilitated his labors. On this point the laborers were often better informed than their former masters.” Second Report of Edward L. Pierce to Hon. S.P. Chase, Secretary of the Treasury, June 2, 1862, in The Rebellion Record, Supp. vol. 1, p. 315, 317.

\textsuperscript{49} Four of the missionaries died in the first summer. See Pierce, The Freedmen at Port Royal at 299-300.

that mechanics be paid between $8 and $12 per month, and that other laborers receive between $4 and $8 per month, and three months later government wages were set at $9 to $12 per month for Mechanics and Drivers of Gangs, $6 per month for First Class laborers (healthy adult males doing field work), and $4 per month for Second Class Laborers (healthy adult females doing field work), all wages to include one food ration daily.  

Displaying what would be routine unfamiliarity with the sentiments of their charges, neither Pierce nor his missionary friends had expected Black resistance to working the cotton crop at a wage. Oblivious to the cultures of work among enslaved people prior to emancipation, northern managers of freed Black labor were taken aback when the former house servants were particularly set against doing what had previously been the work of field slaves. What is more, before the northern superintendents took over the supervision of freedmen’s labor, the refugees had begun to plant corn for their own consumption on land they had claimed for themselves, and were resistant to returning to the cotton fields under white supervision, “regarding it as a badge of servitude.” In his second report to Secretary Chase in June of 1862 Pierce wrote:

The negroes had commenced putting corn and potatoes into their own patches, and in

---


52 The superintendents were instructed not to resort to the lash or other violent means of punishment that had been frequently used by planters. Nevertheless, other coercive means were used by the northern overseers to discipline non-compliant workers: “the delinquent, if a male, is sometimes made to stand on a barrel, or, if a woman, is put in a dark room ... such discipline proved successful.” Moore, The Rebellion Record, Companion Volume at 313, quoted in Webster, The Operation of the Freedmen’s Bureau in South Carolina at 4.

53 Pierce, The Freedmen of Port Royal at 308.

54 Id. at 298.
some cases had begun to prepare a field of corn for the plantation. No land had been prepared for cotton, and the negroes were strongly indisposed to its culture. They were willing to raise corn, because it was necessary for food, but they saw no such necessity for cotton, and distrusted promises of payment for cultivating it. It had enriched the masters, but had not fed them.\textsuperscript{55}

So great was the ex-slaves’ hatred of cotton that among the first things they did when their former masters fled was destroy many cotton gins, with the aim of never “planting cotton for white folks again.”\textsuperscript{56} “No more driver, no more cotton, nor lickin’,”\textsuperscript{57} freedmen were known to declare. Getting them to plant cotton was made no easier by the fact that the federal government lacked the funds to make good on the meager wages Pierce had promised. As early as March 1862, superintendents complained to Pierce that they were having trouble getting their hands to work without paying them.\textsuperscript{58} During this period, Pierce repeatedly wrote to the cotton agent in New York pleading for funds to pay the Port Royal laborers for bringing in the previous year’s crop. In his reports to Chase he frequently voiced frustration at the prospect of gaining the trust of the freed men or their commitment to the notion of wage labor when the government was so delinquent in paying promised wages. Freed men often complained that their rations and clothing allotments had been much better before their white masters had fled.\textsuperscript{59} Meanwhile, their clueless overseers from the North were earning up to ten times as much as they were, and they were having no trouble getting paid by their Northern sponsors. From the freed men’s

\begin{footnotes}
\item[55] Letter from Edward L. Pierce to Salmon P. Chase, June 2, 1862, Port Royal Correspondence.
\item[56] Letter from Edward Philbrick, March 20, 1863, Pearson, Letters from Port Royal at 181; Pierce, The Freedmen of Port Royal at 308; Johnson, A Social History of the Sea Islands at 161.
\item[57] Letter from Edward Philbrick, March 20, 1863, Pearson, Letters from Port Royal at 181.
\item[58] Edward Philbrick to Edward L. Pierce, March 26, 1862, Port Royal Correspondence; Richard Soule, Jr. to Edward L. Pierce, March 29, 1862, Port Royal Correspondence.
\item[59] For example, see Edward L. Pierce to Samuel P. Chase, June 2, 1862, Port Royal Correspondence. “Again, the laborers had but very little confidence in the promises of payment made by us on behalf of the Government.”
\end{footnotes}
perspective, freed-dom wasn’t getting off to a very good start.

* * *

In April 1862 when responsibility for overseeing confederate abandoned lands passed from the Treasury to the War Department, Brigadier-General Rufus Saxton assumed the Governorship of the Sea Islands. Saxton, Sherman, Chase and Pierce shared the view that an essential part of their mission was the reallocation of confiscated land to the freedmen that they could till for themselves. A people who have land “will never be nomads or vagabonds,” wrote Pierce in the Atlantic Monthly. In February 1862, well before he became Governor of the Islands, Saxton observed “it would be well to parcel out the fertile lands of these islands among the different families in lots large enough for their subsistence.” Chase echoed this view in his own correspondence. Interestingly, these views mirrored contemporaneous federal policy aimed at “civilizing” the Indians in the West by allocating them homesteads in fee simple.

Upon assuming control of Port Royal, Saxton continued a land allocation plan originally recommended by Pierce: two acres of land was assigned to each working hand, plus an additional five-sixteenth of an acre for each child. They were permitted to raise corn and potatoes sufficient for their own use in exchange for which they would work the government’s cotton fields. In addition, they were required to cultivate sufficient food supplies for the superintendents and disabled and elderly members of the community. The Government supplied

---

60 On July 1, 1862, control of the Sea Islands passed from the Treasury Department to the War Department.
61 Pierce, The Freedmen of Port Royal at 310.
62 Rose, REHEARSAL FOR RECONSTRUCTION at 211.
63 Id.
the implements and seeds and paid $.25 for a day’s work under a task system.\footnote{Circular, Head Quarters, Beaufort, S.C., July 3, 1862, enclosed in Brig. Genl R. Saxton to Hon. Edwin M. Stanton, July 10, 1862, Letters Received, RG 94, NA.} Pierce reported that, notwithstanding their previous antipathy towards cotton, after some time they willingly took it up. “[T]he culture of the cotton is voluntary,” he wrote in the Atlantic Monthly.\footnote{Pierce, The Freedmen of Port Royal at 308.} But Pierce failed to mention that this “voluntary” compliance was bought at the price of a special tax of two dollars per month if they refused to plant cotton.\footnote{Rose, REHEARSAL FOR RECONSTRUCTION at 211, 225; Pierce, The Freedmen of Port Royal at 308. This recipe for land allotment mirrored that undertaken by missionaries who set up free Black villages in Jamaica in the 1830s in lots large enough to qualify Black Jamaicans to vote, but not adequate to produce a living. Catherine Hall, CIVILIZING SUBJECTS.} Thus, the new land settlement policy kept Black men tied to wage labor working on the island’s cotton plantations, exactly what the northern administrators wanted.\footnote{See Catherine Hall, Civilizing Subjects at 127.}

Renting the confiscated lands to freedmen under these conditions was merely a temporary solution to get through the 1862-63 planting season. For Saxton and Pierce, the permanent transfer of land to freed-people was the longer term goal. A range of plans was being developed both at Port Royal and in Washington for the allocation of the land confiscated from confederate loyalists. The Confiscation Act of 1862 imposed a property tax in Insurrectionary Districts to raise revenue for the war, and authorized the confiscation of land for those taxes that went unpaid. Of course, Congress knew that none of these taxes would be paid and that this measure stood on shaky constitutional ground as a way of confiscating confederate land.\footnote{Senator Collamer made an impassioned speech on the floor of the Senate arguing that the Confiscation Act was unconstitutional. Congressional Globe, 37th Cong., 2d Sess, p. 1809, April 25, 1862. The Kentucky Supreme Court held the Confiscation Acts unconstitutional in Norris v. Doniphan, 61 Ky. (4 Met.) 385 (1863). Despite disagreement about the constitutionality of the Confiscation Acts in Congress and in various state courts, the U.S. Supreme Court upheld them after the close of the war as a legitimate exercise of the war power in seizing enemy property. Tyler v. Defrees, 78 U.S. (11 Wall.) 331 (1871);}
properties were to be sold in lots not exceeding 32 acres to “loyal citizens” in fee simple.\textsuperscript{70} The auction of land seized at Port Royal was then scheduled for February 11, 1863, yet given the cost of 32 acre lots, Saxton and others worried that the freedmen would be practically prohibited from purchasing any land of their own, and that the large plots would lock in perpetuity a large-plantation economy that would continue to exploit Black labor. “I regard this law as eminently wise and just; but still it makes no provision for the negroes, who have been for so many years regarded as a portion of the live stock for the plantation, that it is not easy to separate them entirely from its future,” Saxton urgently wrote Secretary of War Edwin Stanton in December of 1862. “The prospect now is that all the lands on these sea islands will be bought up by speculators; and in that event, these helpless people may be placed more or less at the mercy of men devoid of principle, and their future well being jeopardized, thus defeating in a great measure the benevolent intentions of the Government towards them.”\textsuperscript{71} Saxton, Stanton, Chase and others desperately tried to hold off the auctions through Congressional action or otherwise.\textsuperscript{72} They fought hard to be sure that the freedmen would enjoy preemptive rights when the confiscated lands of the Sea Islands were auctioned or allotted, “Their attachment to place is a marked trait in the negro character, and in my humble opinion the enforcement of a law of this

\textsuperscript{70} An Act for the Collection of Direct Taxes in Insurrectionary Districts within the United States, and for other Purposes, 37\textsuperscript{th} Congress, Sess. II, Chapter 98, 12 Stat. 589 (June 7, 1862).

\textsuperscript{71} Letter from Rufus Saxton to Hon. Edwin M Stanton, Secretary of War, December 1862, Group 431, Series I, Box 1, Folder 1, Letterbook Headquarters - 2\textsuperscript{nd}, Beaufort S.C. 1862, Correspondence of Gen’l Saxton, June 30., 1862- October 15, 1864, Rufus and Willard S. Saxton Papers, Yale University, Manuscripts and Archives.

\textsuperscript{72} LaWanda Cox, The Promise of Land for the Freedmen, 45 Miss.Valley Hist. Rev. 413, 428 (1958); “[T]he Abolitionists and negroes’ friends up North are striving so hard to have the sale postponed ...”
kind would be the means of establishing them in permanent homes, would secure the careful cultivation of the lands allotted to them, and consequently their own independence; and in addition would furnish a large supply of willing laborers, who could be hired to cultivate the purchased lands,” wrote Saxton in 1864. In his mind, the freedmen had a right to land as reparation for enslavement and in order to adequately address their current state of impoverishment. For Saxton, the freed people already had an equitable mortgage on the land based on generations of unpaid wages:

They had been the only cultivators, their labor had given it all its value, the elements of its fertility were the sweat & blood of the negro so long poured out upon it, that it might be taken as composed of his own substance. The whole of it was under a foreclosed mortgage for generations of unpaid wages.

Saxton was joined in his sentiments by Abram Smith, one of the three tax commissioners who had been sent by Washington to inventory the land in arrears and administer the land auctions. Smith had been a tax attorney in Wisconsin and had had a hand in drafting the 1862 Direct Tax Act. Smith’s view was that the Sea Islands Blacks “did not want to go away; they were attached to their homes and wanted to stay here provided they could be free and protected. But in order to get that encouragement and hope, they must have the family organized, and a homestead must be given them – they must have land, land. A mere military title furnish [sic] no security, no permanence.” Saxton and Smith were concerned that under the President’s plan the size of the lots left in the general auction would place them well beyond the means of even

---

74 Letter of Rufus Saxton to Prof. J.J Child, March 15, 1865, Saxton Papers, Yale University.
75 Testimony of Judge A.D. Smith to American Freedmen’s Inquiry Commission, June 1863, M619 Roll -30-
the most enterprising freedmen. The result of such a land allocation scheme would be “to fix the people for a long time in the condition of a peasantry only a little higher than chattelism, and that, too, when so many of them had proved their fitness to be owners of the soil, and some their competence to manage large estates.”

In January Judge Smith traveled to Washington and met with Secretary Chase, and several members of Congress, all of whom, he reported, agreed with his concern about the dangers of the lands falling into the hands of speculators. They had Smith draft an amendment to the Direct Tax Act that would assure that the government could reserve enough lands for all of the Sea Islands freedmen. The amendment became law on February 6, 1863. When the land auction was held in March the tax commissioners held back 40,000 acres on St. Helena Parish for ongoing government use and the government bought another 20,000 acres in open bidding, leaving approximately 20,000 acres (45 plantations) for private purchase at the auction. Saxton acknowledged that the theory behind the selection of which lands would be sold, which would be reserved, and the size of lots that were auctioned “was to alternate the plantations sold to private individuals with those reserved by Government for the negroes; thus by a judicious location of houses a supply of labor will always be at hand which can be hired at reasonable wages to cultivate the land.”

200, NA, emphasis in original.
76 Report from Saxton to Stanton, December 30, 1864, at 1025 (“To put the lands at auction in large lots was virtually to place them beyond the reach of the freedmen. In a free competition of their weakness, ample means of persons eager to grasp the prizes offered here to speculation their chances could be state only by very small fractions or minus quantities.”).
77 Id.
78 Statutes at Large, vol 12, pp. 640-41.
79 Testimony of Judge A.D. Smith to the American Freedmen’s Inquiry Commission, June 1863, M 619, Roll 200, NA; Report of R. Saxton to Brigadier General M.C. Miegs, October 2, 1863, reprinted in Berlin -31-
The land bought by private parties ended up selling for an average price of $1.00 per acre. Of the 20,000 acres that was sold in open bidding and ended up in private hands at the March 1863 auction, 2,595 acres were bought by freed men and women. Some pooled their resources and bought land collectively, others bought land individually. By and large they had saved their wages working for the government and had built up savings from the proceeds from selling pigs, chickens, and eggs. Edward Pierce wrote of “Harry,” his former guide, who “bought at the recent tax-sales a small farm of three hundred and thirteen acres for three hundred and five dollars.” In fact, what had happened was much more complicated than a straight up purchase. Harry McMillan was about 40 years old, had been born in Georgia, but had been sold to Abraham Eustis, a Port Royal planter, when he was a small boy and had been a Eustis slave until federal occupation. He had served as Pierce’s “faithful guide attendant, who had done for me more service than any white man could render.” He had saved some money and was preparing to bid on a plantation called “The Inlet” on Ladies Island, a plot that he wanted very much. Edward Philbrick, one of the men brought down by Pierce from Boston to run cotton production on the Coffin plantation, the largest plantation in the Sea Islands, heard of Harry’s intentions and counseled him against it. Warning him of the risk involved in owning and running a plantation, Philbrick suggested that he, Philbrick, buy the plantation and then Harry work it for wages, while the profits from the crop would be Philbrick’s. Harry, unsure of the wisdom of this advice, consulted Laura Towne, one of the missionary teachers on the Island, and

---

80 Letter from William C. Gannett, March 14, 1863, Letters from Port Royal at 177.
82 Id.
83 Report of Edward L. Pierce to Salmon P. Chase, June 2, 1862, Port Royal Correspondence.
Captain E. W. Hooper, an aid to General Saxton for whom Harry worked as his servant. Both Towne and Hooper were furious about Philbrick’s advice. Hooper was so angry that he bid on and bought the plot in Harry’s name for about $300. Harry did not have the full purchase price, but Hooper lent it to him along with some extra cash to buy tools and equipment. Harry worked the land with his wife Celia, two daughters aged 16 and 17, and three hired hands. Pierce went to see Harry in April of 1862 and reported that he was plowing the fields with a 25 year old blind horse, led by a rope, was living in the home of the former overseer and “delights, though not boastingly, in his position as a landed proprietor.”

Saxton noted his success two years later, “Harry took the acres into his own hands, working diligently and hiring the necessary assistance & managed his affairs with so much shrewdness, judgement & success, that with the avails of his cotton crop alone he paid the price of his land, $305, the current expenses of the farm & of his family, increased his farm stock, & found himself in possession of a clear cash capital of nearly $500, & a large store of corn, potatoes, etc for future operations.”

In a manner similar to Captain Hooper assisting Harry McMillan’s land purchase, Reverend Solomon Peck, a 60-year-old Baptist Minister from Massachusetts, bought the 800 acre Edgerly Plantation for $710 for the “people of Edgerly and the adjoining Red House plantation.” They had raised $500 of their own money and he advanced the rest, which they repaid as soon as they received their back wages from the government. They surveyed the land and divided it up into plots for each of the 13 or 14 families that formed the buying cooperative, began to build homes and till the land. The first year they planted melons, corn and rice and produced more than 1,200 pounds of high quality ginned cotton. To the astonishment of

---

northern observers, they did all this without a superintendent or overseer, instead relying only on one of their own adult men, Francis, to work as foreman to oversee the common land.  

This arrangement in collective land purchase and living was rather typical of the freed people who purchased land. Relatives or households related as kin would buy land collectively, divide it up so that each household would have its own plot on which they would build a home and plant provision crops, and then keep the pastures and woodlands as commons for grazing, firewood and other collective needs. Records reflecting government-run sales of abandoned property during this period show that freed men and women were regular purchasers of cows, mules, carts wheels, buggies and other implements necessary for successful farming. On the Fripp Plantation, for instance, Plenty bought a pair of wheels for $2.00, and Cupid bought a mule for $16.00. On the Sams Plantation, both Mingo and Carolina bought cows for $12.00. As with the purchase of the land, it was not uncommon for freedpeople to buy farm implements collectively. The register of sales of the chattel from the James Fripp plantation indicates that the “people on the place” bought one whipper and one corn sheller for $5.75. Yet, with these sales, just as with the land sales, Edward Philbrick ended up buying almost everything he could get his hands on. On Coffin’s Island he bought almost 90% of the goods up for sale.  

Recall that the Confiscation Act permitted the sale of land at auction to “loyal citizens.” Thus, for the purposes of these sales, freedmen were considered “citizens” - a rather remarkable,
and historically underappreciated, fact. Indeed, their successful participation in the first Port Royal land auction may be understood as the first “acts of citizenship” by freedmen.

Philbrick, who professed to have the ex-slaves’ interests in mind, with the aid of financing from thirteen investors in Boston, bought over 7,000 acres comprising 11 plantations at the auction, and leased two more plantations from the government. In so doing, he became the largest landowner at Port Royal and controlled the labor of nearly 1,000 freed people. While this promise was later denied by Philbrick, the freedmen of Coffin Island swore that before Philbrick bought these large tracts he pledged to sell the land back to them at $1.00 an acre. 88

At this point, it was widely understood that a significant portion of the 60,000 acres of land reserved by the Government was designated to be farmed by freedmen. There was some discussion about whether it was in the best interests of the freedmen to have them farm as tenants on government-owned land, as laborers on land run by private white superintendents, or as outright owners of the land themselves. Saxton believed strongly in the latter strategy, and did much to raise those expectations in the Black residents at Port Royal. 89 “Most of the places reserved were selected for the purpose of selling land to the negroes next year, after the crop is in.” 90 Meanwhile the current year’s crop had to be planted and tilled under the labor regulations promulgated by General Saxton.

In the fall of 1863 plans began for the auctioning of the remaining land in the possession

89 Johnson, A Social History of the Sea Islands at 186.
90 Letter from Charles P. Ware, March 10, 1863, in Letters from Port Royal at 171. See also, Rose,
of the government at Port Royal. Much debate and strategizing surrounded the terms under which the land would be made available. In September 1863, President Lincoln issued orders to the tax commissioners in South Carolina that the auction take place in early 1864 in lots no greater than 320 acres, and he included a special provision reserving a large block of land to be sold in lots up to 20 acre in size for sale to “heads of families of the African race” at a rate of $1.25 per acre.\(^91\) Saxton, Smith and others sympathetic to the freed men’s interest in owning land were alarmed at these instructions, as the amount of land set aside - 16,629 acres, enough for 831 families in 20 acre lots - would not come close to meeting the needs of the remaining freed men and women who sought to own homesteads - certainly not in 20-acre parcels. Those who would be forced to bid on the land not reserved at below market prices were sure to be outbid by northern speculators. While Saxton again tried to persuade officials in Washington to reconsider the instructions, he acted aggressively on the local scene, exceeding Lincoln’s order and issuing additional instructions on November 3rd to the freedmen encouraging them to build cabins and squat on parcels of the unreserved government land that they should expect to have “a pre-emptive right in equity to the soil.”\(^92\) Saxton’s aggressive tactics infuriated two of the three tax commissioners as they did not feel their instructions presupposed the sale of land to every

\(^{91}\) Report from Saxton to Stanton, December 30, 1864 at 1025; Rose, Rehearsal for Reconstruction at 272.

\(^{92}\) Kerry S. Normand, “By Industry and Thrift”: Landownership Among the Freedpeople of St. Helena Parish, South Carolina, 1863-1870, unpublished thesis, Hampshire College (1994) p. 20; Rose, Rehearsal for Reconstruction p. 274. The Tax Commissioners designated to implement the President’s order did not take kindly to Saxton’s aggressive strategy with respect to securing land for the Freedmen. To them, he was undertaking “an attempt to get up among the Negroes a sort of ‘squatter sovereignty’ to have them stake out their lands which they want, and then make a public opinion which will frown down a bidder over a certain sum.” Id. at 275 n.6.
freedman on the Sea Islands, but only to a deserving few. At stake here, as all were aware, was a land redistribution program breaking up the old plantations that would serve as a model for the rest of the South.

Mansfield French, a 52 year old Methodist Minister from New York who had been sent to Port Royal by the American Missionary Association shortly after the federal occupation of the Sea Islands, strongly believed that ex-slaves should receive land as a form of reparation and had been attending Sunday church services all over the Port Royal area for months encouraging the freedmen’s expectations to land and urging them to stake out preemptive claims on the land they considered home and theirs by right. When word of instructions for the second auction got out, Reverend French was sent by Saxton to Washington to plead the case to Secretary Chase, one of French’s close personal friends, that more land be reserved for subsidized sales to the freed men and women of the Sea Islands. French’s arguments were persuasive, and December 31, 1863 President Lincoln instructed the tax commissioners in South Carolina to put up for auction the 60,000 odd acres that they had reserved the previous March with the instructions that those who had resided on the land for the last six months or were currently cultivating the land had a preferred right to purchase up to forty acres of land at a price of $1.25 per acre. Saxton, anxious that the Port Royal freedmen secure as much land as they could at this sale, distributed President Lincoln’s order with the encouragement: “I also recommend the people to lose no time in pre-empting their claims and in preparing their grounds for the coming harvest ... Freedmen,

---

93 Id. at 276.
94 Id. at 279.
95 Abraham Lincoln, “Additional Instructions to the Direct Tax Commissioners for the District of South Carolina in Relation to the Disposition of Lands,” December 31, 1863, War of the Rebellion, Official Records (hereinafter “OR”), Series III, Vol. IV, p. 120.
you should plow deep, plant carefully and in season, cultivate diligently, and you will reap abundant harvests. First provide for an ample supply of corn and vegetables, then remember that cotton is the great staple here. I advise you to plant all you can of it. So profitable was its culture in the old days of slavery that your former masters said: ‘Cotton is King.’ It is expected that you will show in a free South that cotton is more of a king than ever.”

Almost immediately, the tax commissioners’ office was inundated with pre-emption claims signed with an “X” by freedmen. Within two weeks over 1,000 Black families had filed applications for up to 4,000 acres and deposits of $8,000 with the tax commissioners. They began to build small cabins on the land they claimed and started planting provision crops. Others who had no plans to farm the land staked out claims with the intention to resell the land at a substantial profit - they had learned the game of land speculation from the example set by their northern white tutors. Some freedmen had accumulated money from working as plantation hands for the government, and many had earned extra money as truck farmers, selling fish and chicken to the superintendents and soldiers. William Gannett wrote in 1862 that a freedmen named Limus had earned four or five hundred dollars since Union occupation; “He is ready to buy land, and I expect to see him in ten years a tolerably rich man. Limus has, it is true, but few equals on the islands, and yet there are many who follow not far behind him.”

Another agent reporting on the financial state of the Sea Island freedmen wrote that “I know one man on St. Helena island – a slave formerly on an adjoining plantation – who now owns a farm of 315 acres,

---

96 Rufus Saxton Report, February 7, 1864, OR, Series III, Vol. IV, p. 120.
97 Letter of Rufus Saxton to Charles Sumner, December 6, 1863, Saxton Papers, Yale University; Pearson, Letters from Port Royal, pp. 230, 247; Mary Jennie McGuire, Getting Their Hands on the Land: The Revolution in St. Helena Parish, 1861-1900, unpublished dissertation, University of South Carolina 1985) pp. 75-76.
works twenty laborers, has twelve cows, a yoke of oxen, four horses, twenty swine; and he showed me, with very pardonable pride, his fifty-eight acres of the best sea-island cotton I saw anywhere ... There are a number of men on Edisto and the other sea-islands who are only waiting the action of government in permitting them to have lands to engage in similar operations.”  

The entrepreneurial spirit of many of the freedmen was unambiguous and needed no cultivation from the northern tutors who had come to teach them to be good capitalists. When a representative of the New York National Freedmen’s Relief Association sought to understand “Why, Sambo, you work much harder now than you did for Master?” a freedmen responded: “We used to work for the lash, now we works for the cash.”

In anticipation of the second auction, scores of federal surveyors were busy at work trudging through the Sea Island marshes marking out perfect rectangular plots. The tax commissioners described St. Helena Parish as “comprising islands of irregular form, and of various size, serrated by firths and coves, occupied with plantations of every conceivable shape, with landmarks obliterated and boundaries obscured, if not entirely demolished.”

This absurd project of imposing modernist order on the chaotic topography ignored existing plantation boundaries that had been in place, in some cases, for well over a hundred years and which respected the unruly salt marsh terrain. Speaking of the land in pejorative terms that echoed the judgment in which the missionaries held the Black residents of the Sea Islands, the Commissioners sought to civilize the land through surveyance, “to bring order, distinctness,

100 Brief History of the New York National Freedmen’s Relief Association at 8.
101 Preliminary Report from the Tax Commissioners of South Carolina under the act of Congress June 7,
definiteness, valuation, assessment and adequate certainty of description."\(^1\)

No one found the surveyors project more absurd than the Black people of St. Helena. They refused their help in identifying property lines and landmarks, and instead resisted this ludicrous project by following behind the surveyors pulling up survey markers. Much was at stake for these people who were busy laying their own claim to this land they considered home. They expected to bid on plots of land they were familiar with, not absurdly concocted rectangles fashioned in the style of French *arrondissements*. This was land that they had worked and on which they had shed blood and tears for their whole lives, indeed property lines ran the same course as blood lines for the Sea Island Black people. The old plantation boundaries told you who your kin were in this system. “The new land lines were laid down as if the land were virgin, unpopulated, free for the taking. When the freedmen saw this, they felt uprooted, alienated from their rights.”\(^2\) The Black people of the Sea Islands were confounded by the way the white northerners related to property. An elder from a local church told one of her northern teachers: “We born here; we parents’ graves here; we donne oder country; dis yere our home, antee? What a pity dat dey don’t love der home like we love we home, for den dey would neber come here for buy all way from we.”\(^3\)

Others who had not earned as much as Limus pooled their resources and, as in the last

---

\(^1\) Preliminary Report from the tax commissioners of South Carolina under the act of Congress June 7, 1862 at 2, 37\(^{16}\) Congress, Sess. III, Exec. Doc. No. 26 January 1, 1863.

\(^2\) Rosengarten at 267. Theodore Rosengarten and William Allen, a Wisconsin school teacher and song collector who left a remarkable diary of his time on the Sea Islands, offer very moving accounts of the freedmen’s views toward the land. The William F. Allen Diary, State Historical Society of Wisconsin, Madison, Wisconsin.

auction, planned to bid on land as clubs. Meanwhile Saxton was inundated with inquiries from northern speculators interested in buying land at the next auction. To Saxton’s horror, someone had placed an advertisement in the *American Agriculturist* magazine announcing the land auction and listing Saxton as the person to contact for more information. Saxton wrote them all back, discouraging their participation in the land sale with well-meaning exaggeration. He tried to ward off these investors looking for a fast buck by telling them that there were so many Black people who had preempted plots that “the amount and quality of the lands remaining after the preemption claims are satisfied will not be thought worth very sharp competition.”

Unfortunately, two of the three tax commissioners did not share Saxton’s view that the Port Royal properties were best allocated to the freedmen, and they refused to accept the freedmen’s money or recognize their land claims. After much wrangling both locally and in Washington, in February Secretary Chase reversed the December auction instructions, including the pre-emption provision and instructed that the sale go forward as previously set out. When the auction finally took place, Saxton’s worst fears were realized. “The auction sales held under the first instructions, were the very carnival of speculators and sharpies. They were here in

105 Johnson, A Social History of the Sea Islands at 190.
106 Letter of Rufus Saxton to Mr. George H. Lambert, January 13, 1864; Letter to Mr. Joseph Pettince, Brooklyn, N.Y., February 26, 1864, Saxton Papers, Yale University.
107 “There has been the most disgraceful squabbling among the tax commissioners, General Saxton ... and other authorities. The people are the victims. At first most of the lands were to be sold at auction in large lots; that brought in white settlers – and only a little was for negro sales. Then one commissioner sends up to Washington, gets orders for a Western preëmption system, and with a grand hurrah the negroes were told to go and grab the lands. The other commissioners then throw all possible obstacles in the way till they can get dispatches up to Washington too, and the answer comes back, – Preëmptions don’t count, sell by auction.” Letter from William C. Gannett, February 22, 1864, Letters from Port Royal at 254.
swarms, Jew and Gentile, with claws sharpened for a clutch at the fat carcass,” wrote Saxton.108

“The farms, reserved for educational purposes, & some plantations, were offered for lease by the Commissioners. Eleven of these were leased to one individual, – Irving, I believe of N.Y., who was among the most eager of auction bidders – although negroes had applied for them, with the money in their hands for the payment of the rent.”109 The land was sold at an average of $11.00 an acre and a high price of $20.00 per acre, well beyond the means of most of the freedmen.110

White buyers, mostly outsiders to the Port Royal experiment, bought close to 100,000 acres, while 110 Black families bought 2,750 acres of land, both individually and collectively, largely from the tracts that had been reserved for subsidized sale. Few freedpeople were able to meet the prices that had been established in the open auction, given the competitive bidding and the land being sold in very large lots. A notable exception was the sale of the 614-acre Thomas James Fripp plantation to a group of Black families and the sale was registered with a shared heads of family certificate.111 So too, freedpeople bought a 280-acre farm on Wassa Island for $2,100 and Bolus Point, a 190-acre tract, for $1,250.112 But such large purchases were unusual, by and large freedpeople who were able to buy land ended up with 20, 10 and 5 acre plots, if they got any land at all.

The open auction was one heartbreak after another for the freedpeople of the Sea Islands. Pooling their resources for the open auction freedmen bid $2,000 for the Ashdale tract but were outbid by a white man who got it for $2,550. The people who resided on a 300 acre farm on

108 Letter of Rufus Saxton to Mr. C.C. Leigh, April 1, 1864, Saxton Papers, Yale University.
109 Id.
110 Prices ranged from $5.00 to $20.00 per acre. See letter from William C. Gannett, Letters from Port Royal at 254.
111 Magdol, A RIGHT TO THE LAND p. 177.
Dathaw Island bid $3,100 for their home, but lost it when the property went for $3,500. The freedpeople of Bluff farm lost out to a white northerner when he bid $3,025, besting their $2,000 bid. "A plantation on which the people have always resided, and who by industry and frugality had saved up two thousand dollars, their little all to buy it back lost to them at the sale because some speculator bid $2,500. They are now homeless, except at his mercy, and God help them when they are in the power of a man who could do them such a wrong," wrote Saxton to Senator Sumner. Over and over the freed people lost control of their homesteads, their crops and the land they had hoped to make their own.

In the end, just over 1,000 Black families were able to buy land at the two auctions, a fraction of the freedpeople who had selected plots, planted crops, and made down payments. Their devastation cannot be overstated, "the disappointment to them is almost unbearable. They see neither justice nor wisdom in such treatment," wrote Reverend Mansfield French to the head of the Commissioner of Internal Revenue in Washington. As Saxton described it, "The action of the commissioners proved a sad blow to their hopes, and the disappointment and grief of all were in proportion to their previous exaltation in the hope of soon becoming independent proprietors, free men upon their own free soil; for the attachment and love of the soil is one of the marked traits of the negro character."

112 Id. p. 156, 177.
113 Id. p. 177; Rose, Rehearsal for Reconstruction, pp. 287-290.
114 Letter of Rufus Saxton to Charles Sumner, December 6, 1863, Saxton Papers, Yale University.
115 Report from Saxton to Stanton, December 30, 1864, at 1026; Rose, Rehearsal for Reconstruction at 290.
117 Report of Rufus Saxton to Edwin Stanton, December 30, 1864, War of the Rebellion, OR, Series III,
Not surprisingly, the freedmen were outraged by their land being sold out from under them. What is worse, shortly after the land auction, the government, desperate for cash, set out to appraise and then auction all of the other chattel that had been found on the plantations. Some of the freedmen who had lost out in the land auction organized themselves and bought at auction all the work animals and farm implements on the plantations on which they lived and worked - outbidding the white owners who had spent all of their money buying land. This cleaver strategy infuriated the likes of William Gannett, a young Unitarian teacher from Boston, who ran two plantations owned by fellow Bostonian Edward Philbrick. William Gannett wrote of this period: “At the sale of abandoned chattels in the spring of 1864, the negroes carried off nearly the whole stock of some estates, bidding against white men. On a single plantation three men paid each upwards of two hundred dollars for the horse that was to “call him massa”.

Edward Philbrick and Henry Brisbane, the chair of the Tax Commission, had had a plan for the distribution of the Sea Islands land, and in the end they more or less prevailed. As Saxton described it to a friend, “Their idea of complete justice to the negroes, in present circumstances, is to get the bulk of the land into the hands of white men – Christian philanthropists & special lovers of negro humanity as all white Yankees are – & to allot to the negroes enough – their estimate is 2 acres apiece – to raise their own hominy, thus save the planter all expense for their subsistence. This is an experiment, in its lowest terms, of the ability of the negro to take care of himself. Then, as the negroes, in their new conditions of freedom, will be likely to want

Vol. IV p. 1026.
something more than hominy, it is calculated that he will go for it where only he can find it, to the planters’ cotton fields.”119

The Black people who had lost out at the land auctions were not only devastated; they were angry and in many cases were not going to quit their homesteads willingly. Resistance to the new white owners was not uncommon. E.P. Hutchinson had bought land at the action and reported that when he came to Port Royal from Massachusetts and tried to enter his land the people he had outbid tried to shoot him and warned him not to come near the place.120 When Mansfield French urged the freedmen to defend their claims with hoe handles, troops were deployed to protect the white purchasers who sought to take possession of their newly bought land.121

The freedmen used every means they could imagine to remain on the land they regarded as their own - land that many felt they already owned by virtue of an equitable interest acquired through years of labor and suffering while enslaved. Once it became clear that the tax commissioners were committed to frustrating their expectations to own the land they had staked out, nineteen freedmen signed a petition to be delivered to President Lincoln demanding that he intervene to set matters right, particularly with respect to Philbrick’s refusal to make good on his promise to sell his land back to them for $1.00 an acre. “Wee hav gon to Mr Philbrick & Ask’d him to sell us our Land, and get for an answere he will not sell us one foot, & if he does sell to

119 Letter of Rufus Saxton to Mr. C.C. Leigh, April 1, 1864, Saxton Papers, Yale University.
any one he will charge $10.00 Ten Dollars pr Acre. Wee have work’d for Mr Philbrick the whole year faithfully, and hav received nothing comparatively, not enough to sustaine life if wee depended entirely uppon our wages ... Why did Government sell all our Masters Land’s to Mr Philbrick for so trifling a sume; we are all redy & willing of truth anxious to buey all our Masters Land, & every thing upon them; and pay far more than he did for them.”

Upon receipt of the freedmen’s petition Secretary Chase dispatched special agent Austin Smith to investigate the complaints the freedmen had lodged against Philbrick. Besides his refusal to sell them the land he had bought at the first auction, they also claimed that he was grossly underpaying them for their work, overcharging them for goods sold at stores he ran, and in one case flogged a young girl in contravention of Saxton’s orders that no whipping or physical punishment be used on lands owned by either government or private parties in the areas under his command. At this point Philbrick owned eleven plantations on which about nine hundred people were living, of which 371 were adult working hands. Smith wrote a report of his investigation, confirming that Philbrick had represented that he had bought the land “for the benefit of the freedmen,” and that “Mr. Philbrick promised to let the negroes have lands for homes, when the war should close.” Smith did not doubt the veracity of this promise, but urged the Treasury Secretary to arrange to have the land transferred to the freedmen sooner rather than later, “I think it would be better if their hopes were no longer deferred.” He also affirmed the notion that the land be sold at the promised $1.00 per acre price. “In view of the large profits realized upon the investment, these gentlemen can well afford to grant homesteads to these people at a nominal price. Justice & equity demand that the freedmen should be provided with

122 Petition to his Excelnecy Abraham Lincoln from John H. Major and 18 others, 1 March 1864, reprinted -46-
homes, [and that they should be regarded] as having an equitable lien upon the lands of their masters for compensation for what they had done. If the law does not hold these men to the fulfilment of their promises, public opinion will." Would that Austin Smith had had greater power, for neither the law nor public opinion forced the satisfaction of Philbrick’s promise.

In the aftermath of the tax sales, freedmen who had not been able to buy land were faced with either entering into labor contracts with the new owners or being ejected from the land altogether. Given their attachment to the land and their poverty most of them entered into written labor contracts to work their land for wages. Saxton was very concerned that the freedmen would be taken advantage of and thus ordered that all labor contracts be in writing and were subject to his approval. The freedmen’s bitterness and disappointment manifested itself in resistance to enter into labor contracts with the white men who were buying the land, and complaints about how much they were being paid. Freedmen on four islands refused to enter into contracts of any form. Some of them were so adamant that they preferred to walk away from their homes rather than contract with their former masters. On St. Catherine’s Island, eighty men, women and children left the cotton in the fields and their household goods in their houses and rowed to Savannah rather than be tied by contract to white land owners. In Colleton district the freedpeople gathered their cotton, slaughtered the livestock, cut all the timber and headed off to Charleston. Other freedmen tore up bridges to impede the return of the white planters, armed themselves and were ready to fight, and took returning planters prisoner in

124 Brig. Genl R. Saxton to Hon. Edward M. Stanton, 30 Dec. 1864, RG 94, Letters Received, NA.
defense of their claim to the land they felt was rightfully theirs.\footnote{125} None of them was interested in working for wages and many made pleas to Saxton that, at a minimum, they be allowed to rent land and work it autonomously. Given that the government still possessed enormous tracts of land, the freedmen continued to assert demands for their forty acres. A new development at Port Royal brought this issue back into focus.

* * *

Beginning Christmas night of 1864, thousands of cold, tired, hungry and sick freedmen sought refuge on the South Carolina Sea Islands.\footnote{126} These refugees from enslavement came to be known as “Sherman refugees,”\footnote{127} as tens of thousands of them accompanied General Sherman’s troops on his great march to the sea. After some time he found them a hindrance to his military operations,\footnote{128} and sought some means by which to address both their destitution and his need to continue his mission. On January 12, 1865 Sherman and War Secretary Stanton gathered twenty Black leaders at Sherman’s headquarters and asked their views on how he should address their problems.\footnote{129} Among the issues they discussed was the settlement of “Sherman’s refugees” on abandoned land, as the freedmen continued to express a strong desire

\footnote{125} New Orleans Tribune, November 20, 1895; New York Herald, October 22, 1865; Magdol, A Right to the Land pp. 164-166; Williamson, After Slavery, pp. 63, 82 - check this.
\footnote{126} “On Christmas night seven hundred cold, shivering, and hungry freedmen of all ages came into Beaufort ... The homeless ones were ‘in a state of misery which would have moved ... a heart of stone.’” Rose, Rehearsal for Reconstruction at 321.
Draft – Not for Circulation or Citation with Author’s Permission

for land, “[t]he way we can best take care of ourselves is to have land, and turn it and till it by our own labor ... We want to be placed on land until we are able to buy it and make it our own.” 130 Stanton asked them whether they would prefer to be settled in communities of mixed white and Black people or in areas restricted to “Negroes” entirely. To Sherman’s surprise, the freedmen present were virtually unanimous that they preferred to live alone, apart from white people, “for there is a prejudice against us in the South that it will take years to get over.” 131

Five days later, General Sherman issued his famous Special Field Order No. 15, reserving exclusively for Black settlement the entire Sea Island area, as well as a strip of land thirty miles wide from the coast inward and bounded from the north at Charleston and the St. John’s River on the south. 132 On this land, Sherman ordered, “no white person whatever, unless military officers and soldiers detailed for duty, will be permitted to reside,” and the freedmen were left to their own control. 133 “The negro is free, and must be dealt with as such.” 134 Each respectable family

130 Id. at 39; Hoffman, From Slavery to Self-Reliance at 20. These demands were reflected in editorials in The Anglo-African Magazine on January 2, 1864; March 19, 1864; April 16, 1864 and June 4, 1864.
131 Special Field Orders, No. 15, Headquarters Military Division of the Mississippi, 16 Jan. 1865, Orders & Circulars, ser. 44, Adjutant General's Office, Record Group 94, National Archives; Rose, Rehearsal for Reconstruction at 327.
132 “The islands from Charleston, south, the abandoned rice fields along the rivers for thirty miles back from the sea, and the country bordering the St. Johns river, Florida, are reserved and set apart for the settlement of the negroes now made free by the acts of war and the proclamation of the President of the United States.” War of the Rebellion, Official Records, Series I, vol. 47, Part II pp. 60-62 (January 16, 1865).
133 “At Beaufort, Hilton Head, Savannah, Fernandina, St. Augustine and Jacksonville, the blacks may remain in their chosen or accustomed vocations--but on the islands, and in the settlements hereafter to be established, no white person whatever, unless military officers and soldiers detailed for duty, will be permitted to reside; and the sole and exclusive management of affairs will be left to the freed people themselves, subject only to the United States military authority and the acts of Congress. By the laws of war, and orders of the President of the United States, the negro is free and must be dealt with as such. He cannot be subjected to conscription or forced military service, save by the written orders of the highest military authority of the Department, under such regulations as the President or Congress may prescribe.
was to be allotted 40 acres of tillable land. 135

In the following months 485,000 acres were divided up among 40,000 freedmen. At this point titles had already been issued for almost all of the land on St. Helena Island at the two auctions, and Sherman’s Field Order exempted Port Royal Island from his land resettlement program. This left Edisto 136 and Hilton Head Island, plus a few smaller islands, with land subject to Sherman’s Field Order #15, and most of the plots were much smaller than 40 acres. Given the number of Port Royal freedpeople who had not gained land at the auctions and the amount of Port Royal land available for Sherman’s settlement plans, many of Port Royal’s Black population that sought land through Sherman’s Field Order were faced with choosing between Sea Island contract-wage labor or establishing homesteads on the mainland on land seized by Sherman’s order. No doubt this was a wrenching decision for them, particularly since most of them had never set foot off the islands. Saxton and others told them: “In selecting your lands, Domestic servants, blacksmiths, carpenters and other mechanics, will be free to select their own work and residence, but the young and able-bodied negroes must be encouraged to enlist as soldiers in the service of the United States, to contribute their share towards maintaining their own freedom, and securing their rights as citizens of the United States.” Id.

135 “Whenever three respectable negroes, heads of families, shall desire to settle on land, and shall have selected for that purpose an island or a locality clearly defined, within the limits above designated, the Inspector of Settlements and Plantations will himself, or by such subordinate officer as he may appoint, give them a license to settle such island or district, and afford them such assistance as he can to enable them to establish a peaceable agricultural settlement. The three parties named will subdivide the land, under the supervision of the Inspector, among themselves and such others as may choose to settle near them, so that each family shall have a plot of not more than (40) forty acres of tillable ground, and when it borders on some water channel, with not more than 800 feet water front, in the possession of which land the military authorities will afford them protection, until such time as they can protect themselves, or until Congress shall regulate their title.” Id.

136 After the cotton crop was planted in 1862, the freedmen living there had been evacuated to other islands in July 1862 when the troops defending the island from rebel incursions had been withdrawn to aid in the defense of Washington City. Edisto Island remained unsettled until the spring of 1865 when Saxton began relocating families there pursuant to Sherman’s Field Order. Within a year, roughly 2,300 families had established Edisto homesteads, albeit with possessory titles. Records of the Assistant
be sure to get such as were owned by men who have taken up arms against the government or
aided in the rebellion or have abandoned the plantations — then you can be sure to keep your
land."  Saxton, who had been charged with settling Sherman’s Refugees, was skeptical about
the integrity of these land grants, as Sherman’s order promised only possessory titles to the
freedmen. He undertook this task quite reluctantly, as he feared he would be responsible for
disappointing the freedmen once again in their claims for land.

Little more than two months later Congress passed a law establishing the Freedmen’s
Bureau, and, in effect, statutorily authorized Sherman’s field order by permitting the new Bureau
to divide up the confiscated land into 40 acre lots. They did not, however, reserve these lots
exclusively for freedmen, but instead authorized their lease or sale to freedmen, refugees and
other male citizens. These lots were to be leased for three years, at which point they could be
sold by the government with “such title as it could convey.” Thus the Freedmen’s Bureau Act
acknowledged the fact that the confiscated or abandoned land that had been seized by the Direct
Tax laws and the Confiscation Act was vulnerable to legal challenge. Significantly, the final

Commissioner for the State of South Carolina, BRFAL, M 869, Roll 34, NA.
137 Hoffman, From Slavery to Self-Reliance, p. 21.
138 “In order to carry out this system of settlement a general officer will be detailed as inspector of
settlements and plantations, whose duty it shall be to visit the settlements, to regulate their police and
general management, and who will furnish personally to each head of a family, subject to the approval of
the President of the United States, a possessory title in writing, giving as near as possible the description
of boundaries, and who shall adjust all claims or conflicts that may arise under the same, subject to the
like approval, treating such titles altogether as possessory.” Special Field Orders, No. 15, Part V; War of
139 “Several occurrences had led them to doubt our good faith,” he wrote Stanton on December 31, 1864.
140 38th Congress, Session II, Chapter 90, An Act to Establish a Bureau for the Relief of Freedmen and
Refugees, Statutes At Large XIII, March 3, 1865.
141 LaWanda Cox provides a thorough reading of the integrity of the government’s title to abandoned and
confiscated lands, as well as to the legislative history of the land provisions of the first Freedmen’s
Bureau Act. Cox, The Promise of Land for the Freedmen at 413-440; see also, Paul A. Cimbala, The
version of the bill provided governmental responsibility for the education and general welfare of the freedmen, but it did not establish government-operated plantations. This resolution of the issue of the oversight of the freedmen’s labor put to rest, at least temporarily, an issue that had received much debate both inside the government and among private parties: Would the freedmen’s transition from enslavement to free labor be best facilitated by the establishment of government owned plantations, independent Black yeoman farmers working land they owned themselves free from white involvement, or private (white) owned plantations on which freedmen would work as contract laborers? The later plan became the blueprint for Black freedom in the post-Civil War period.

Lee surrendered to Grant at Appomattox in April 1865, while the freedmen began their spring planting on the land they had been allotted under Sherman’s Order and the Freedmen’s Bureau Act. Nevertheless, they proceeded with caution, not sure what the end of the war would mean for them, their freedom and their land. They had placed so much trust in Lincoln, that his assassination in May shook much of their confidence in the stability of their newfound freedom. Edwin Ruggles, one of the “Gideonites” who had come down to Port Royal from New York in March of 1862 to teach the freedmen, observed that “The death of Lincoln was an awful blow to the negroes here. One would say, ‘Uncle Sam is dead, isn’t he?’ Another, ‘The Government is dead, isn’t it? You have got to go North and Secesh come back, haven’t you? We going to be slaves again?’ They could not comprehend the matter at all – how Lincoln could die and the Government still live. It made them very quiet for a few days.”

This insecurity was

Freedmen’s Bureau, the Freedmen, and Sherman’s Grant in Reconstruction Georgia, 1865-1867, 55 J. Southern Hist. 597 (1989).

142 Letter from T. Edwin Ruggles to Charles P. Ware, May 6, 1865, Letters from Port Royal at 310-11.
reinforced by the return of some of the former white planters who had fled when Sherman’s troops took Port Royal in 1861. The former confederate owners of the Sea Islands land wanted their land back, and the freedmen were determined not to abandon the lots that they, and Saxton, felt were rightfully theirs.

The freedmen’s fears about the federal government’s commitment to their land claims without Lincoln in the White House were realized when President Johnson issued an Amnesty Proclamation on May 29, 1865. Not only did he grant amnesty to all former confederates (except confederate military and political leadership) upon the signing of the “Iron Clad Oath” of allegiance to the United States, but he included “the restoration of all rights in property, except as to slaves.” Thus, the new President set up an even more complicated set of problems related to land claims. Did the March 3, 1865 Freedmen’s Bureau Act or the Amnesty Proclamation control the disposition of land subject to Sherman’s field order? After consulting with Stanton, Saxton and the Attorney General, the Commissioner of the newly created Freedmen’s Bureau, General O.O. Howard, issued an order that the lands set apart for the freedmen in the March 3, 1865 Act were not subject to the Amnesty Proclamation, and that the Bureau should continue to convey the land to freedmen in 40 acre lots. This work proceeded even though it was not clear whether the title they were conveying could withstand legal challenge from the pardoned rebel planters who sought the return of their confiscated land.

In mid-August President Johnson stepped in and put an end to the Bureau’s attempts to undermine the restoration of planters’ land envisioned by his Amnesty Proclamation. He

---

143 The Nation, The South As It Is, November 30, 1865, 682-83.
instructed the Bureau to restore land to pardoned Confederates. Howard sought to comply
creatively with the President’s order, issuing a new circular to his agents ordering them to restore
all abandoned property, but to retain within the Bureau’s control all property for which
confiscation proceedings had been commenced.146 This infuriated Johnson, and he personally
issued an order in September to all Bureau agents demanding that they restore all land except
that which had already been sold under a court decree. Prior to Johnson issuing this order
Howard had worked hard to gain a modification that would condition the restoration of lands on
the grant of plots to the freedmen in possession of those lands. Johnson found this suggestion
amusing and rejected it out of hand.147

Almost immediately, Saxton’s office at Port Royal was overrun with former Confederate
planters seeking to get their land back. General Howard arrived shortly thereafter to deliver the
terrible news to the freedmen. His task was made all the more difficult by the fact that his aim
was to make them leave their farms, but not the island, as it was the Johnson administration’s
goal that they would work as contract laborers for the planters who were back in possession of
their land. None of this would sit well with the freedmen. “One of the strongest motives
preventing the making of contracts, is the hope of possessing land of their own.”148 So too, they

146 Id. at 95.
147 William S. McFeely, Yankee Stepfather: General O.O. Howard and the Freedmen 133 (1968). The
struggles in Washington between the various actors in the Congress and the Executive Branch, resulting
in conflicting instructions to the officers in the field, in many cases never made their way to the field
officers, many of whom held the belief that no policy was being set with respect to settling the land
claims of either the freedmen or the returning white planters. See e.g. Report of Brev. Brig. General C.H.
Howard to Maj. General O.O. Howard, December 30, 1865 at 125 (“Now the old owners are returning
and the freedmen are unwilling to give up the land; in fact. I am not aware that any order has been issued
requiring them to relinquish it.”).
were “reluctan[t] to work under overseers especially the same overseers they had had in slavery.”\textsuperscript{149} Bureau officials reported that “planters coming to claim lands in some cases find the people unwilling to give them up.”\textsuperscript{150} In response to the influx of returning planters, the freed people held meetings and signed written pledges not to contract with any white owners.\textsuperscript{151}

At these meetings, General Howard found the freedmen well organized and very articulate in their resistance to a contract labor system. “The freedmen of Edisto, having organized resistance to being deprived of their farms, claimed that no one could force them to work for their old masters. The freedmen held regular weekly meetings, and when they heard of Howard’s approach, they gathered in a large church on the island to tell the Commissioner that they would not be put off their lands.”\textsuperscript{152} The angry and desolate group refused to come to order until a Black woman began to sing “Nobody knows the trouble I feel – Nobody knows but Jesus.”\textsuperscript{153} After all joined in singing, the group came to order. They were adamant in their demand to own the land they worked. They regarded the proposed contract labor system as a return to slavery.

Howard empathized with their position, and, in his first public break with the Johnson administration, indicated that an appeal must be made to Congress to buy land on their behalf if

\textsuperscript{149} McFeely, Yankee Stepfather at 133.
\textsuperscript{150} Report of James C. Beecher Capt Hodges, December 1, 1865, RG 393, Part 1, entry 4112.
\textsuperscript{151} Id.
they were not to be awarded the land that had been abandoned or confiscated.\textsuperscript{154} Howard probably got this idea from Saxton, who had previously urged the General to pursue this course, as he felt strongly that it was “an act of gross injustice to deprive the freedmen of these lands now.”\textsuperscript{155} Howard saw to it that the local Bureau officers dragged their feet in restoring land to the returning rebels. In particular, they would not award any land to a former white owner who had not yet entered into a contract with the freedmen who would work the land. A rather clever ploy since the freedmen were refusing to sign labor contracts, leaving the whole process at a standstill. Further complicating matters, if he were to get their land back planters had to agree to leave the existing crops to those who had planted them.\textsuperscript{156}

Shortly after the Thirteenth Amendment abolishing slavery became effective in December 1865, the radicals in Congress turned their attention to another Freedmen’s bill. Among their priorities was extending the life of the Freedmen’s Bureau, securing funding for its activities, and statutorily recognizing the Sherman land grants. Both houses passed bills by large majorities that confirmed Sherman’s field order and converted the possessory titles into valid deeds. It also authorized the President to reserve three million acres of public land in the

\textsuperscript{152} Id. at 141.  
\textsuperscript{153} Id.  
\textsuperscript{154} Id. at 143. Saxton had urged Howard upon the same course in a report he gave the General in December of 1865. “Inasmuch as the faith of the government has been pledged to these freedmen to maintain them in the possession of their homes, and as to break its promise in the hour of its triumph is not becoming of a just government, which can only live in the hearts of its whole people, I would respectfully suggest that a practical solution of the whole question of lands ... may be had by the appropriation of money by Congress to purchase the whole tract set apart by [Sherman’s Field Order], and have a fair and liberal assessment of its value made, and offer to pay to the former owner that sum, or give him possession of the land, as he may elect. In case he should prefer the land to the money, then pay the money to the freedman who occupies it.” Report of General Rufus Saxton to Maj. General O.O. Howard, December 6, 1865, Sen Exec. Docs. 27, 39th Cong. 1st Sess. (1865-66) at 141.  
\textsuperscript{155} McFeely, Yankee Stepfather at 146.  
\textsuperscript{156} Bentley, A History of the Freedmen’s Bureau at 99-100.
South to make good on this promise.

Johnson was indisposed to sign the bill, and even before it had been voted on by Congress, he consulted General Sherman about the Field Order No. 15 land grants and whether he had intended that they be binding. Sherman responded: “I knew of course we could not convey title to land and merely provided ‘possessory titles’ to be good so long as war and our Military Power lasted. I merely aimed to make provision for the negroes ... leaving the value of their possessions to be determined by after events or legislation.”

On February 19, 1866 Johnson vetoed the bill, arguing in his veto message that it was unnecessary. There were not enough votes in Congress to override Johnson’s veto.

Almost immediately thereafter, Johnson arranged for the Bureau to come under the control of the occupying military command in the South. As a result, the military seized control of the land restoration process. At Port Royal, they assured the repossession of the land by the former owners, and those freedmen who refused to enter into labor contracts were forced to leave the islands.

The Congressional radicals regrouped and were able to pass another version of the Freedmen’s bill in July that would overcome Johnson’s veto. Yet this bill contained a more timid approach to the Sherman land grants. Those freedmen who had been ousted from the Sherman lands would have no claims to redeem those land grants, but instead were permitted to lease twenty-acre lots on other government-owned lands, with a six-year option to buy.

---

157 Id. at 118-19.
158 Rose, Rehearsal for Reconstruction at 357.
month before the Second Freedmen’s Act became law, the Congress passed the Southern Homestead Act that addressed some of the land allocation issues that had appeared in earlier unsuccessful legislation.\textsuperscript{160} The new Homestead Act opened up public land in Alabama, Mississippi, Louisiana, Arkansas, and Florida for homesteading in 80 acre plots. It prohibited ex-confederates from applying for land until January 1, 1877, and included a provision prohibiting discrimination on the basis of race or color. This land grant program fell well short of what the freedmen would have seen had their Sherman titles been honored. Land without tools, farm animals, and seed was of little productive value.\textsuperscript{161} Perhaps more important, however, land was not a fungible good to the freed men and women of Port Royal who had lived their entire lives on the isolated Sea Islands plantations. This was home, their families were buried here, their kin were here, and they spoke a dialect quite in comprehensible to outsiders - a combination of English and West African languages. For people who had never set foot on the mainland, abandoning the Sea Islands on the basis of a promise by the government for a plot in Arkansas or Florida was unimaginable for most of them, not to mention the fact that they had little reason to trust the government after so many broken promises. That mistrust in this case, as before, was not mislaid, as most of the land made available by the Homestead Act was of very low quality, often mostly sand and rock. In the end, out of 23,609 homesteads awarded under


\textsuperscript{161} Ironically, many of the freedmen’s farming implements had been confiscated or pillaged by Union soldiers as they moved through the south during the war. Dylan Penningroth has provided a careful account of the freedmen’s efforts to receive compensation from the Southern Claims Commission for their property stolen by union troops. Dylan Penningroth, The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South (2003).
the Act, General Howard reported that by 1870 only 4,000 were for freedmen’s families.\textsuperscript{162}

In any event, this aid from Congress was too little, way too late. By then, virtually all of the land temporarily owned by freedmen under Sherman land grants had been repossessed by their former owners. On January 16, 1865 Daniel Middleton along with 18 other freed men and women had received possessory titles for 40-acre lots from Saxton on what had previously been the Whaley plantation on Edisto Island. They planted an ample cotton crop in for the 1885-1886 season, however in the mid summer of 1866 Whaley rented the land to Heinrich Herman van Houten. Two months later van Houten seized all the cotton that the freedmen had harvested and locked it up where they couldn’t get at it. Middleton and his colleagues filed an action in the Charleston District Court to recover the cotton van Houten had taken. The extant court records are unclear as to whether the Middleton plaintiffs won their lawsuit. Tragically, the complaint asked only for compensation for the seized cotton, not for the enforcement of their Sherman titles to the land. One has to assume that they had been advised that the best they could hope for was the proceeds from the cotton.\textsuperscript{163}

Middleton’s experience was not unusual. In many cases freed people, forced to enter into contracts with white planters, found the planters unwilling to live up to their contractual obligations. In March of 1865 the Mayor of Port Royal reported that “There are other deceptions and impositions practiced upon the freedmen, such as letting land to them pretendingly (sic) on shares, then for some pretend offense committed after the crop ‘is made’, driving them from the

\textsuperscript{162} McFeely, Yankee Stepfather at 213.
\textsuperscript{163} Provost Court, Sea Islands, S.C. Edisto Island, Nov. 28, 1866 (Morris and Finnick cases), Provost Court, Sea Islands, Charleston, S.C., December 22, 1866 (Clark case), RG 393, Entry 4257, Box 1, NA.
plantation, seizing and taking the whole of the crop from them.”

Provost Court records from November of 1866 indicate that Samuel Morris and 27 other freedmen who had contracted to work for Mr. van Houten sued him for breach of contract for his failure to pay them at the end of the growing season. The court ordered him to pay them and to pay the court costs. Another entry shows that Richard Finnick and five other freedmen and successfully sued van Houten for the same problem. Similarly, John Clark and nine of his co-workers sued George Lee in December of 1866 for firing them in November without paying them a cent. They too won their wages. After repeatedly breaking promises to the freedmen about their right to the land, what they were left with was not property, but a cause of action to collect owed wages.

Notwithstanding the tireless efforts of devoted Bureau officials, the Port Royal experiment in freedom in the form of land ownership and economic independence from white people had come to an end. In a matter of months the Johnson administration transformed a radical experiment in Black land ownership into the testing ground for contract labor, and converted the land reallocation project into one of land restoration. From this point forward, freedom in general, and free labor in particular, took the form of legally binding labor contracts between a class of Black peasant agricultural workers and white land owners.

This is not to say that Black people did not own land on the Sea Islands. The 1870 census, for instance, showed 6,200 residents in St. Helena Township, the area of highest population density in the Sea Islands. Ninety-eight percent of the township’s residents were Black and at least seventy percent of the Black families owned property. These numbers are less

---

164 Report of MH Lelany (?), Mayor, Military Inspector, Pt Royal to Bvt Lieut. Col WLM Burger, March 5, 1866, RG 393, Part 1, entry 4112, NA.
165 Id.
impressive when viewed in contrast to white ownership. Of a total of 21,608 acres in St. Helena Township, 8,459 were owned by Blacks, while 13,149 acres were owned by whites, who comprised just over one percent of the population. Most of the plots owned by Blacks were small, ranging between five and twenty acres. Almost half of them were about ten acres in size. Large enough, in many cases, to feed their families, but not large enough to assure economic independence from whites. More freedmen ended up owning their own homesteads on the Sea Islands than in most of the postbellum South, but the small size of plots, particularly compared to the large farms owned by white planters like the despised Edward Philbrick, meant that at best the allocation of land to freedpeople at the tax sales produced a landed agricultural peasantry who would live hand-to-mouth on small tracts of land, economically dependent on white planters for their families’ support. In this sense, the aspirations of the majority of tax commissioners in making small lots available to the Sea Islands freedmen were realized: by owning land, they wouldn’t leave, but having small plots they would need to work and would thus be a permanent ready labor force for the larger farms owned by white planters. This arrangement locked formerly enslaved people into economic dependence on white people, denied them any form of compensation or reparation for the obscene crime of slavery, and secured a post-bellum socio-economic structure within which white people would accumulate wealth through property ownership, while Black people’s relation to property resulted in their generations-long impoverishment.

Many Sea Islands freedmen, however, found themselves landless and bound to white planters - often their prior owners - through year-long labor contracts that they could not escape.

---

This was a curious freedom indeed. The dreams of Edward Pierce, Rufus Saxton, Daniel Middleton and the freed people of the Sea Islands were of a very different kind of freedom, one that was cut short by President Johnson, the Sea Islands tax commissioners and pardoned Confederate white planters. In the post-bellum society they envisioned, freedom presupposed a form of justice that recognized that slavery was something not merely to abolish, but was an injury and a theft that justified, if not required, reparation. What they got instead was a strange brand of emancipation that locked most freedpeople in a bare life, neither free nor enslaved yet still bound to whites through legally mediated relationships of labor, production, and discipline.

The legal and economic interests of ante-bellum land-holding and slave-holding white people were adequately protected however. Not only did President Johnson grant them amnesty and restore the confiscated land to white planters who returned to the Sea Islands with the aim of reestablishing an earlier status quo. But once that land was restored to white planters, the freedpeople of the Sea Islands who had bought land at the auctions were not reimbursed for what they had paid for those properties. Even worse, for the white planters who had not returned to reclaim land that been seized pursuant to the Direct Tax Act and then sold at auction to white speculators and some freedpeople, Congress passed a law in 1891 that would compensate them for the value of the land they so seized, albeit at a substantially discounted rate. The U.S. Court of Claims was then charged with tracking down the heirs to that land who had dispersed

167 Act of March 2, 1891 An act to credit and pay to the several States and Territories and the District of Columbia all moneys collected under the direct tax levied by the act of Congress approved August fifth, eighteen hundred and sixty-one. Fifty-First Congress, Sess. 2, Chap. 469 Sec. 4 (1891)(“To the owners of the lots in the town of Beaufort, one-half of the value assessed thereon for taxation by the United States direct-tax commissioners for South Carolina; to the owners of lands which were rated for taxation by the State of South Carolina as being usually cultivated, five dollars per acre for each acre thereof returned on the proper tax-book; to the owners of all other lands, one dollar
throughout the country as far as New York, Florida, Washington, D.C., and Texas.\textsuperscript{168} Court of Claims records indicate that the U.S. Treasury settled these interests in land in Beaufort County for a total of $207,166.58 ($5,237,443.12 in 2016 dollars).

Land speculators like Edward Philbrick and his northern investors profited handsomely from the Port Royal land auctions. For instance, Philbrick sold Coffin Point, by far the largest property in the Port Royal area, in 1891 to Pennsylvania Senator J. Donald Cameron who was looking for a hunting and fishing retreat, “he and his wife would winter at Coffin Point arriving in their yacht.”\textsuperscript{169} It remained in the Cameron family, though rarely occupied, until 1952 when trustees for the estate sold all 932 acres to Sheriff J.E. McTeer, who had been sheriff of Beaufort County since 1926. A few years later he laid out residential lots but a hurricane in 1959 caused extensive damage. McTeer retired from the force in 1963 and went into real estate. Old Coffin house was sold in 1969 to writers George and Priscilla Johnson McMillan in 1969. The house was listed with the National Register of Historic Places in 1975.

The successes and, tragically, ultimate failures of this utopian experiment teaches us something important about the nature of freed-dom and the freedom that Black people later came to enjoy as U.S. citizens. Freedom for so many former slaves meant the acquisition of a kind of “burdened individuality,” of “being freed from slavery and free of resources, emancipated and subordinated, self-possessed and indebted, equal and inferior, liberated and encumbered,


sor and dominated, citizen and subject.”

Black Self Governance at Davis Bend

The Davis brothers, Jefferson and Joseph, owned two substantial plantations on the banks of the Mississippi River thirty miles south of Vicksburg, Mississippi. Jefferson, the younger brother, was well known as the father of the Confederacy and a staunch defender of chattel slavery. Yet a form of Black self-governance was set in place on the Davis’ brothers’ plantations during and after the Civil War that rivaled, if not exceeded, the best utopian aims of the Port Royal experiment.

Joseph was the eldest of ten children, and his youngest brother Jefferson, 24 years his junior, is well known as the face of the Confederacy. Joseph distinguished himself first as a lawyer in Natchez, later as a delegate to the Mississippi constitutional convention in 1817, and finally as an innovative plantation owner. In 1818, Joseph Davis gave up his career as a lawyer and bought 11,000 acres of land abutting the Mississippi River south of Vicksburg in an area that came to be known as Davis Bend. Over time, he sold portions of the land to people whom he welcomed as neighbors. In 1835 he offered a substantial tract adjacent to his own plantation, Hurricane, to his brother Jeff, as payment for the interest Joseph owed Jeff for the enslaved people that their father had left them, and that Joseph had been using on his

171 He was one of the founders of the Mississippi Bar Association.
172 Varina Howell Davis, Jefferson Davis: Ex-President of the Confederate States of America, A Memoir 1, 49-50, 171-72 (1890).

-64-
Jeff named his plantation Brierfield, due to the abundance of briers on the property. At the start of the Civil War, the Hurricane plantation covered 1,700 acres and included 345 enslaved people. Joseph Davis was very attracted to the theories of reform and progressive thinkers of the time who advocated collective principles of organizational management and industrial structure. He was particularly interested in the work of Robert Owen, often referred to as the father of British socialism. Owen brought his cooperative ideas of industrial management to the United States and set up an experiment in collective labor and living in New Harmony, Indiana. Joseph Davis, interested in learning more about Owen’s ideas put into action, accompanied Owen on a U.S. tour in 1825, with a mind to applying Owen’s progressive theories of factory management to an agricultural context involving enslaved labor.

From his own experience as a lawyer, and from Owen’s writing, Davis believed that people worked best by the carrot rather than the stick. “The less people are governed, the more

\[173\] Id. at 163.
\[175\] Janet Sharp Hermann, THE PURSUIT OF A DREAM 6, 13 (1981). Unlike other parts of the antebellum South, Mississippi planters did not, by and large, own enormous plantations and employ vast numbers of slaves. Joseph Davis, for instance, was one of only 9 Mississipians who owned more than 300 enslaved people. Janet Sharp Hermann, Joseph E. Davis: Pioneer Patriarch 54 (1990).
\[178\] Hermann, Joseph E. Davis at 43 (“For nine long hours Joseph Davis had an opportunity to hear and argue [the advantages of cooperation for human productivity and happiness], and he was profoundly impressed with Owen’s ideas.”); Davis, Memoir I at 49-50, 171-72. Davis was also interested in employing the most modern methods of production and as well, and in the 1830's was one of the first people in Mississippi to purchase a steam engine, which he later used to power his mills. Hermann, THE PURSUIT OF A DREAM at 11.
Both Jeff and Joe Davis detested centralization of governance, and believed it the best course for the nation and for the plantation to pursue a system of “widest community independence.” Joseph took the ideas he had acquired from Owen and developed a novel form of self-governance on his plantation that was surely unique for its time. He was known for providing the people he enslaved with comparatively generous housing, food and medical care - indeed he was one of the only planters to provide dental care to his slaves. He also provided incentives and rewards to the people he enslaved for exceptional cotton picking, paid them for extra work, and allowed them to sell their own chickens and eggs. Benjamin Montgomery, one of his most trusted slaves, was allowed to open up a store on Hurricane, and Davis extended him credit as an advance on merchandise to be sold in the store. Montgomery’s store was quite successful, selling goods to the people of Hurricane and Brierfield, as well as to steamboats that docked at Hurricane on their way up and down the Mississippi. Montgomery’s store was so profitable that he was able to pay Davis for the cost of his wife’s labor so that she could stay home with their five children, a kind of gendered freedom nested within the slavery system itself.

At the core of this structure of self-governance, however, lay a legal system, run entirely by the enslaved people on Hurricane. Davis devoted a building on the plantation to a slave court,

---

179 Hermann, Joseph E. Davis at 55.
180 Davis, Memoir 1 at 174.
183 Id. at 18-19.
184 Id. at 19.
and called it the Hall of Justice.\textsuperscript{185} Court was in session every Saturday, and a jury made up of enslaved people would hear cases and complaints of misconduct among their peers. They would take testimony, and issue sentences where appropriate. Davis served as judge, but intervened only to grant a pardon if he regarded the sentence too severe.\textsuperscript{186} Davis also insisted that the white overseers he employed on Hurricane bring their complaints before the Saturday court, and they were not allowed to punish enslaved people without the court's permission. For this reason most overseers in the region preferred not to work at Hurricane.\textsuperscript{187} This form of local justice was unheard of in the Southern plantation system, and set Joe Davis apart from his contemporaries.\textsuperscript{188}

When Jeff had Brierfield up and running, he borrowed many of his brother's progressive approaches to slave management, including the court system.\textsuperscript{189} But in the end, Jeff took a very different view towards Black people than did his elder brother. While Joseph treated his slaves with dignity, calling them by the names they preferred and referring to them as servants, not slaves, Jeff shared the view of most of his contemporaries that Black people were inferior and that slavery was ordered by divine law. Fortunately for the enslaved people at Brierfield, Jeff was away from the plantation on political business most of the time after 1845, and the rules and norms adopted by his brother at Hurricane were enforced at Brierfield in his absence.\textsuperscript{190}

Joseph Davis regarded himself a benevolent patriarch who had a responsibility to serve as

\textsuperscript{185} Frank Edgar Everett Jr., BRIERFIELD: PLANTATION HOME OF JEFFERSON DAVIS at 13 (1971).
\textsuperscript{186} Davis, JEFFERSON DAVIS: EX-PRESIDENT OF THE CONFEDERATE STATES OF AMERICA at 174 ("He instituted trial by jury of their peers, and taught them the legal form of holding it. His only share in the jurisdiction was the pardoning power.")
\textsuperscript{187} Hermann, Joseph E. Davis at 55; Hermann, THE PURSUIT OF A DREAM at 12-13, 28.
\textsuperscript{188} Janet Hermann notes evidence of only one other planter who permitted his slaves a trial before punishing them. Hermann, THE PURSUIT OF A DREAM at 14.
\textsuperscript{189} Id. at 13-14.
a moral example and steward for his slaves. Despite his progressive views about how to manage his plantation and the enslaved people who worked on it, he remained, albeit ambivalently, committed to the institution of slavery. His slaves no doubt appreciated the privileges they enjoyed as compared with other enslaved people, but surely they preferred not to be enslaved at all. In the end, not one Davis slave was ever manumitted.\textsuperscript{191}

Joseph Davis discovered that his slaves’ loyalty was not unbounded, however, when, in May of 1862 he fled Hurricane on account of the war and a particularly high flood season. He sent a boat to rescue his personal affects and papers, and as many slaves as could fit on the boat. He was then shocked to learn that most of them had fled into the woods after he had repaired to higher ground. When the boat left with as many items of personal property as could be retrieved, the enslaved people of Hurricane who remained broke into Joseph’s mansion and looted what they could for their own use or sale, thus proving the limit of their love and respect for Joseph Davis. A month later, a raiding party of Union troops further ransacked the house and burned it to the ground.\textsuperscript{192}

After the arrival of Union troops, many of Joseph Davis’s slaves remained at Hurricane to fend for themselves, including Benjamin Montgomery, who took over agricultural production and the care of the population at Hurricane for a short time. Yet by June of 1863 Montgomery had retreated with his family to Cincinnati.\textsuperscript{193}

As General Grant moved through the South he, like General Sherman, found his troops’ progress burdened by increasingly large groups of formerly enslaved people seeking protection

\textsuperscript{190} Id. at 31-32.
\textsuperscript{191} Id. at 32.
\textsuperscript{192} Id. at 40.
and food.\textsuperscript{194} One northern paper estimated that as early as August 1863, 155,140 formerly enslaved people had been liberated by Union forces in Mississippi.\textsuperscript{195} Military officials set up refugee camps but with limited resources, as they were quickly overwhelmed by the large numbers of Black people fleeing their conditions of enslavement.

Like Sherman, Grant sought to find a way to free his troops from the refugees’ needs,\textsuperscript{196} and in November 1862 appointed Chaplin John Eaton as superintendent of freedmen to take charge of the problem, organizing the refugees into companies, and “set them to work picking, ginning and baling all cotton now out and ungathered in the field.”\textsuperscript{197} Eaton, following Grant’s orders, set up a system of wage labor in Mississippi, employing the refugees not only for agricultural work, but also in labor battalions for the army, largely constructing military fortifications.\textsuperscript{198}

Eaton kept the freed people housed in camps through the winter, and in the spring sent them out to plant the abandoned cotton fields that were closest to the camps. It was becoming clear that this system of government-run refugee camps was not a plausible long-term solution to

\textsuperscript{193} See Interview with Isaiah Montgomery, Id. at 89.
\textsuperscript{194} “The moment the Union army moved into slave territory, the Negro joined it. Despite all argument and calculation and in the face of refusals and commands, wherever the Union armies marched, appeared the fugitive slaves. It made no difference what the obstacles were, or the attitudes of too low wages to the commanders. It was ‘like thrusting a walking stick into an ant hill,’ says one writer. And yet the army chiefs tried to regard it as an exceptional and temporary matter, a thing which they could control, when as a matter of fact it was the meat and kernel of the war.” W.E. Burghardt Du Bois, Black Reconstruction 62 (1935); see also W.E. Burghardt Du Bois, The Freedmen’s Bureau, 87 Atlantic Monthly 354, 354-55 (1901).
\textsuperscript{195} James W. Garner, Reconstruction in Mississippi 256 (1901).
\textsuperscript{196} John Eaton provided a stirring description of what it was like for Grant’s army to encounter the fleeing Black refugees, “an army of slaves and fugitives, pushing its way irresistibly toward an army of fighting men ... The arrival among us of these hordes was like the oncoming of cities. There was no plan in this exodus, no Moses to lead it.” Eaton, Grant, Lincoln and the Freedmen 1-3 (1907).
\textsuperscript{197} Grant’s Special Order No. 15, November, 15, 1862 at 4-5.
\textsuperscript{198} Id. at 24; Wharton, The Negro in Mississippi at 30.
the problem, as there was no support in the North for such a monumental public works project.\footnote{199} Given the overwhelming needs of the freedmen, the imperative that the cotton crop keep in production, and the absence of governmental wherewithal to continue oversight of the refugee camps, military officials overseeing Davis Bend decided to bring in private entrepreneurs to rent the land at very low rates, use the equipment they found on the plantations,\footnote{200} and require them to feed, shelter and pay low wages to the freedmen to do the field work.\footnote{201} Unfortunately, this plan turned out to be a disaster, as the so-called entrepreneurs who leased the land were “generally men of low character who came largely from the group of ‘sharks’ who followed the army.”\footnote{202} “The desire of gain alone prompts them, and they care little whether they make it out of the blood of those they employ or from the soil,”\footnote{203} wrote James Yeatman of the Western Sanitary Commission.\footnote{204} In Mississippi, as in South Carolina and throughout the South, the

\footnote{199} The American Freedmen’s Inquiry Commission recommended to the Secretary of War and the Senate in June of 1863 that the “contraband camps” be used not as a permanent, structural solution to the problem of the refugees in the South, but as a temporary place of “reception and distribution” of the fleeing refugees who should be expeditiously settled on abandoned plantations to work for “loyal and respectable owners or lessees who will hire the freedmen at fair wages.” Preliminary Report Touching The Condition and Management of Emancipated Refugees, supra note 1 at 14.

\footnote{200} General Lorenzo Thomas ordered that all of the “horses, mules, oxen, wagons and carts and farming implements” that the freedmen had in their possession be confiscated. John Eaton, Jr., Report of the General Superintendent of Freedmen, Department of the Tennessee and the State of Arkansas for 1864 at 39-40 (1865). “The government regularly seized all animals and tolls from contrabands who entered their lines on the assumption that they were stolen goods, since slaves could not legally own property; the army hoped thereby to secure more supplies for their own use and keep them from falling into enemy hands. This peremptory confiscation of their property infuriated the Davis ex-slaves and left them unable to continue farming on their own.” Hermann, THE PURSUIT OF A DREAM at 50.

\footnote{201} Eaton, Grant, Lincoln and the Freedmen at 59-60.

\footnote{202} Wharton, The Negro in Mississippi at 33.

\footnote{203} James Yeatman, Report p. 8.

\footnote{204} James Yeatman, president of the Western Sanitary Commission, a private philanthropic organization, was actively engaged at this time in visiting Mississippi and making recommendations for the treatment of the freedmen. See James A Yeatman, A Report on the Condition of the Freedmen of the Mississippi (1864); James E. Yeatman, Report to the Western Sanitary Commission in regard to Leasing Abandoned Plantations (1864); James A Yeatman, Suggestions of a Plan of Organization for Freed Labor and the
Treasury and War Departments fought bitterly over control of the Freedmen, until Congress stepped in and established an independent Bureau in 1865.

Vicksburg became the largest gathering point for Black refugees in the state, and Eaton had an enormous humanitarian crisis on his hands. He desperately needed a reliable assistant, and looked to Captain Samuel Thomas, who in August 1863 was placed in charge of the refugees in the Vicksburg area.\textsuperscript{205}

Even before General Grant took Vicksburg on July 4, 1863, he had decided that the plantations of the President of the Confederacy would make a wonderful “negro paradise.”\textsuperscript{206} This plan was provisionally put into place by Admiral David Porter, commander of the Union fleet on the Mississippi, who ordered that Davis Bend be used as an independent Black colony for the refugees who were left there.\textsuperscript{207} In December of that year, General Thomas stationed two companies of Black troops at Davis Bend, and a reporter for the New York Herald noted that the Davis plantations had become a colony for freed slaves.\textsuperscript{208} At that time, over 600 freedmen were living at the Bend and the crops were being prepared for the following year.\textsuperscript{209}

For most of 1863, through Grant’s capture of Vicksburg in July and well into 1864, chaos reigned in the Davis Bend area. Northern troops, northern civilian speculators, and other miscellaneous white people from the South engaged in all manner of fraud, theft and

\textsuperscript{205} Just as Port Royal had two Shermans, Davis Bend had two Thomases: Captain Samuel Thomas and General Lorenzo Thomas.
\textsuperscript{207} Hermann, THE PURSUIT OF A DREAM at 42.
\textsuperscript{208} New York Herald December 28, 1863.
exploitation, such as stealing bales of cotton and whatever else they could get their hands on. The Treasury Department was given authority to oversee and protect the successful production of cotton in the abandoned and confiscated lands in the area, but their presence set up foreseeable conflicts between Treasury agents, the military officers in the area, civilians seeking to assist the destitute freedmen, and Colonel Thomas’ oversight of freedmen’s affairs. Finally, in the fall of 1864, Eaton was able to obtain President Lincoln’s authority to restore control over the Davis Bend plantations and refugees.

At this point, a large group of former Davis slaves remained at Hurricane and Brierfield, and had been joined by hundreds of other Black refugees. In September of 1864 General Lorenzo Thomas visited Davis Bend and reported back to Secretary of War Edwin Stanton, “there is a large home farm where the negroes are cultivating on their own account, and I understand, are doing very well ... This colony, containing many indigent, will, I understand, be self-supporting.”

Just as at Port Royal, the civilian and military officials responsible for the refugees at Davis Bend had two principal objectives: caring for the needs of the indigent and destitute freedmen and keeping cotton production going in order to provide a source of financing for the ongoing war.

On November 5th, Maj. General Napoleon Jackson Tecumseh Dana implemented General Thomas’s Special Order No. 15 making it official by confiscating virtually all of Davis

---

210 See e.g. Eaton, Grant, Lincoln at 163.
211 Such as James Yeatman, president of the Western Sanitary Commission.
213 Eaton, Grant, Lincoln at 190.
Bend “for military purposes, on which will be established a home farm, and to furnish land for freedmen for their own cultivation.” Dana instructed that the Bend was to be set aside for “colonization, residence and support of freedmen ... The home of Jefferson Davis is a suitable place to furnish the means of support and security for the unfortunate race he is being so instrumental in oppressing.” And, just as Sherman had done in the Sea Islands under his Special Order No. 15 setting aside land along the coast for freedmen, Dana ordered that “all white persons not connected with the military service will be required to leave the above limits before the 1st day of January, 1865, and after that date no white person will be allowed to land on any part of the same without written permission”. Dana’s order appointed Colonel Thomas to oversee the Davis Bend colony. The order had been previously issued by General Thomas in March of 1864, but the overall chaos at the Bend made its implementation impossible. Finally in the late fall of that year the Union army seized the Bend for the purpose of establishing an independent Black colony and charged Freedmen’s Department officials with overseeing this project. Davis Bend was one of several Mississippi Valley plantations that had been converted to Black-run “home farms” that were not only self-sustaining, but could send profits up north to fund the war effort.

Colonel Thomas’s oversight of the Davis Bend colony prevailed over an earlier plan

---

215 Special Orders, No. 120, Lt.Col. T.H. Harris, By Order of Maj. Gen. N.J.T. Dana, November 5, 1864, OR, Series 1, vol. 41 (Part IV) p. 437-38. It is worth noting the serendipity that Sherman and Thomas both issued Special Orders No. 15 regarding the allocation of land to freedmen is quite a remarkable coincidence.
216 Id.
217 Id.
218 Recall that Congress did not allocate any funding for freedmen’s affairs until the Second Freedmen’s Bureau bill in 1868.
developed by Quakers working in the area. Samuel Shipley, a representative of the Friends’ Association of Philadelphia sent to assist in setting up a model freedmen’s colony at the Bend, had developed a plan to divide up one thousand acres of land for cultivation by one hundred freedmen. Shipley felt strongly that the contract labor system resulted in the exploitation of the freedmen, and preferred that the Freedmen be allotted plots at the Colony under the supervision of the Quakers. “Without it, the great mass cannot easily rise from their present position,” wrote Shipley to his executive committee in Philadelphia. The Quakers’ plan was never adopted, and it was quickly overshadowed by Colonel Thomas’s experiment, ultimately embodied in General Thomas’s placing the Bend under the Colonel’s control.

---

219 See Thomas to Stanton, September 11, 1864 at 709.
221 “Under these circumstances, it is evident that this system does not furnish the best mode of elevating the colored man into the position of an intelligent and self-directing laborer. The true friends of the negro in the Southwest recognize these facts and deplore their effects, but see no present remedy. Between the cupidity of the lessees and the indifference of the officials, the true interests of the Freedman are little thought of.” Report of Samuel R. Shipley, President of the Executive Board, of His Recent Visit to the Camps of the Freedmen On the Mississippi River, January 12, 1864, in Statistics of the Operations of the Executive Board of Friends’ Association of Philadelphia and its vicinity, for the Relief of Colored Freedmen 24 (January 19, 1864).
222 “In the active aid of such association as our own, the true solution of this great problem may be found; and, as it seems to be a work of a kindred character with that in which we as a society have been so long engaged in behalf of the Indian Tribes, it ought to find special favor with us. It is believed that if an assignment of a plantation were made to one hundred laborers, and it were divided into tracts of vie to ten acres each, to be under their individual care an management, subject in a measure to the director of a capable and faithful Friend who would assume the general oversight of all matters of interest for the plantation, it would prove a great success. Such a tract will be furnished by Colonel Eaton at Palmyra, Davis Bend, twenty miles below Vicksburg ... If 1,000 acres were divided in the manner above stated, and a Friend could be found who would undertake the supervision of it, there would be no difficulty in at once procuring the necessary laborers and proceeding to work it ... In short, it is proposed to enable these 100 laborers to become lessees on a small scale, but the disinterested aid of our Association.” Id. at 24-25.
223 Id.
224 In October, 1865, Colonel S.W. Preston who commanded a unit of the colored infantry, suggested to General Thomas that the Bend be settled by colored soldiers, who, in his opinion, were reckless in spending their military pay. “The Colored soldiers here, have been in the habit of spending all their money within a few weeks after receiving it and many of them in a way that brings no substantial benefits to themselves or to their families ... Their reckless expenditures of their earnings if indulged and as is too
Thomas set aside roughly 500 acres at David Bend for a Home Farm that housed orphaned children, and older and infirmed freedmen.\textsuperscript{225} He then parceled up 5,000 acres for 1,300 adults and 450 children who joined into 181 voluntary cooperatives. The freedmen were left alone to manage their own affairs and the officers of the newly created Freedmen’s Bureau were prohibited from intervening in their activities.\textsuperscript{226} This experiment was enormously successful. Notwithstanding heavy rains in June that hurt the crop, the freedmen of the Davis Bend Colony turned a $25,929.80 profit, all of which was paid directly into the Bureau’s coffers.\textsuperscript{227} John Trowbridge reported that fifty freedmen planters earned $5,000 each year in 1863 and 1864, and one hundred others accumulated between $1,000 and $4,000 annually during this period - absolute fortunes by contemporary standards. Trowbridge remarked that “the signal

often the case, encouraged, will create habits of prodigality that cannot be eradicated, and they must remain a demoralized and dependent race.” Colonel S.W. Preston to General Lorenzo Thomas, October 9, 1865, RG 105, M 826, Roll 8, National Archives. Instead, he recommended, their pay should be directly invested in homesteads at Davis Bend, which, under Preston’s tutelage, was a plan sure to succeed. “I believe I have an unbounded influence over my men, and shall have no difficulty in controlling them in this enterprise for their welfare,” he humbly offered. Id. General Thomas never seriously considered this plan.

\textsuperscript{225} “In 1864 the Home Farm [at Brierfield] accommodated some 955 people, according to a detailed record book. The vast majority of them were females of all ages. There were many male children and quite a few men over sixty; some were in their eighties, and one was age ninety-two. But there were only a handful of females in the eighteen-to-fifty age group, and most those were labeled “unfit for work. The typical family consisted of an adult female and her children, although there were some families with two adult females, either sisters or mother-daughter groups. The overwhelming majority were described as Black; there were three listed as yellow, one brown, and three white.” Hermann, THE PURSUIT OF A DREAM at 53.

\textsuperscript{226} Lt.Col. T.H. Harris, Special Orders, No. 120, November 5, 1864, War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies, Series 1, Vol. 41 (Part IV) 437-48 (“The home of Jefferson Davis is a suitable place to furnish the means of support and security for the unfortunate race he is being so instrumental in oppressing. All white persons not connected with the military service will be required to leave the above limits before the 1\textsuperscript{st} day of January, 1865, and after that date no white person will be allowed to land on any part of the same without written permission so to do ...”).

success of the colony perhaps indicates the future of free labor in the South, and the eventual
division of the large plantations into homesteads to be sold or rented to small farmers. This
system suits the freedmen better than any other; and under it he is industrious, prosperous and
happy.”

This experiment in economic and social self-governance included an autonomous legal
system that the freedmen ran themselves. Presumably, some of the previous Davis slaves
remained at the Bend, and continued to implement a system of justice that they had learned when
Joseph Davis had been present. The freedmen’s court system at the Davis Bend Colony was
as unique and remarkable as it’s antebellum predecessor.

Formally established in January 1865, the Freedmen’s Court had

three judges who shall constitute a court, with authority to try all cases that may be
brought before it. This court shall be elected to hold office 3 months ... The court shall
meet at 9 am Saturday, at the Jeff Davis place. There shall be one Sheriff on each
plantation to whom all complaints will be made by parties aggrieved, and he on Saturday
will bring the case before the court. He will arrest parties when necessary ... The court
will proceed to the trial of cases, swear witnesses, examine them and decide the case
according to their ideas of justice and the evidence produced. The judges and sheriffs
shall be elected by the people. The court will inflict as punishments fines not to exceed
one thousand dollars, forfeitures of crop, expulsion from the Bend, confinement in the
guard house, hard labor on the home farm. All decisions of the court must be approved
by the post Supt Freedmen. If the judges fail to do their duty or the sheriff to perform
their part, they shall be fined and punished by the Post Supt. Freedmen.

Captain Gaylord Nelson, Provost Marshall of Freedmen at Davis Bend, formally

---

228 Trowbridge, The South at 384.
229 “Visitors from the North often cited this court system as evidence of a unique experiment in self-
government; few realized that it was simply a continuation of a tradition established by Joseph Davis
more than a generation earlier. The ease with which the older residents, who may well have suggested
and helped plan the court system, adopted this form of community control stemmed largely from their
previous experience under Davis’s tutelage.” Hermann, THE PURSUIT OF A DREAM at 63-64.
230 Freedmen’s Court, Davis Bend, Record Court of Freedmen, Davis Bend, Miss., RG 105, Entry 2153,
NA.
established the Court as a matter of Freedmen’s Bureau policy, and kept spotty records of the cases brought before it. The judges, all former slaves, were Simon Cable, Daniel Davenport, and J.A. Gla.\(^{231}\) Colonel Eaton was much impressed with their “shrewdness” and found the court system itself quite remarkable.\(^{232}\) The extant records document only 10 sessions of the court, between June 10 and December 2, 1865 during which time the judges heard a total of 21 cases. Ten resulted in criminal convictions, three civil cases resulted in judgment for the plaintiff, two people were fined for failure to appear, one defendant was acquitted, and five civil cases were dismissed for lack of evidence. All of the court’s orders were approved by Captain Nelson.\(^{233}\) The cases ranged from minor infractions such as stealing fruit, wood or clothing, to adultery, shooting a neighbor’s dog, and charges by a woman against her husband for assault and battery with intention to kill. On Saturday, December 2\(^{nd}\), 1865, Ms. Phila Davenport charged Abe Davenport with “striking and otherwise abusing her.” The court fined the defendant $5.00. In the next case on the docket, William Hall charged Cesare Johnson with shooting his dog, for which Johnson was fined $10.00.\(^{234}\) Under the justice system established at the Bend, the penalty for shooting a dog was twice as severe as that for beating your wife.

While the minute book that recorded the cases heard before the Davis Bend Court of Freedmen did not include any testimony or details about the cases, John T. Trowbridge described one Saturday court session in a published narrative of his tour of “the battlefields and ruined cities of the South.”\(^{235}\) On a visit to the Bend in late 1865, he reported that the Freedmen’s Court

\(^{231}\) Id.
\(^{232}\) Eaton, Grant, Lincoln and the Freedmen at 165.
\(^{233}\) Record Court of Freedmen, Davis Bend.
\(^{234}\) Id.
\(^{235}\) Trowbridge, The South. Record Court of Freedmen, Davis Bend.
judges did more than listen to community complaints and hand down judgments. When a freedman and his mother were brought before the court for stealing a bag of corn, one of the judges chastised the defendant:

Now you listen, you. You and your mother are a couple of low-down darkies, trying to get a living without work. You are the cause that respectable colored people are slandered, and called thieving and lazy niggers. Now this is what I’ll do with you. If you and your mother will hire out today, and go work like honest people, I’ll let you off on good behavior.  

This example is remarkable not only for the detail it reveals about the sophistication of the legal proceedings before the Freedmen’s Courts, but even more important, as an illustration of how the legal actors involved expressed, performed, and enforced the civilizing power of law. As the judge, himself a Black man, put it to the defendants: the choice is yours, either act like a civilized, law abiding and industrious citizen, or pay the price as a “low-down darkie”.

Freedmen’s bureau and military officers alike regarded the Davis Bend Home Farm as enabling all manner of uplift: “The community distinctly demonstrated the capacity of the Negro to take care of himself and exercise under honest and competent direction the functions of self-government.” As at Port Royal, this experiment provided an alternative blueprint for Black freedom, a path ultimately abandoned, but one which would have laid the way for a very different story of Black freedom, citizenship and reparation structured around separation from white people rather than integration with and subordination to them.

Notwithstanding its financial, moral, and agricultural success, the Freedmen’s Colony at the Bend was disbanded after only one year. As soon as President Johnson started issuing pardons to former southern planters, four of the plantations at the Bend were returned to their

---

236 Trowbridge, The South at 384-85.
The Army closed its post at the Bend in October 1865 and Gaylord Nelson was relieved of duty shortly thereafter. Colonel Thomas was relieved of command in May of 1866. “Colonel Thomas’ transfer removed the last federal official with an interest in creating an ideal colony on the Bend. Henceforth, the Bureau would be more concerned with defending past actions than with initiating new projects.”

The Davis brothers were not among the former planters whose land was immediately restored, thus the Hurricane and Brierfield plantations remained in the control of Benjamin Montgomery, who had been running them almost continuously since he had returned from Ohio in the beginning of 1865. During this time, Montgomery had been corresponding with his former owner Joseph Davis, and kept him apprised of developments at the Bend, including difficulties Montgomery was having with Colonel Thomas and other Bureau officials. More than once, Davis intervened on Montgomery’s behalf to resolve conflicts relating to matters such as the control over the Bend’s cotton gin.

In October 1865, Joseph Davis met with Benjamin Montgomery in Vicksburg where they signed a contract permitting Montgomery to lease Brierfield and Hurricane for the next year. Thus, while the Bureau regarded itself in full control and ownership of the land “abandoned” at the Bend, Joseph Davis and his loyal former slave Benjamin Montgomery were contracting in the shadows as if Davis had never lost title to the property. Joseph Davis was fully pardoned by

---

237 Eaton, Grant, Lincoln and the Freedmen at 166.
239 Hermann, THE PURSUIT OF A DREAM at 95-96.
240 Currie, Enclave at 101.
241 Hermann, THE PURSUIT OF A DREAM at 83-84.
242 Id. at 74.
President Johnson on March 20, 1866, however he did not receive notice of the pardon until five months later. Davis was to be restored the full title, use and enjoyment of his property as of January 1, 1867, with rent paid to him from the effective date of the pardon.\textsuperscript{243} By this point, the elder Davis was over eighty years old, and had no intention of returning to Davis Bend to farm. In November of 1866 he and Montgomery agreed to a method by which Davis would finance the sale of 4,000 acres of land at the Bend to Montgomery for $300,000. The Black Codes recently enacted by the Mississippi legislature made this contract of sale unenforceable insofar as the law prohibited freedmen from owning land. Nevertheless, both Davis and Montgomery intended to abide by its terms.

Montgomery was elated to be in full possession of the Bend and almost immediately took out an ad in the \textit{Vicksburg Daily Times} announcing that on January 1, 1867 he intended to “organize a community composed exclusively of colored people, to occupy and cultivate said plantations, and invites the cooperation of such as are recommended by honesty, industry, sobriety, and intelligence, in the enterprise.”\textsuperscript{244} Montgomery went on to outline a form of self-government and taxation that would be instituted at this new colony. This new regime would surely include the system of freedmen’s courts that he had maintained at the Bend after the Freedmen’s Bureau had retreated.

Over the years, Montgomery and his family struggled to make the payments to Davis, never, in the end, paying off any of the principal on the loan, and only making partial payments on the 5% annual interest upon which they had agreed. Davis was content to receive a steady income of interest payments from Montgomery in his old age. But his heirs were not so tolerant,
neither of the lost income, nor of the noble project in Black self-sufficiency to which Benjamin and Joseph has been committed. After a number of years of successful farming, indeed innovation, Benjamin Montgomery died a poor man in 1878. His son, Isaiah abandoned the Bend in 1883 due to recurring floods, and went on to establish another utopian all-Black community at Mound Bayou, Mississippi in 1887. In the spring of that year, a volume of water that raged down the Mississippi River, cutting out a new channel just up river from the Bend. Almost overnight, Davis Bend became Davis Island, significantly complicating the logistics of running the former Davis plantations. Much of the best land remained under water until well into the planting season.

The experiment at Davis Bend, in ways so similar to the Port Royal experience, was both enormously successful and tragically short lived. While a fraction of the freedmen of Port Royal ended up with land on the Sea Islands or along the southeastern coast as envisioned by General Sherman, Benjamin Montgomery and his family were the only freedmen to gain longer term ownership of land at Davis Bend, but even Montgomery’s title was highly leveraged and contingent upon the ongoing beneficence of his former owner. Surely no one underappreciated the irony of the fact that the Montgomery family enjoyed this privilege on account of the kindness of the elder brother of the President of the Confederacy. To his death, Isaiah Montgomery praised even Jefferson Davis as “a wonderful man ... My thoughts frequently go

244 Vicksburg Daily Times, November 21, 1866.
245 Isaiah Montgomery reported that they ranked third in the county in cotton production. Porter, Extracts from Newspapers and Magazines at 89.
246 Benjamin Montgomery led the state in experimenting in diversifying cotton seed, and crop rotation. See Hermann, THE PURSUIT OF A DREAM at 153-54.
247 Wharton, The Negro in Mississippi at 44.
248 Porter, Extracts from Newspapers and Magazines at 90.
back, now that I am approaching the end of my days, to the time I was his personal servant as a barefoot boy. I truly believe, when he got his last sickness, had I been here to serve and care for him, that he would have lived many more years ... It was the influence of Jefferson Davis and his sweet life that has guided all my efforts in bettering the life of my colored brothers and if I have succeeded it was because of them.”

The story of Black freedom at Davis Bend is replete with paradox. Time and again, Joseph Davis came to the aid of his former slaves in defense of their interests that were being disregarded by northern officials. One wonders what Benjamin Montgomery could have accomplished had he not been saddled with the debt to his former owner Joseph Davis, or made to suffer the ravages of the weather and a river that did not bear his interests in mind. Davis could have forgiven the debt in his will, but instead passed it on as an asset to his children, thus assuring that the Montgomery family had no future at Davis Bend. Today, the land that was the Bend is abandoned and overgrown.

Law played a significant role in the civilizing mission that was undertaken at the Bend, but in ways that differed somewhat from law’s utility at Port Royal. Both before and after emancipation, legal self-governance was looked to to subsidize the production of cotton - first with enslaved Black labor and later with free Black labor. Unlike at Port Royal, Black people at Davis Bend were not merely governed by law, but they served in positions of legal governance as well. So too, law’s governance at the Bend was largely intra, not inter-racial. Black men, both free and enslaved were enlisted to undertake fairly well scripted performances of legal

249 Currie, Enclave at 126.
250 Id. at 91.
251 Everett, Brierfield: Plantation Home of Jefferson Davis pp. 3-6.
authority - as police, as judges, and as jurors. Thus the call of law and the kinds of legal
subjects that it summoned, was more complex at Davis Bend than at Port Royal in so far as the
legal roles made available to Black men allowed them to distinguish themselves as more or less
civilized, more or less of a “low down darkie”. Here we see the seeds of the notion of the good
Black, the civilized negro, the successful product of moral uplift, who never fully achieves the
full civility and subjectivity of white men, but rather is asked to mimic what those men are by
nature, always and already.

III. Conclusion: The Ongoing Case for Reparations

On the evening of December 31st, 1862, Black people across the South gathered together
for what they called “Freedom’s Eve” celebrations and counted down the minutes, then seconds
until the Emancipation Proclamation took effect. At Beaufort, South Carolina, over five
thousand Black people gathered and sang what one white observer called “the Marseillaise of the
slaves ... The effect was electrical.” 252 “In that New Jerusalem, I am not afraid to die; We must
fight for liberty, in that New Jerusalem.” 253 In that electric moment at the stroke of midnight,
Black people were transformed from objects of enslavement to subjects of freed-dom. But, as
they would shortly learn, the freed-dom they were about to enjoy was every bit as peculiar as the
soul-killing institution that Lincoln’s pen was designed to destroy.

While the Emancipation Proclamation marked the end of enslavement for masses of
Black people throughout the South, 254 a few thousand Black people in enclaves in South

252 Elizabeth Hyde Botume, FIRST DAYS AMONGST THE CONTRABANDS 76 (1968).
253 Id.
254 In fact, the slaves at Port Royal had been legally emancipated twice prior to the enactment of the
Carolina and Mississippi had been experiencing a robust form of practical freedom for over a year - this included the Black people in Beaufort. Union troops had overseen the creation of “a negro paradise” just south of Vicksburg, Mississippi, and a radical experiment in free Black labor, land ownership, and self-sovereignty at Port Royal, South Carolina. These two utopian experiments provided a blueprint for what freedom, reparation, transitional justice and citizenship could have looked like for African Americans. Their initial successes and ultimate failures help illuminate the peculiar form of freed-dom that Black people enjoyed in the newly united States.

It may be that these efforts to frustrate Black equality and citizenship merely exacerbated a structural problem inherent in the nation’s approach to Black freedom in general. The aims and tactics of governance applied to freed men and women during this period were at their core, and at their best, tied to a notion of racial difference. Law failed to eviscerate that difference, but instead entrenched it. Law became the tactic by which freedmen’s second class status was both produced and maintained. At a time when freed men and women made ardent demands for land redistribution and separation from white people, reconstruction governance preferred an approach that nested both freedom and transitional justice for Black people in a web of legally

Emancipation Proclamation. On May 9, 1862, Major General David Hunter, Commander of the Department of the South, issued a general order declaring that “the persons in Georgia, Florida, and South Carolina heretofore held as slaves, are ... declared forever free.” President Lincoln quickly revoked Hunter’s declaration just as he had General Freemont’s order emancipating enslaved people in Missouri in August of 1861. General Orders, No. 11, Rebellion Record: a Diary of American Events: Documents and Narratives: Volume 5. Doc. 28 (ed. Frank Moore). Then two months later, on July 17, 1862 Congress enacted the Second Confiscation Act of 1862 in which, among other things, it emancipated the slaves of any person in rebellion or insurrection against the United States. U.S., Statutes at Large, Treaties, and Proclamations of the United States of America, vol. 12 (Boston, 1863), pp. 589-92. Lincoln felt that he must do more than rely upon the Confiscation Act to free the slaves in part because of concerns about the Act’s constitutionality, but also due to the difficulty in proving that a particular slave’s
mediated relationships with white people - contract laborer/planter and sharecropper/landowner. While formerly enslaved people expected that their freedom would take place on the material terrain of land, in forty acre lots, northern officials thought it better that the freedmen learn the lessons, responsibilities, and discipline of freedom through legally structured institutions such as the contract labor system. Keeping to the obligations of labor contracts that the head of the Black household would sign for a year was the best method by which to teach freed people a necessary form of self-mastery, so their thinking went.

The experiment in a productive freedom at Port Royal undertaken by Philbrick and colleagues illustrated what has been manifest in many other colonial contexts: economic interests underwrite “common sense notions of who (or what) is responsible for social inequalities.” For Edward Philbrick and William Gannett, by 1865 the articulation of benevolent, unself-interested concern for the welfare of the freedmen became a fig leaf for promoting economic interests in southern cotton production that they shared with their Boston investors, who, it should be pointed out, made a substantial profit on Philbrick’s “experiment” in free labor. Philbrick’s success at Port Royal served as a model for Northern industrialists, such as Horace Greeley, who “insisted that what the South needed most was not talk of confiscation, which would paralyze investment and economic development, but an influx of northern capital, settlers, and industrial skills.” The temptation for those on colonial missions to do not only good but well is surely not unique to the Port Royal project.

-------------------
256 Foner, Thaddeus Stevens at 136-37.
257 See Sally Engle Merry, COLONIZING HAWAI’I at 26 (“some New Englanders came to do good,
The global implications of this venture in virtue for profit were anything but extenuating. The U.S. sought to better advantage in the international cotton market, then dominated primarily by India, Egypt and Brazil. Cotton industrialists like Edward Atkinson, the author of *Cheap Cotton by Free Labor*, sought to sell the anti-slavery campaign as one that would improve the U.S.’s standing in an increasingly globalizing cotton market. Industriousness and a commitment to a single crop economy by the freedmen were key to the success of these plans. While these northerners were committed to the destruction of the system of chattel slavery, they favored the retention of the plantation system, but with northern capital and management. These plans could not tolerate independent Black yeoman farmers engaged in subsistence or just above subsistence farming of crops other than cotton. “Their vision of the freed people as agricultural peasants devoted to a single-crop economy and educated to a taste for consumer goods supplied by Northern factories fulfills the classic pattern of tributary economies the world over.”

In the end, the policies of both the Freedmen’s Bureau and Northern settlers favored a role for the freedmen in the post war economy as “an essentially propertyless plantation force, whose basic legal rights would be recognized,” who would remain an agricultural peasantry in the South, possessing basic legal rights, but would, “hardly be in a position to challenge propertied whites for political and economic dominance.” This policy received strong endorsement from northern industrialists and members of the Johnson administration, who, in the

---

259 In this argument you see a convergence of the interests of Black people and capitalists that Derrick Bell later identified as underlying the civil rights struggles of the 1950s. See: *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518 (1980).
261 Foner, *Thaddeus Stevens* at 136.
end, viewed confiscation as an outrage. Once public sentiment in favor of aiding the freedmen dimmed with the end of the war, prominent northern journals issued editorials urging that the allocation of land to freedmen not violate well-hewn American values of hard work and desert. *The Nation* commented that giving homesteads to the freedmen would teach the wrong lesson, that “there are other ways of securing comfort and riches than honest work ... No man in America has any right to anything with he had not honestly earned, or which the lawful owner has not thought proper to give him.”

By 1867, all but a few of the nation’s leaders were looking forward to the economic future of the unified nation, no longer mindful of what moral imperative the atrocities of slavery might demand, nor interested in the economic needs of African Americans. Confiscation triggered self-serving concerns about the integrity of private property interests - regardless of the fact that the property was that of disloyal confederates. The fundamental integrity of capitalism was at stake, not to be dwarfed by backward looking claims by poor Black people in the South. *The New York Times* gave voice to this view in July of 1867 when it editorialized: “If Congress is to take cognizance of the claims of labor against capital ... there can be no decent pretense for confining the task of the slave-holder of the South ... An attempt to justify the confiscation of Southern land under the pretense of doing justice to the freedmen, strikes at the root of all property rights in both sections. It concerns Massachusetts quite as much as Mississippi.”

The interests of capital forged solidarity between white men who only a couple years earlier had

---

262 *The Nation* March 21, May 9, 16 1867.
263 Thaddeus Stevens continued to fight to his death in 1868 for confiscation and homesteads for the freedmen. But he increasingly became a minority in the increasingly less radical Republican delegation in Congress. See generally, Foner, Thaddeus Stevens at 128-49.
been shooting at each other. Thus, reconstruction governance of Black labor and white capital created a grid of intelligibility underwritten by the logic of racial difference.

Once the war was over, outrage toward the atrocity of chattel slavery was expeditiously replaced by indignation at the specter of an erosion of the natural right to property. Once emancipated, Black people were successfully bound into a peasant status through an interlocking web of legal relationships, responsibilities, and rights. The use of law in general, and rights in particular, were an effective form of pastoral governance over these new citizens whose freedom and free labor played a vital role in the post-bellum economy. Even the Montgomerys of Davis Bend, while escaping much of the overbearing white governance that the freed people of Port Royal endured, found that the more autonomous form of freed-dom they enjoyed was unsustainable under the economic, legal and normative pressure of the post-war Johnsonian America.

This history makes the most compelling case for the renewed call for reparations today, especially in the form of property redistribution. To be sure, modern principles of human rights and dignity – familiar to today’s ear but not yet articulated in the 19th century – fully embrace the notion that a kind of repair and restorative justice must be awarded to the victims of human enslavement, loss of liberty, torture, hatred, and degradation that characterized the institution of chattel slavery.265

265 The international community has fully embraced the notion that human slavery violates fundamental human rights. See Slavery Convention of 1926 (“The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps: (a) To prevent and suppress the slave trade; (b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.”); Universal Declaration of Human Rights of 1948 (“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”).
Draft – Not for Circulation or Citation with Author’s Permission

But a modern sensibility toward rights is not needed for one to agree that a writ of reparation must accompany the abolition of slavery if the demands of justice are to be fulfilled. General Rufus Saxton framed the question so eloquently in 1862: “It seemed to be the dictate of simple justice that [the freedmen] have the highest right to a soil that they have cultivated so long under the cruelest compulsion, robbed of every personal right, and without any domestic or social relations which they could protect.”

By 1865, the debt owed to formally enslaved people had matured in Saxton’s mind, and he argued to his superiors that the freedpeople’s demand for land was secured by an “equitable mortgage on the land” for “generations of unpaid wages.”

The freed people of Port Royal and Davis Bend fully expected that the terms of emancipation would entail the exchange of the condition of being property to that of being property owners. Secure title to land figured as a horizon of freedom for formally enslaved people, and many of their northern white contemporaries were in agreement. Remarkably, the freedpeople of Port Royal did not expect to be given land – as later promised by Generals Sherman and Grant – rather they aimed to buy it, often in clubs, kinship groups, or in cooperatives. They worked hard to save enough money to buy land at public auctions, and the federal officials that set the terms of these sales understood that if title to land was to play a meaningful role in the reparation of slavery the land could not be priced at what the market would bear, but rather at what the community could afford.

The blueprint for individual and collective ownership of land as part of what it meant to

---

266 Letter from Rufus Saxton to Hon. Edwin M Stanton, Secretary of War, December 1862, Saxton Papers, Yale University.
267 Letter of Rufus Saxton to Prof. J.J Child, March 15, 1865, Saxton Papers, Yale University.
do justice to formally enslaved people is to be found in the histories of Port Royal and Davis Bend. The failure of these experiments in reparation testifies to the triumph of white innocence, or at least redemption (thus justifying amnesty, pardons, and restoration of confiscated confederates’ land), the enduring and subordinate status of people who have been freed but are not free, and the normalization of property-based wealth accumulation by white people, an entitlement never meaningfully offered to formally enslaved people and their descendants.

Today’s call for community land trusts, Limited-Equity Housing Cooperatives, Zero-Equity Co-operatives, Mutual Housing Associations, and Deed Restricted housing gain moral force when they are seen as honoring the demands of the formerly enslaved people in Port Royal and Davis Bend for land redistribution as a debt owed for enslavement. Indeed, the first CLT was established in 1968 by civil rights activists seeking a way to assist African-Americans in rural Georgia. These modern ownership structures echo the spirit of these experiments in freedom, refusing to surrender tactics of reparation to i) the values of a “free market” that assign real property ownership to the “carnival of speculators and sharpies,”268 ii) the individualization of injury and disadvantage that undermines collective remedies, and iii) the work that white innocence does in justifying and normalizing the intergenerational accumulation of property-based wealth by white people and the relative structural poverty of African Americans. The underlying philosophy of the early CLTs reflected a notion that “Land is treated as a common heritage, not as an individual possession.”269

Activists working on these trust-based forms of land redistribution and ownership have

268 Letter of Rufus Saxton to Mr. C.C. Leigh, April 1, 1864, Saxton Papers, Yale University.
developed creative ways to structure land ownership that preserves both affordability and equity for lower income homeowners. There are a number of ways in which these strategies could be relied on to accomplish a kind of land-based reparation today. So called “mansion” or “flip” taxes could be used to disgorge generationally accumulated profits in land ownership as could other tax measures on the 1%. These revenues could then be earmarked for investment in the purchase of land through “third sector” housing. Data reveal that rates of residential property foreclosure in Beaufort County are substantially higher than either the state or national average. And numerous farms are in foreclosure throughout the south, many in excess of 50 acre parcels. Public-private partnerships could acquire these tracts of land in trust as part of a large-scale form of reparation for enslavement. Eminent domain measures could also play an important role in the preservation of large parcels that could be held in trust as part of a larger publically sponsored reparation project.

Others have done the hard work of hammering out the legal and financial structure of these non-market driven approaches to land ownership. This article aims to make the historical and normative case for their demand, not only for the descendants of enslaved people in Port Royal and Davis Bend, but in the descendants of enslaved people more generally.

Black lives will not matter today if we don’t take more meaningful steps to repair the intergenerational wreckage that slavery has inflicted on Black peoples’ lives.

---

270 As of August 2016, the foreclosure rate in Beaufort County was .11%, as compared with .09% in South Carolina and .07% nationally. Beaufort County Real Estate Trends & Market Info, RealtyTrac, August, 2016, available at: http://www.realtytrac.com/statsandtrends/foreclosurerate/sc/beaufort-county.

271 The website FarmFlip lists farms for private sale, at auction, or in foreclosure,