Article

In the Beginning: Origins of African American Real Property Ownership in the United States

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Abstract

The quest for real property ownership by African Americans began immediately after emancipation. Even though free people of color were able to purchase real property in the South, their numbers were few and many states erected barriers that either prohibited land ownership by African Americans or imposed strict limitations on their ability to purchase real property. In the absence of de jure restrictions, there were de facto impediments that came in the form of violence against African Americans who either made land purchases or attempted to make such purchases and the outright refusal by Whites to sell land to them. Despite the many barriers and challenges faced by those who sought to own land, African Americans saw land ownership as a pathway to independence, and a confirmation of their freedom. The Civil War period brought many legislative enactments that ostensibly provided recently enslaved African Americans with opportunities for the acquisition of real property. These efforts served as the primary basis for the belief that African Americans would receive "forty acres and a mule" at the conclusion of the Civil War. Opponents to African American's quest for land ownership were vehement in their efforts. This article reviews the African American drive for land ownership, barriers to their aspirations, and how congressional land reform efforts provided hopes for land ownership that were soon shattered by a president who was sympathetic to the former

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confederates and intent on dismantling legislative enactments that benefited the newly freed African Americans.

Keywords
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The arrival of enslaved Africans in America swiftly brought about laws that forbade them the right to purchase real property (Stampp, 1956, p. 197). Black land owners in the antebellum south were anomalous. Enslaved Africans were allowed to accumulate items of personality such as farm animals ". . . gold and silver coins, wagons, buggies. . . and in rare instances even real estates" (Schweninger, 1997, p. 59).

Even in those rare cases of "free" African Americans, many of the rights and liberties bestowed on Whites were withheld from them. One right withheld from free African Americans or strongly restricted was the right to own land. The State of Georgia had one of the most comprehensive statutory schemes prohibiting African American land ownership. The legislature of Georgia, in 1818, passed a law prohibiting persons of color from owning real property. The breadth and depth of the statute foreclosed any possibility of African American real property acquisition. In relevant part, the statute provides:

> No free person of color within the state, (Indians in amity with this state excepted,) shall be permitted to purchase or acquire any real estate, or any slave or slaves, either by a direct conveyance to such free person of color of the legal title of such real estate, or slave or slaves, or by a conveyance to any White person or persons of such legal title, reserving to such free person of color the beneficial interest therein, by any trust, either written or parol, by any will, testament, or deed, or by any contract, agreement, or stipulation, either written or parol, and security, or attempting to secure to such free person or color, the legal title or equitable or beneficial interest therein. . .. (Cobb, 1818, p. 993)

Throughout the south, state legislatures were used to thwart any progress toward Blacks concerning the owning and acquiring of land. The consistent use of the legislative enactments was a primary tool that prevented African Americans from acquiring land. Not only did Georgia provide a statutory basis to prohibit Black land ownership; the Georgia Supreme Court ruled on the matter as well.

The Georgia Supreme Court upheld the prohibition against African American (free or enslaved) land ownership in the case of *Swoll et al. v. Oliver et al.* (1878, p. 248). In *Swoll*, heirs of Aspasia Mirault filed a

complaint against Calley demanding that land he held in trust for Mirault be returned to her estate. Mirault was a free person of color who paid purchase money for a lot of land in Savannah, Georgia and allowed Calley, a White man, to hold title to the lot in trust for her. Mirault mistakenly believed this arrangement would allow for her heirs to later claim the property. The Georgia Supreme Court took no pains in proclaiming that any such arrangement was forbidden by law. "If such were the facts, as shown by the evidence, then the trust in her favor under the deed to Calley, as the law then stood (in of April, 1842), was void by the eighth section of the act of 1818, as being against the then declared policy of the state" (*Swoll et al. v. Oliver et al.*, 1878, p. 253). This prohibition was noted 25 years earlier in the case *Bryan v. Walton* wherein the Court, *in dicta*, wrote the intent of the act of 1818 was to ". . .divest free persons of color of the property held by them at the time of its passage" (*Bryan v. Walton* 1853, p. 185, 204). While the question before the Court centered on manumission of enslaved Africans, there is little doubt that its reference to property reiterated the express prohibition against the acquisition of land by enslaved Africans in Georgia.

> Other states in the south imposed strict limitations on the ability of African Americans to acquire property during the antebellum period. For example, in Florida, "it was forbidden to buy anything from or sell anything to a free negro without the consent of his guardian under a penalty of $100 to $500" (Thomas, 1911, pp. 340-341). At Louisiana's ". . . constitutional convention in 1852, several delegates unsuccessfully attempted to forbid free Negros from acquiring real estate by inheritance or purchase" (Schweninger, 1997, p. 64)

Despite onerous statutory prohibitions and the refusal of Whites to sell, there existed a few conspicuous examples of free Blacks who were land owners in the ante-bellum south. Despite efforts by some to forbid the sale of land to people of color, the state of Louisiana had several Black land holding planters (Phillips, 1966, p. 434). Most notable among them were Marie Metoyer of Natchitoches Parish who owned a number of slaves and more than 2,000 acres of land when she died in 1840; Charles Roques, also of Natchitoches Parish, owned approximately 1,000 acres of land at his death in 1854 (Phillips, 1966, p. 434). In Maryland, in 1860, it is reported that free Blacks paid taxes on more than 1 million dollars worth of property. In Virginia alone, Blacks owned approximately 60,000 acres of farmland (Bennett, 1971, p. 170). African American ownership of city property in the state of Virginia had an assessed value of approximately 463,000 dollars (Bennett, 1971, p. 170). In 1860, Blacks owned property valued at more than 15 million dollars in New Orleans, Louisiana (Bennett, 1971, p. 170).

In the state of South Carolina, there were a few Black planters who owned real property (Gordon, 1971, p. 158). Some of the free Black. . . "came into possession of their land, slaves and other property by gifts from their White relatives" (Gordon, 1971, p. 158). Those Blacks who managed to own were fortunate. For the Black property owners, during the ante-bellum, regardless of how they obtained possession were rare breeds especially in light of a plethora of laws that denied enslaved Africans the right to acquire land (Stampp, 1956, p. 197).[1]

Unlike the large numbers of poor White men who were able to acquire land from the public domain under federal homestead laws in the late 1800s, African Americans who acquired land did so mostly by private market purchases, many times under the threat of violence, limited access to credit, overt discrimination and the outright ". . . refusal of many Whites to sell to Black people" (Mitchell, 2001, pp. 505, 525). The new group of Black landowners who purchased rural land between 1865 and 1910 generally became owner-operators of farms; consequently, the high-water mark for Black landownership strongly correlates with the high-water mark for the number of Black farmers in the South.

An inextricable link exists between land ownership and power in America. The ownership of private property is the bedrock of the American economy. It represents power and wealth. The nexus between property, power, and wealth has existed since the founding of America. "Private property establishes (the) maximum conditions for wealth creation . . ." (O Lee Reed, 2012,p. 203.). St. George Tucker, a law professor at William & Mary, recognized in 1796 the easiest way to smother "Free Negroes" quest for economic development and power defeat their ability to acquire property. While he professed a desire to "incorporate the Black into the state," he exposed the belief that ". . . no negro or mulatto be capable of taking, holding, or exercising, any. . .freehold,. . .or any estate in lands or tenements, other than a lease not exceeding twenty one years" (Tucker, 1796, pp. 93-94). Interestingly, in using an agricultural metaphor, Tucker's (1796) desire was that African American ". . . seeds of ambition would be buried too deep, ever to germinate" (pp. 93-94).

In 2008, the American Humanist Association published an article that argued that if emancipated slaves had been allowed to possess and retain the profits of their labor, their descendants might now control a much larger share of American social and monetary wealth (Osel, 2008). The wealth of the United States, they say, was greatly enhanced by the exploitation of Black slave labor (Horton & Horton, 2005, p. 7). According to this view, reparations would be valuable primarily as a way of correcting modern economic imbalance. The U.S. Department of Commerce has calculated that in modern U.S.

dollars calculated for inflation and interest, slavery generated trillions of dollars for the U.S. economy.

Prelude to Forty Acres and A Mule

There is little doubt that President Lincoln believed slavery was repugnant. In a letter to Albert G. Hodges, he wrote, "I am naturally anti-slavery. If slavery is not wrong, nothing is wrong. I cannot remember when I did not think so" (Lincoln, 1864). In his 1858 Senatorial debate with Stephen Douglas, Lincoln denounced the Dred Scott decision, and remarked that states that adopted such regulations were ". . . disgusting and abhorrent, according to my views" (Lincoln & Douglas, 1858). "But when, during the Civil War, field commanders on their own initiative issued orders freeing slaves in areas of their military operations, Lincoln vetoed their actions" (Bell,1980). Lincoln firmly believed the resolution of the slavery question should not be answered with military action. In response to ardent abolitionist, Horace Greeley, he wrote,

> I do not agree with them. My paramount object in this struggle is to save the Union, and is not either to save or to destroy slavery. If I could save the Union without freeing any slave, I would do it; and if I could save it by freeing all the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that. What I do about slavery and the colored race, I do because I do believe it helps to save the Union. I shall do less whenever I shall believe doing more hurts the cause, and I shall do more whenever I shall believe doing more will help the cause. I shall try to correct errors when shown to be errors, and I shall adopt new views so fast as they shall appear to be true views. (Lincoln, A. (1862, August 22). [Letter Horace Greely].,)

The crucible of war continued to wear on Lincoln; casualties mounted, the economy was weakened, and the public was becoming impatient and battle worn. "There were indications that foreign powers might both recognize the Confederacy and supply it with financial aid and arms" (Bell, 1980). In September of 1862, Lincoln ". . . issued a preliminary proclamation, promising that if the rebellion continued on January 1, he would free all slaves in states and ports of states under rebel control" (Nieman, 1991, 55). On New Year's Day, 1863, the President signed the Emancipation Proclamation. Against the backdrop of war, dueling loyalties, and the eventual emancipation of enslaved Africans, the questions of land allocation, seizure of property, and abandoned lands, and the redistribution of such property began to be addressed.

The First Land Confiscation Acts

On August 6, 1861, Congress enacted the First Confiscation Act (United States Congress, p. 352). This act provided the president with authority to seize property used in aid of the Confederate rebellion. Pursuant to the first Confiscation Act, Thaddeus Stevens ". . . proposed to remake the south through massive confiscation of lands of slave owners and redistribution of those lands to the slaves" (Oubre, 1978). Lincoln was lackluster in his interpretation of the First Confiscation Act; ". . . he could have interpreted the act to include not only the property actually used in waging war but also all of the public lands belonging to the states" (Oubre, 1978, p. 2). The First Confiscation Act was passed, without much debate, in response to military reverses and the dilemma faced by Union commanders when fugitive slaves crossed the Union lines (Syrett, 2005). Neither Lincoln nor his attorney general Edward Bates was vigilant in enforcing the Act. Lincoln consistently opposed harsh punishment for rebels because of his focus on restoring the Union.

In the ensuing 6 months, Senator Lyman Turmbull of Illinois and Congressman Thomas D. Elliot of Massachusetts demanded a new confiscation act that would free slaves and provide for an area of land suitable for them (Basler, 1953, p. 506).

The Second Confiscation Act, enacted on July 17, 1862, called for the seizure of rebel's property regardless of whether it was used in war (37th United States Congress, 1863, pp. 589-592). This act also granted freedom to the slaves of individuals who were engaged in rebellion against the Union when their lands were overtaken by the United States Military (Oubre, 1978, p. 2). Lincoln objected to portions of the Second Confiscation Act on grounds that it was unconstitutional because it called for forfeitures of property "beyond the lives of guilty parties" (Bentley, 1970, p. 89). This, according to Lincoln, constituted a bill of attainder (Oubre, 1978, p. 3). The land seized by the government pursuant to the Second Confiscation Act did not come with clear title (Oubre, 1978, p. 3). Clouds on the land seized pursuant to the Second Confiscation Act made it difficult to guarantee to freedmen perpetual possession of such land. A third Confiscation Act, the Confiscation Act of 1863, empowered the Secretary of the Treasury to take control of abandoned lands in the Confederate States (Magdol, 1977, p. 153).

As the dawn began to draw on the Civil War, it became essential to establish an organization to be a watchdog for the freedmen. In 1863 and 1864, very few individuals found it necessary to establish such an agency as the interest in the freedmen and their quest for property was subservient to the restoration of the Union.

The Freedmen's Bureau

During January of 1863, Representative Thomas D. Elliot introduced a bill in the House of Representatives calling for a bureau of emancipation (United States Congress, pp. 282, 381). "It was referred to a select committee on emancipation, but, for lack of time, the committee failed to report before the close of the session" (Pierce, 1971, p. 35). On December 14, 1863, Elliott introduced a similar bill to establish a bureau of emancipation.

Opponents of Elliot's bureau of emancipation bill advanced two constitutional arguments against passage of the bill. First, the opponents noted that because Elliot's bill heavily depended on the war power and because there could not be a war except against a foreign government, then *a fortiori* the president could not constitutionally use his war powers in aid of the establishment of the freedmen's bureau (Bentley, 1970, p. 37). This argument was made null and void in 1863 in the *Prize Cases* where the United States Supreme Court held that the Civil War was indeed a "war" (*Prize Cases*, 1863, p. 459).

Second, opponents of the bill argued that the bureau bill sought to alter the federal system of America.

> For the first time, under it provisions, the federal government would administer charity to the needy on a large scale, and for the first time citizens in a state would be taxed from Washington to support the indigent population of other states. "General Supervision" of the freedmen would give the central government unwonted police power. From that new power and the land-settlement of the bill, it appeared to Democratic Congressmen that "the solemnly guarded power of the states over their lands and inhabitants" would be destroyed at a blow. (Bentley, 1970, pp. 37-38).

Despite strong opposition against the establishment of the Freedmen's Bureau, on March 1, 1864, the bill passed in the house by the slim margin of two votes (United States Congress, pp. 773, 895).

When the bill reached the Senate it encountered further difficulties. Committee delays and disagreement over whether the bureau should fall under the umbrella of the Treasury or the War Department (Bentley, 1970, pp. 39-40). After arguments in the Senate were resolved, regarding which executive department was going to be used to control the bureau, the bill passed the Senate. The Senate and the House passed the bill on March 3, 1865 (after a motion to table the bill was defeated in the House by a vote of 77 to 52; Bentley, 1970, pp. 39-40). President Lincoln signed the bill on the same day (Bentley, 1970, p. 49).

In January 1865, General William T. Sherman met with 20 African American leaders who informed him that land ownership was the best way for the freedmen to secure and enjoy their new found emancipation (Bentley, 1970, p. 49). On the 16th of that year, Sherman issued Special Field Order No. 15. The order reserved coastal land in Georgia and South Carolina for Black settlement, with each family receiving 40 acres. Later Sherman agreed to loan the settlers army mules. Six months after Sherman issued the order, 40,000 former slaves lived on 400,000 acres of this coastal land (Bentley, 1970, p. 49). Sherman vested General Rufus Saxon the authority to carry out his orders (Couto, 1991, p. 163). Sherman's ". . . Special Field Order No. 15 would constitute the greatest land redistribution program ever benefiting African Americans in this country's history" (Mitchell, 2001, p. 525).

In March, Congress seemed to have laid plans for widespread land reform when it authorized the Freedmen's Bureau to divide confiscated land into small plots for sale to freedmen and loyal Southern Whites (Oubre, 1978). Less than a year after Sherman's order, President Andrew Johnson intervened, and ordered that the vast majority of confiscated land be returned to its former owners (Oubre, 1978). This included most of land that the freedmen had settled. As a result of the President's Order, the federal government dispossessed tens of thousands of African American landholders (Oubre, 1978). In Georgia and South Carolina, some Blacks fought back, driving away former owners with guns, but only 2,000 African Americans retained land they had won and worked after the war (Oubre, 1978).

Other federal laws existed ostensibly for African Americans to acquire land, but they were largely ineffective. Prices under the Southern Homestead Act were too high for the formerly enslaved African Americans who had almost no capital (Oubre, 1978). The development of Black Codes[2] and the use of year-long contracts to bind labor and the hostility of Whites against African Americans also made the acquisition of land nearly impossible. [T] he Southern Homestead Act proved to be "a dismal failure" (Foner, 1988. The Federal retreat from land redistribution was not only a disappointment that cultivated a sense of betrayal, it was also a missed opportunity for economic reform that might have allowed Southern Blacks to consolidate and hold political gains made during the early years of Reconstruction (Foner, 1988.

After a struggle through both houses, an act titled the Bureau of Refugees, Freedmen, and Abandoned Lands was passed. The Bureau was established to last for only 1 year after the end of the Civil War (p. 990). Chairing the bureau was a commissioner appointed by the president (Pierce, 1971, p. 44). General Oliver Otis Howard was named the Bureau's first commissioner (Bentley, 1970, p. 53). With the approval of the president, the commissioner was

entitled to provide loyal freedmen and refugees such tracts of land within the Confederate States that was abandoned or acquired by confiscation, sale, or any other means by the United States Government.

> Of these lands a tract of not more than forty acres might be leased to every male citizen, whether refugee or freedman, and lessee was to be protected in the use and enjoyment of the land for a term of three years. (Bentley, 1970, p. 53)

Shortly after the bureau was organized, the government transferred to the land division all abandoned and confiscated property not especially needed for military purposes (Pierce, 1971, p. 45).

> Abandoned lands were defined as those lands whose owners were voluntarily absent, aiding the rebellion. Confiscated property was that which has been condemned and sold by decree of the federal courts and to which title was vested in the United States. (Pierce, 1971, p. 129)

As to both kinds of land, the bureau was given all incidents of ownership except the right to sale.

During the war between the states, the U.S. government held millions of acres of land, of which approximately 800,000 acres were abandoned by confederate sympathizers. The abandoned lands were granted to the Freedmen's Bureau sometimes during the spring of 1865 (Pierce, 1971, p. 129). The Freedmen's Bureau had control of less than 1% of the land confiscated from the Confederate States. "Only two-tenths of one percent of the land in the insurrectionary states was ever held by the bureau. It would have been impossible to give even one acre (of land held by the Freedmen's Bureau) to each family of freedmen" (Magdol, 1977, p. 156). "The Freedmen's Bureau never controlled more than two-tenths of one percent of the land in the South and President Johnson's Amnesty Proclamation forced restoration of most of that land" (Pierce, 1971, pp. 129-130).

Sherman's Orders

When General William T. Sherman commenced his march across Georgia in November of 1864, thousands of freedmen accompanied him. The freedmen, for the most part, came with little clothing and supplies; they did, however, come with a strong will to fight. Sherman met with Black leaders in Savannah, Georgia ". . . in an effort to determine (among other things) what could be done with the vast multitude following in the train of Sherman's Army" (Pierce, 1971, pp. 129-130).

As a result of this meeting General Sherman issued his now famous Special Field Order Number 15, which provided that,

> The islands of 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 from the settlement of the Negroes now made free by the acts of war and the proclamation of the President of the United States. (Pierce, 1971, p. 18)

Pursuant to Sherman's Order General Rufus Saxton was given the responsibility of dividing the land set aside pursuant to Sherman's Special Field Order Number 15. Saxton began dividing the land into 40 acre tracts (Sherman, 1957, pp. 248-252). All of the land on which the freedmen settled was not surveyed, in an attempt to minimize potential problems, Saxton issued land certificates that named the possessor, the plantation in which the parcel was located, and the amount of land granted to him (Oubre, 1978, p. 46). The titles given pursuant to Howard's orders were "possessory" titles. Such titles did not vest the freedmen with absolute ownership.

The possessory titles issued pursuant to Sherman's Special Field Order Number 15 were to be approved and made legally effective, and the president was granted the authority to reserve three million acres of public land in the south for the sole use of the former slaves and loyal refugees. Forty acre tracts of the confiscated and abandoned lands were to be leased by the commissioner to his underlings, and they were given options to purchase the acreage they held (Oubre, 1978, p. 49).

Word of Sherman's Order spread quickly throughout the covered jurisdictions. As a result of the publicity generated by the issuance of Special Field Order Number 15, thousands of African Americans flocked to the Sherman Reservation in search of their 40-acre plot.

In August of 1865, General Howard determined that more than one commissioner was needed to distribute the land of the three states forming the Sherman Reservation; accordingly, the General reassigned Saxton to control South Carolina, appointed T. W. Osborne assistant commissioner of Florida and Davis Tillsen assistant commissioner of Florida (Bentley, 1970, p. 116).

The Forty Acres and a Mule Mirage

The belief that African Americans would receive 40-acre plots of land off the coasts of South Carolina, Georgia, and Florida in 1865 spread rapidly. Fueled by Sherman's Special Field Order No. 15 and the establishment of the Freedmen's Bureau, it was "promised (that) every male citizen, whether

refugee or freedman, forty acres of land at rental for three years with an option to buy" (Couto, 1991, p. 165, Note 11). In fact, there was never a promise of a mule. The mule myth developed from the provision of the Freedmen's Bureau providing for provisions. "This clause of the act was partially responsible for the unfortunate forty acres and a mule myth. The freedmen came to believe that they would be given land and a mule. . ." (J. D. Richardson, 1963, p. 19). A portion of this belief might also be attributable to ". . . some military commanders (having) turned over to the use of the bureau the horses and mules in excess of military needs" (Oubre, 1978, p. 22). Many of the surplus mules were purchased at public auctions by the freedmen. This effort at land redistribution to benefit the Freedmen came to an abrupt halt. The federal government's failed promise of "forty acres and a mule" continues to resonate in the African American community.

> The broken promise has become a metaphor for the continued unwillingness of the government to provide African Americans with the same range of economic opportunities that his has afforded White Americans to integrate African Americans into the economic mainstream of society. (Mitchell, 2001, p. 501).

The 1999 case of *Pigford v. Glickman* represents another instance wherein African American hopes of relief from fraudulent practices which lead to their loss of land were aborted. The gravamen of the *Pigford* suit asserted that the United States Department of Agriculture (USDA) discriminated against African American farmers from 1983 to 1997 when they sought loans and other financial assistance from the agency. (*Pigford* v. Glickman, 1995). A study commissioned by the USDA found that "(a) the largest USDA loans (top 1%) went to corporations (65%) and White male farmers (25%), (b) loans to Black males averaged US$4,000.00 (or 25%) less than those given to White males, and (c) 97% of disaster payments went to White farmers, while less than 1% went to Black farmers" (Congressional Research Service Report for Congress 7-5700, p. 2). Compounding the woes of African American farmers was the disbanding of the USDA's Office of Civil Rights in 1983 (General Accounting Office [GAO] No. GAO-06-469R, 2006).

> That effectively ended any federal investigation of complaints filed by minority farmers. But Black farmers were never informed that the complaint division had been abolished. When their loan applications were routinely rejected by county lending committees, their loan appeals went to the same loan officers who had rejected their original applications. (Mittal & Powell, 2000, 4)

One hundred years after Special Field Order No. 15, the U.S. Commission on Civil Rights ". . . found discrimination at U.S.D.A. in both program

delivery and the treatment of employees. Subsequent reports in 1982 and 1990 found that civil rights abuses at the USDA were actively contributing to the decline in minority farm ownership" (Civil Rights Action Team [CRAT], 1997, p. 2).

Historically, African American land ownership has been dependent on government agencies and policies that on the surface were designed to increase their holdings and provide a means to bolster the economic status of the land owners. Now, and as was the case during reconstruction, the very agencies and legislative enactments designed to render assistance, became nothing more than a bureaucratic field of land mines laden with racial prejudice and discriminatory practices. The skepticism voiced by the Freedmen in 18 is echoed today by their descendents. Government involvement has been little more than a "conspiracy to strip Black farmers of their land" (CRAT, 1997, p. 5).

The Sea Islands

Although President Johnson blocked almost every chance for a policy favorable to confiscation and redistribution of land, Howard continued to mount opposition to restoration. One prospect to obtain land for the freedmen was in the Sea Islands. However, in September of 1865, the former owners of plantations within the Sherman Reservation began to demand that they too be restored their lands. Saxton refused to restore the lands and stated his position to Howard as follows:

> The lands which have been taken possession of by this bureau have been solemnly pledged to the freedmen. The law of Congress has been published to them, and all agents of this bureau acting under your order have provided lands to these freedmen. Thousands of them are already located on one acres each. Their love of the soil and desire to own farms amounts to a passion—it appears to be the dearest hope of their lives. I sincerely trust the government will never break its faith with a single one of these colonists by driving him from the home which he has been promised. It is of vital importance that our promises made to freedmen should be faithfully kept. (Bentley, 1970, p. 95)

The former plantation owners appealed to President Johnson who commanded Howard to notify Saxton that Circular 15 was applicable to the Sherman Reservation. In Edisto Island, South Carolina, Howard met with a group of freedmen to inform them that pursuant to President Johnson's orders that he had to restore the land. "He assured them that although he could not retain the land for them he would not restore the land unless the owners

provided work for all who were on the land" (Saxton, 1865). The freedmen objected to this proposal and pleaded for the opportunity to keep the land. An excerpt of one such plea from a group of freedmen made the following request:

> General we want [h]omesteads. We were promised [h]omesteads by the government. If it does not carry out the promises [i]ts agents made to us . . . we are left in a more unpleasant condition than our former. We are at the mercy of those who are combined to prevent us from getting land enough to lay our [f]athers['] bones upon. We have property in [h]omes, cattle, carriages, & articles of furniture; but we are landless and [h]omeless. . . We cannot resist. . . [w]ithout being driven out [h]omeless upon the road.
>
> General, we cannot remain [h]ere. . . [under] such condition[s] and if the government permits them to come back we ask it to help us to reach land where we shall not be slaves nor compelled to work for those who would treat us as such. (Oubre, 1978, p. 53)

Their petition to President Johnson is equally touching:

> This is our home. We have made [t]hese lands what they are. [W]e were the only true and [l]oyal people that were found in possession of [l]ands. [W]e have been always ready to strike for liberty and humanity, yea to fight if need be [t]o preserve this glorious Union. Shall not we who [a]re freedmen [sic] and have been always true to this Union have the same rights as are enjoyed by [o]thers? Have we broken any laws of these United States? Have we forfeited our rights of property [i]n land—If not [,] then, are not our rights as [a] free people and good citizens of these United States [t]o be considered before the rights of those who were [f]ound in rebellion against this good and just government [?]. . . If [the] [g]overnment does not make some provision by which we a [f]reedmen can obtain [a] [h]omestead, we have [n]ot bettered out condition. (Registers and Letters Received BRFAL, IN R.G. 105, NA, Microcopy 752, Roll 19).

There are three points illustrated in this petition that are essential to understanding the freedmen's position on the Sherman Reservation. First, the former slaves realized that without land they could not be truly free. Second, they did not necessarily anticipate that the government would give them land; on the contrary, they were prepared to pay for the land. Third, they desired the land in which their free labor had made productive (Registers and Letters Received BRFAL, IN R.G. 105, NA, Microcopy 752, Roll 23).

On General Howard's return to Washington, he left Captain A. P. Ketchum in charge of handling the details of land restoration. Ketchum was instructed to establish a committee to referee differences between the former owners

and the freedmen. Controversy immediately erupted when it was learned that an African American was appointed to serve on the committee (Oubre, 1978, pp. 54-55). Landowners on the Sherman Reservation became concerned when General Howard instructed Captain Ketchum to inquire with the representative for the landowners, whether he refused to serve on a board (which had an African American member) to referee disputes between the former owners and the freedmen (Oubre, 1978, pp. 54-55).

As a condition precedent to restoration, the former owners were required to ensure that the freedmen would be able to harvest the crops grown in 1865 and make no claim to the proceeds themselves. Bureau agents attempted to negotiate the best terms possible for the freedmen with their former owners (Oubre, 1978, p. 57).

In late 1865, Governor James Orr of South Carolina complained to the president that the Bureau's requirement of completing numerous forms was unnecessarily delaying the restoration process. Orr further claimed the bureau was unnecessarily lenient toward the freedmen (Oubre, 1978, p. 59). On January 15, 1866, Saxton was removed from his position as an assistant commissioner of the Bureau. Saxton's successor, Robert K. Scott, issued an order allowing the dispossessed owners to return and reclaim their lands. Scott's order also provided that the former landowners were not to evict freedmen who were issued valid grants pursuant to Sherman's Special Order, nor were they to dispossess other freedmen who accept labor contracts to work for the returning owners, so long as the contracts were approved by the Freedmen's Bureau (Bentley, 1970, p. 123).

On December 4, 1865, Congress met in its first postwar session. In March of 1865, Congress had established the Bureau of Refugees, Freedmen, and Abandoned Lands. The Bureau was to last for 1 year after the end of the war. Although the war was over and the abandoned lands were quickly being restored to their former owners, the problems of the freedmen were far from being resolved.

Freedmen's Bureau II

Early in 1866, a new Bureau bill was proposed. During this time, there was little doubt that President Johnson began contemplating his reaction in the event of the bill's passed. Opinions of the President's closest advisors on the Bureau were that the Bureau was "unnecessary" because regular military forces could protect the freedmen; special favors to the freedmen "discriminated" against poor Whites and it would be "very expensive" (Bentley, 1970, p. 118).

President Johnson also elicited General Sherman's opinion with respect to the Sea Island clause of the bill. When Johnson inquired as to how binding Sherman intended Special Field Order No. 15 to be, the General replied,

> I knew of course we could not convey title to land and merely provide 'possessory titles' to be good so long as war and our military power lasted. I merely aimed to make provision for Negroes. . . Leaving the value of their possession to be determined by after events or legislation. (Sherman, 1866)

Johnson vetoed the bill because he felt it was unnecessary given that the original Bureau bill would still be in force for several months (Bentley, 1970, pp. 119-123).

After President Johnson's best efforts to discredit the Freedmen's Bureau proved unsuccessful, the Radicals[5] gained more support for the Bureau. On July 16, 1866, the Second Freedmen's Bureau was passed overriding President Johnson's veto (Bentley, 1970, p. 133). "The. . . final tally was. . . 104 for the Freedmen's Bureau II bill, in the House, 33 against it; and in the Senate 33 for and 12 against it" (pp. 38-50).

Among other things, the new Bureau law extended the life of the federal agency by 2 years and expanded its jurisdiction to all loyal refugees and freedmen in the United States (pp. 92, 173-177). "Thad Stevens had tried to make it illegal for the Freedmen's Bureau to restore lands held under Sherman's possessory titles, but the Senate had insisted on an amendment to the bill by which such lands could be returned to their White owners" (Bentley, 1970, p. 134). For those who returned, the Bureau was to allow the holders of possessory titles to lease 20-acre plots elsewhere with 6-year options to purchase (Bentley, 1970, p. 134). The assistant commissioners in Georgia and South Carolina provided help to the freedmen who acquired property pursuant to Sherman's Special Order secure permanent titles to that land (Oubre, 1978, p. 168).

Conclusion

Prior to the Civil War, there were rare instances wherein African Americans purchased real property. Free African Americans who acquired land had to navigate around barriers erected by state legislative enactments and withstood the onslaught of violence by Whites who were determined to keep them landless. While various state statutory schemes, the refusal to sell by many Whites and threats of violence against African Americans who sought to purchase land were prevalent: land acquisition remained an important aspiration. Property ownership was more than a mere status symbol for African

Americans. Land ownership represented independence, self sufficiency and served as evidence that some African Americans possessed the will to overcome economic, legal obstacles, and even the threat of violence to become property owners.

The Civil War brought a loud call for freedom by enslaved African Americans. This call was answered by President Lincoln signing of the Emancipation Proclamation. The call for freedom was followed by a cry for land at the conclusion of the Civil War. While there were several legislative attempts to vest African Americans with title to land, those efforts were soon thwarted by ardent supporters of the former slaveholders.

The record is unequivocal that African Americans obtained only a small percentage of the abandoned and confiscated land under the various congressional proposals during the post–Civil War period. The important connection between land and freedom made by early African Americans was recognized by members of congress and others early on.

> Although Civil War and Reconstruction historians have largely ignored the importance of land for the freedmen, one can hardly fail to note that every new act which brought emancipation brought with it some measure to bind the freedmen to the land. (Oubre, 1978, p. 20)

Attempts by African Americans to acquire land during the pre–Civil War era and Reconstruction period were thwarted by a number of legal restrictions, violence, and the refusal by Whites to sell. Efforts to provide African Americans with land via federal land reform policies were met with strong political resistance. President Johnson not only pardoned many former confederates, but ordered General Howard to restore land previously seized from them. "African Americans throughout the South overcame obstacles to land acquisitions by demonstrating what can only be described as heroic action" (Lanza, 1990, pp. 82-89). The moral of the story of early African American land acquisition was intense desire, passion, and a recognition that freedom without land would surely relegate them back to slavery.

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Notes

1. The author would be remiss if he failed to note the taking of Native American land. Few will contest the fact that much of what is now known as the United States was once occupied by Native Americans. Native American land tenure was based largely on the belief that land was communal property and not subject to private ownership. The taking of Native American land resulted from the erroneous belief that Europeans "discovered" America thusly were entitled to the fruits of their "discovery." Through war, mass killing, resettlement, taking and scores of treaties, legislative enactments and court decisions, by the conclusion of the 19th century most of the land in the United States had been taken from Native Americans. Cf. Banner (2005), Carlson (1981), and McDonnell (1991).
2. Legislatures passed laws known as Black Codes to restrict the rights of newly freed African Americans. Restrictions imposed included freedom of movement and the right. Black Codes were restrictive laws designed to ensure planters in the south would have an inexpensive labor force. These codes also imposed other restrictions on African Americans that limited their freedom of movement, ability to work, and engage in certain contracts (Franklin, 2000).
3. Circular 13, issued by General Howard pursuant to a legal opinion issued by Attorney General Speed, provided for. . . "The actual distribution of forty-acre plots to freedmen" (Magdol, 1977, p. 157).
4. Circular 15, was issued by General Howard pursuant to pressures from President Johnson, ". . . effectively killed the forty-acre plan" (Magdol, 1977, p. 158).
5. Radicals were those who fought for, inter alia, equality of rights for the freedmen; Pushed for the passage of the Fourteenth Amendment, removal of Black Codes, and land ownership for freedmen.

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