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TO SET THE LAW IN MOTION: THE FREEDMEN'S BUREAU
AND THE LEGAL RIGHTS OF BLACKS, 1865-1868

VOLUME I

by

Donald G. Nieman

A THESIS SUBMITTED
IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF

Doctor of Philosophy

Thesis Director's signature:

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Houston, Texas

April, 1975
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Preface

Although historians have devoted a great deal of attention to the Freedmen's Bureau, they have neglected examination of legal aspects of Bureau operations. This is so, despite the fact that protection of blacks' rights as free men was a matter of great concern to Bureau officials, who rightly perceived that minimal legal protection was essential if emancipation was to be meaningful. Bureau officials realized that unless freedmen were able to obtain redress against whites who committed acts of violence against them or who sought to deprive them of their property, they would find it difficult to gain sufficient independence of whites to nourish freedom. Similarly, they believed that if freedmen were without legal remedies against unscrupulous planters, the quality of their freedom would suffer.

The present study seeks to fill this void in the scholarship by examining the Bureau's attempts to provide freedmen with legal protection. Thus it deals with measures which the Bureau adopted to provide blacks with equal rights in law, protection against personal violence and remedies against employers. Moreover, it also examines the broader institutional context within which Bureau policy operated. The fact that Reconstruction-era policy-makers refused to
abandon the rule of law in dealing with the South, make
fundamental alteration in the federal system or create a
permanent governmental agency to protect blacks had a pro-
found impact on Bureau policy. It meant that ultimately
Bureau officials could protect blacks only by providing them
with the ability to protect themselves through state govern-
ment and state courts. And in the face of white southern-
ers' determination to maintain blacks' subordination, such
a localistic and legalistic policy soon proved inadequate to
provide blacks adequate protection.

Hopefully, this institutional approach will shed light
upon the reasons for the Bureau's failure to provide blacks
with a firm basis for freedom. Certainly, as historians
have recently suggested, Bureau officials' inability to
conceive of blacks as equals weakened their ability to
develop successful policies. And, to an even greater degree,
their fear of social disorder and faith in human rationality
and progress led them to adopt policies which left blacks at
the mercy of white planters. However, the institutional
problems which confronted Bureau officials, combined with
Andrew Johnson's hostility to the Bureau and sou\nthern
whites' determination to perpetuate blacks' subordination,
posed problems which were at least of equal importance.

* * * * * *

In completing this dissertation, I have contracted many
debts. Members of the Special Collections staff of the
Hawthorne-Longfellow Library at Bowdoin College made my trip to Brunswick a pleasant, as well as a profitable, one. The staffs of the Old Military Records Division of the National Archives, the Law Library of the Library of Congress and the Fondren Library at Rice University also went out of their way to assist me. Mrs. Nedra Sylvis typed the manuscript with phenomenal accuracy and went above and beyond the call of duty in helping me meet necessary deadlines. Dan Flanigan, a close friend, was always willing to listen to and criticize my ideas, as well as to share with me his insights into the nature of Reconstruction. Louis Marchiafava, another close friend, offered constant encouragement during the difficult months of writing. Professor Sanford Higginbotham read the entire manuscript and offered numerous suggestions of both substantive and stylistic nature; I only hope that the final product approximates his rigorous standards. Professor Harold Hyman, my mentor, introduced me to the institutional approach to Reconstruction, and his criticism and encouragement over the last five years have been of inestimable value. My greatest debt, however, is to my wife Linda. For she not only aided me with the research and served as a skeptical sounding board for many of my ideas, but her support sustained me throughout the entire project.
Introduction

During the Civil War, as northern war aims broadened to include emancipation, antislavery reformers and northern politicians began to consider the post-war status of the emancipated bondsmen. Although at the end of the war neither Congress nor the president had fashioned a program to deal with the problem, reformers and the Republican majority in Congress had come to agree on certain basic points. Both groups believed that freedom was more than the mere absence of slavery and that, if blacks' freedom was to be meaningful, they would have to possess equal rights and be afforded security of person and property by government. Yet they realized that white southerners would not, of their own volition, grant freedmen these rights and agreed that it was imperative that Congress create an agency to protect blacks in the war's aftermath. Moreover, they felt that if blacks were to be a non-disruptive element in American society and were to prosper as free men, such an agency was necessary to teach blacks the responsibilities, as well as the rights, of free men. As slaves, they contended, blacks had neither learned the value of diligent labor nor the importance of fulfilling their agreements with others. Consequently, if the freedmen were to become productive and responsible citizens,
an agency of the national government would be useful to
instruct freedmen in what one contemporary referred to as
the "science of freedom." 1

Although there was widespread support for creation of
a federal agency to supervise race relations, both reform-
ers and congressional policy-makers viewed such an agency
as extraordinary and assumed that its existence would be
brief. The political-legal order of mid-nineteenth century
America sought to give rein to individual enterprise rather
than to provide a paternalistic type of protection for
individuals. Thus individuals, free to engage in economic
endeavor, protected themselves from domination by others
by using their liberty to acquire wealth. And if private
individuals or government threatened the security of their
person or property, they might obtain redress through the
courts or the ballot box. Reformers and Republican politi-
cians, who were satisfied that American institutions were
the epitome of progress and justice and who attacked
slavery as an aberration, wanted blacks to fit smoothly
into American society. Consequently, they feared that if
the national government established a permanent agency to
protect and tutor blacks, freedmen would not develop self-
reliance and would become anomalies in the intensely
individualistic society of mid-nineteenth century America.
As soon as possible, they argued, blacks should have to
protect themselves, as did other free men, through hard
work and the law. 2
Contemporary notions of federalism also reinforced the assumption that supervision of race relations by the federal government should be merely an interlude. In mid-nineteenth century America, the balance of power between state and national government was weighted heavily in favor of the former. The functions of the federal government were quite limited, as was its authority to interfere with the activities of state governments. Moreover, when individuals sought protection from threats to their liberty by private individuals, they inevitably looked to state law and state courts. Although many reformers were not particularly concerned with maintaining the traditional federal system, congressional policy-makers were reluctant to alter it fundamentally. Thus they believed that a federal agency to protect individuals was justifiable only because of the extraordinary problems posed by emancipation. They assumed that such an agency would be useful to smooth blacks' transition from slavery to freedom but that after a brief existence it would be discontinued.  

These ideas culminated in the Freedmen's Bureau act, which Congress passed in March, 1865. The act created the Freedmen's Bureau as a War Department agency and authorized the president to appoint a commissioner to direct Bureau operations and ten assistant commissioners to administer Bureau affairs at the state level. Although Congress neglected to specify Bureau officials' duties, it charged them with control of "all subjects relating to . . . ."
freedmen in the rebel states," thus providing Bureau officials with sufficiently broad authority. However, while the Bureau act provided the means for protecting and instructing freedmen in the rights and obligations of free men, it did not envision a permanent agency to supervise race relations. Not only did the statute provide for termination of the Bureau one year after the war ended, but it underscored the temporary nature of the Bureau by refusing to provide it with independent funding or an independent source of personnel. Consequently, as Bureau operations got underway in late spring, 1865, Bureau officials soon learned that their success depended upon their providing blacks with the ability to protect themselves through the traditional legal channels.⁴
Chapter I

"A Temporary Antagonism of Military Power"

Throughout the summer and fall of 1865, Bureau attempts to protect southern blacks centered on securing for them equal rights in state law. Antebellum southern state law had subjected free blacks to procedural and substantive discriminations. During the early months of Reconstruction, officers of the provisional governments created in the rebel states by Presidents Lincoln and Johnson began to apply these discriminatory laws to the freedmen. Although Bureau agents in most parts of the South responded by assuming jurisdiction of legal cases involving blacks, General O. O. Howard, the Commissioner of the Bureau, felt that this provided blacks only immediate protection. The configurations of American governmental-legal institutions and the pattern of Andrew Johnson's reconstruction policy convinced him that only through reform of southern state law could blacks be provided long-term legal protection. Thus he attempted to use the Bureau as a lever to force state governments to grant blacks equal rights in state law. If blacks possessed equal rights, Howard
believed, they would be able to protect themselves, as did white free men, through law and litigation in state courts.  

* * * * *

In the months after Appomattox, the legal status of southern blacks remained in doubt. Would freedmen be granted the same rights as white free men, or would they be consigned to a legal limbo midway between slavery and freedom? Mid-nineteenth century American federalism complicated the issue. Until enactment of the Civil Rights Act of 1866, the United States Constitution and national law did not define (even obliquely) the rights of free men and did not equate freedom with equality before law. Contrary to abolitionist legal theory, there was not an extensive body of rights which appertained to American citizens and which states could not abridge. There were certain things, such as impairing the obligation of contracts, which states could not do. Yet within these broad bounds states were free to define the rights of their citizens. Although under the United States Constitution a state could not impair the obligation of a valid contract, it was able to decide which of its citizens could make legally enforceable contracts. A state could grant equality before its law to all citizens, or deny one group rights which it granted another.¹

In the ante-bellum years many states, free as well as slave, had created a legal position midway between slavery and freedom for blacks. Most northerners had felt that
blacks were prone to idleness, poverty and crime, a view which was strengthened by the rise of racist thought in the years after 1830. Ante-bellum northerners had hoped that they could remove those blacks already in their midst by colonization and keep out non-resident blacks by state laws designed to prevent black immigration. Moreover, the decline of traditional status relations in Jacksonian America had led many white northerners, uncertain of their own status, to demand that blacks be clearly marked as social, economic and legal inferiors. In a society in which status was uncertain, white skin assured whites that they were clearly superior to at least one segment of society. Illinois, Indiana, Iowa and California had denied blacks the right to give testimony against white men. Oregon had denied blacks the right to own real estate, make contracts or bring lawsuits.\(^2\)

In the South legal discrimination against free blacks had been more widespread and stringent than in the North. White southerners had viewed free blacks as a threat to slavery—because of the example (being both black and free) they provided slave blacks and because they were seen as fomentors of slave rebellion. Moreover, the rise of pro-slavery thought had convinced most southern whites that the Negro race was inferior and destined by God for slavery. Thus it is not surprising that the slave states had subjected free blacks to special restrictions and assigned them a degraded legal status. Throughout the ante-bellum period
there had been restrictions against free blacks entering certain of the slave states, and in the 1850's several states had taken steps toward removal of resident free blacks. Most states had also curtailed the movement of free blacks. A North Carolina statute, for example, had required that black peddlers selling goods in a county in which they were non-residents first obtain a permit from the county court. In no slave jurisdiction except Louisiana and Delaware did free blacks have the right to testify in cases to which a white man was a party. Southern states had also punished free blacks more severely than whites for such crimes as assault, rape, burglary and arson, and had hired out to private individuals free blacks who were convicted of vagrancy or who were unable to pay court costs or fines. In addition, apprenticeship statutes had allowed judges greater discretion in binding out black children than in binding out white children.3

In the 1840's and 1850's appellate courts and legislatures in several slave jurisdictions had held that free blacks were not necessarily entitled to the rights and protection afforded other free men by their states' constitutions and laws. In 1850, for example, the North Carolina Supreme Court had ruled that insolence on the part of a free black to a white man justified the white man in striking the insolent black. In his opinion for the court, Justice R.M. Pearson had argued that since a free black had no master to correct him and insolence was not an indictable
offense, whites had to have an "extrajudicial" remedy in order to curb such "insufferable" behavior. "It is unfortu-
tunate," Pearson lamented, "that this third class exists in our society. All we can do is make it accommodate itself to the permanent rights of white free men." The Georgia code of 1861 had provided that "[t]he free person of color is entitled to no right of citizenship except such as are specially given by the law." Chief Justice Roger B. Taney's dictum in his Dred Scott opinion that blacks had "no rights that a white man is bound to respect," was an accurate appraisal of the legal position of southern free blacks on the eve of the Civil War.

* * * *

Although by the spring and summer of 1865 it was apparent that the war had destroyed slavery, it was not certain that it had rooted out this body of discriminatory statute, custom and case law. In Arkansas and Louisiana, where loyal governments had been formed during the war, there had been indications that southerners would not grant freedmen equal rights. The Louisiana Constitution of 1864, drawn up under the scrutiny of General Nathaniel P. Banks, had made no discrimination on account of color (except as to the right to vote). "Our Constitution . . .," Louisiana Governor Michael Hahn had declared in late 1864, "has provided for . . . [the freedman's] complete equality before the law . . . ." Indeed, Lincoln, who watched events in
Louisiana with great interest, had said that Louisiana's constitution was more favorable to blacks than that of Illinois. Yet in the sessions of 1864 and 1865 the legislature's actions regarding the legal status of blacks had been equivocal. The legislature had appointed a special committee to draw up a code of laws for freedmen. While no code had emerged from this committee, it appears that legislators had intended that the committee draw up a code applying exclusively to blacks. Moreover, when the Louisiana House passed a bill abolishing the black code of 1855, it had died in the Senate.⁷ The Arkansas Constitution of 1864 had not left Arkansans' intentions as to the legal status of the freedmen in doubt. The constitution provided that only whites had the right to bear arms, and an ordinance enacted by the constitutional convention made it illegal for blacks to enter the state.⁸

In the North, however, the war had wrought changes in whites' attitudes toward blacks and, for the most part, brought legal subordination of blacks to an end. Although at the end of the war most white northerners remained opposed to social and political equality for blacks, the war experience had led many northerners to favor extension of equal civil rights to blacks. Growth of northern war aims to include abolition of slavery had transformed a limited war for the Union into a war for liberty and Union, while war-induced hatred of all things southern had further encouraged northerners to hate slavery—the epitome
of the South—and glorify freedom and equality as the hallmark of the North. Moreover, blacks' wartime service to the Union had convinced many northerners that the nation owed the black man a great debt. The northern equalitarian heritage interacted with and fused these feelings and beliefs into a conviction that blacks should be granted equal rights. During or immediately after the war California, Illinois, Iowa, Indiana and Ohio removed most discriminations against blacks from their laws. "This . . . nation is to be entirely free," proclaimed Isaac Arnold, an Illinois member of the United States House of Representatives. "Liberty, equality before the law is to be the great cornerstone." 9

Although by the end of the war many northerners were coming to view freedom and equality before law as synonymous, the Thirty-eighth Congress (Dec., 1863-July, 1864; Dec., 1864-March, 1865) had done little to clarify the legal status of the freedmen. Most congressional Republicans had indicated support for equal rights, but the equal rights issue had been lost in intra-party disputes over reconstruction policy. Consequently, the war ended with no definition of reconstruction policy or the legal status of southern blacks. In July, 1864, Congress had cut to the heart of the matter in passing the Wade-Davis bill. The bill not only gave congressional approval to the president's emancipation measures and defined national reconstruction policy, but it secured for freedmen equal rights in state
law. By the provisions of the bill, the President was to appoint a provisional governor for each of the insurrectionary states. In addition to his other duties, the governor was to see that the laws of the United States and the laws of the state "in force when the state government was overthrown by the rebellion" were faithfully executed. However, this was not to extend to enforcement of state laws which discriminated against free blacks. "[T]he laws for the trial and punishment of white persons shall extend to all other persons," the bill declared. The provisional administrations created by the act would have introduced equal rights into and paved the way for reform of southern state law. However, Lincoln had objected to the bill on both constitutional and policy grounds and killed it with a pocket veto. ¹⁰

The second session of the Thirty-eighth Congress also had failed to give clear definition to the legal status of the freedmen. In January, 1865, Congress, under heavy pressure from the Lincoln administration, had mustered the strength necessary to pass and send out to the states for ratification a constitutional amendment abolishing slavery. A year later congressional Republicans who enacted the Civil Rights Act of 1866 would argue that Congress, in passing the abolition amendment, had intended to secure blacks equal rights in state law. Freedom and equal rights had been intended to be synonymous, they would argue. However, recent scholarship on the passage of the Thirteenth
Amendment has shown that in the debates on the amendment Republicans did not go beyond the problem of abolition to consider and clarify the meaning of freedom. And even if Republicans had specifically intended the amendment to guarantee all persons equal rights, the wording of the amendment failed to convey precisely that intention.\textsuperscript{11}

This uncertainty as to the legal status of the freedmen had not been dispelled by Congress' handling of other reconstruction measures in early 1865. Most Republicans had been willing enough to grant southern blacks equal rights. However, intra-party disputes on other reconstruction-related issues and pressure from the White House to recognize the presidentially reconstructed government of Louisiana had distracted Republicans from the equal rights issue. Successive versions of James Ashley's reconstruction bill had, like the Wade-Davis bill, granted southern blacks equal rights in state law. But the Ashley bill had been killed by conflict within the Republican party over other matters. Moderates and conservatives had demanded recognition of the Louisiana government and had been loath to support the suffrage provisions of the Ashley bill, while radicals had demanded that southern blacks be given the vote and refused to accept unconditional recognition of the Louisiana government. As the session closed, only a radical filibuster in the Senate prevented passage of a joint resolution recognizing the Louisiana government.\textsuperscript{12}
Even the statute creating the Freedmen's Bureau—the agency which was to supervise southern blacks' transition from slavery to freedom—had failed to deal with the problem of the legal status of southern blacks. The statute gave the Bureau control of "all matters relating to the freedmen in the insurrectionary states," but did not say what these "matters" were to include. Although contemporaries generally assumed that the Bureau would be responsible for protecting blacks in the rights of free men, the statute failed to define what rights the freedmen were to possess. "There are few statutes," complained Attorney General James Speed, "that are as disfigured by loose and indefinite phraseology to a greater extent than the act of 1865 establishing . . . [the Freedmen's] Bureau."

* * * * *

Congress' failure to deal with the problem statutorily left definition of reconstruction policy—and with it the problem of the legal status of the freedmen—to presidential determination. However, as the provisional governors appointed by Andrew Johnson established provisional governments and organized state constitutional conventions, the President exerted little direct control over the reconstruction process. He pressed state conventions to abolish slavery, ratify the Thirteenth Amendment and repudiate their ordinances of secession. He even encouraged the Mississippi convention to grant the ballot to educated blacks who owned
at least $250 worth of property. But he declined to estab-

lish a fixed set of requirements which the rebel states
would have to meet before being restored. Instead, he
encouraged state officials to take action, on their own
initiative, which would convince the North that southerners
had accepted the results of the war and were worthy of
restoration. 14

It is not surprising therefore that in the summer and
early fall of 1865, Johnson failed to demand that southern
governors and conventions grant blacks equal rights. He
did not instruct the men whom he appointed as provisional
governors to abolish discriminations against free blacks
which were part of their states' laws. And when several
governors issued proclamations directing state and local
officials to apply state law as it existed in 1861 (with
the exception of the provisions pertaining to slavery,
although presumably including the discriminations against
free blacks), Johnson did not protest. Rather, he allowed
War Department officials to coax southerners to remove,
voluntarily, discriminations against blacks. Thus he
allowed the Freedmen's Bureau to adjudicate cases involving
blacks when state judges and magistrates refused to receive
black testimony. The policy would encourage southerners,
anxious to remove Bureau courts, to provide adequate legal
protection for blacks. In this way, Johnson felt, the
South could be encouraged to act, of its own volition, in a
manner that would please the North and ensure congressional acceptance of presidentially-created southern governments.\textsuperscript{15}  

Johnson's action concerning the rights of South Carolina blacks was symptomatic of his unwillingness to require provisional governments to remove legal discriminations against the freedmen. On July 20, Governor Benjamin Perry issued a proclamation appointing local officials and ordering them to enforce state law in force prior to secession. Until this time, military courts had tried all cases involving South Carolina civilians, black and white. Perry's proclamation thus challenged military jurisdiction and created a great deal of uncertainty as to whether civil or military courts would exercise jurisdiction in cases involving civilians. Johnson dispatched General George Meade to South Carolina to work out a compromise between military and civil officials. As a result, Perry and Meade reached an agreement whereby the civil authorities would assume jurisdiction of cases which involved only white civilians. However, since Perry refused to abandon the state's discriminatory law concerning black testimony, the military retained jurisdiction in cases involving blacks. Johnson thus prevented South Carolina officials from enforcing discriminatory law and offered South Carolinians an inducement (i.e., the removal of military courts) to reform their law, but he refused to lay down the line of equal rights to state officials.\textsuperscript{16}
Even when southerners solicited his views on the subject, the president refused to come out publicly in favor of removing from state law discriminations against blacks. In mid-September, Governor Lewis Parsons requested that Johnson endorse a constitutional provision, then under discussion in the Alabama convention, which made black testimony admissible in all cases. However, Johnson did not reply, and the convention failed to include the testimony provision in the constitution. In early October, as the Tennessee legislature began consideration of the black testimony issue, J.P. Pryor of Memphis asked Johnson to make public his views on black testimony. "I am quite confident," Pryor wrote, "that an expression of your views on the subject at this time, would save infinite trouble. The enthusiasm you have kindled among this people would be likely to lead them to harmonize on the policy you might indicate." However, Johnson did not reply to Pryor and failed to use presidential influence to guide Tennesseans toward equal rights.17

The apparent ambiguity of Johnson's policy (i.e., indirectly attempting, on the one hand, to induce southerners to admit black testimony and, on the other, refusing to use direct influence in behalf of equal rights) indicates that he viewed equal rights as a non-essential part of his policy. He would allow military officials to retain jurisdiction of cases involving blacks until state courts agreed to receive blacks' testimony. If southern
politicians reformed their testimony laws in order to have cases involving freedmen returned to state courts, northerners would be the more impressed with southerners' good will. However, Johnson, as a border state politician who did not understand the war-time transformation of northern attitudes toward blacks, believed that southerners did not necessarily have to grant blacks equal rights in order to satisfy the North. Thus while he readily made known to southern leaders his views on such questions as repeal of secession ordinances, abolition of slavery and repudiation of the rebel debt (things which he felt the North would demand), he remained silent on the apparently non-essential question of equal rights.

* * * * *

Against this background of uncertainty, Howard, soon after assuming his duties as commissioner, attempted to clarify the legal position of southern blacks. On May 30, 1865, he ordered his subordinates to adjudicate all cases involving freedmen "where there is an interruption of the civil law, or in which local courts by reason of the old codes . . . disregard the negro's right to justice before the laws in not allowing him to give testimony." While Howard's order did not demand that state authorities grant blacks complete equality before being allowed jurisdiction in cases involving blacks, it struck boldly at an evil of southern state law against which abolitionists and law
reformers had railed for years. Moreover, the May 30 circular did not signify unwillingness on Howard's part to work for complete equality before the law for freedmen, for subsequently he pressed state authorities to extend complete equality before the law to blacks. In a letter of June 21, 1865, he set forth the goal at which Bureau policy aimed.

"Equality before the law is what we must aim at. I mean a black, red, yellow, or white thief should have punishment without regard to the color of his skin." 18

Army commanders in Virginia and Texas soon joined Howard in attempting to secure equal rights for blacks. On May 31, 1865, General David M. Gregg, in command of troops at Lynchburg, Virginia, proclaimed that freedmen "have all of the rights at present that that free people of color have heretofore had in Virginia and no more." On June 23, General Alfred Terry, an anti-slavery lawyer who commanded the Department of Virginia, countermanded Gregg's order. "People of color," Terry asserted, "will henceforth enjoy the same personal liberty that other inhabitants enjoy; they will be subject to the same restraints and the same punishments that are imposed on whites, and to no others." In support of his action, Terry argued that Virginia statutes which discriminated against free blacks formed a part of the slave code since they were designed to protect the property of slaveowners by restraining free blacks who lived in a slaveholding jurisdiction. With the death of slavery, Terry contended, the slave code's provisions expired,
leaving blacks subject only to those laws which governed whites. In Texas, General Gordon Granger followed Terry's logic in repudiating legal discrimination against the freedmen. Upon his arrival in Galveston, Granger informed Texans that slavery was dead and that, as a result, blacks were entitled to "absolute equality of personal rights and rights of property." ¹⁹

Howard was pleased by the Terry order and pressed other department commanders to take similar action. He secured one hundred copies of the order and sent them to department commanders and assistant commissioners with the notation, "I like the letter and spirit of this order and wish it were universal." In Alabama, Assistant Commissioner Wager Swayne convinced General Charles Woods, the department commander, to issue an order similar to Terry's. General Quincy Gillmore, the Commander of the Department of South Carolina, acknowledged receipt of Howard's endorsement of the Terry order, but declined to issue a similar one. However, he assured Howard that "inasmuch as martial law is the only and supreme law of South Carolina and as colored persons ... enjoy in every particular the same personal freedom in the courts of justice here (provost courts, courts martial and military commission) no such order as General Terry's is or will be necessary here until the civil courts are put in operation." ²⁰

Bureau and military decrees concerning equal rights for blacks encountered immediate opposition from state and
local officials. Provincial governors did not order the judges, mayors, sheriffs and justices of the peace whom they appointed to disregard state law and custom which discrimi-
nated against free blacks. Moreover, these officials, as did most southern whites, responded to the demise of slavery with trepidation. Union generals might argue that the discriminations suffered by ante-bellum free blacks had been imposed merely to protect the slave system and thus lost their reason for being with the death of slavery. However, the pattern of beliefs and assumptions which had grown up around slavery convinced southerners that blacks were uncivilized brutes destined by God for slavery and that they were incapable of being governed by the same laws which governed whites. "We are inclined to the opinion that the reason of our law on this subject [testimony] is not founded entirely on the idea that he [the black] is a slave," argued Judge J.B. Williamson in his charge to a Marshall, Texas grand jury, "but rests . . . on his mental and moral incapacity." These views, exacerbated by the social dis-
location of 1865, made southern civil officials fearful that society would be destroyed unless blacks were subjected to special restrictions. To southerners, the discriminatory laws which had been imposed on ante-bellum free blacks were more necessary in 1865 than they had been before the war.21

Southern whites saw legal discrimination as a way to ensure that emancipation did not end relegation of blacks to an inferior caste. Contempt for blacks, shaped by the
place which they had occupied in ante-bellum thought and society, made many whites hostile to attempts to make whites and blacks equal. On an emotional level, southern whites felt that to grant freedmen equal rights—including the right to bring suit and testify against white men—would be an insult to whites. Many southerners also feared that allowing blacks equal civil rights might start a movement which would result in black political and social equality. If, however, blacks were clearly marked as inferiors—in their legal, as well as their social and economic status—they would be constantly reminded of their "place" and less likely to attempt to get out of it.  

These responses to emancipation convinced local officials of the urgency of applying to the freedmen the discriminatory law and custom which they had applied to free blacks before the war. Across the South, judges and magistrates refused to admit black testimony in cases in which one of the parties was a white man. In many places, local officials applied customs which had restricted the liberty of blacks before the war to the freedmen. Moreover, a number of towns, shaken by the tremendous influx of freedmen in the summer of 1865, enacted additional ordinances regulating blacks.  

Although many Bureau and military officials failed to understand the full implications of it, an even more distressing tendency was the failure of local officials to protect blacks from personal violence. Southerners'
contempt for blacks encouraged them to resort to violence when matters of difficulty with blacks arose. Moreover, the frustration of defeat made whites more likely to resort to violence against blacks; the slaves had been freed by the success of Union arms and the freedmen thus personified the South's defeat. In cases of white violence against blacks, civil officials, because of community pressure or genuine empathy with the assailants, were often reluctant to do justice. In Amite City, Louisiana, for example, a Bureau agent reported that many blacks had been "shot or otherwise maltreated" by whites. "[N]o means of redress could be had by them," he said, "as the civil authorities did not take any interest in their welfare."  

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Bureau and military officials responded to these injustices by establishing courts or empowering agents to adjudicate minor cases involving blacks. In many states, the jurisdiction of the courts was not precisely defined. Mississippi Bureau officials, for example, authorized agents to assume jurisdiction in "petty cases such as theft, disobedience or breach of the peace." The jurisdiction of the courts or agents was better defined in South Carolina, Virginia and, after September, North Carolina. Army provost courts, which handled all minor cases involving blacks in South Carolina, might impose fines of up to $100 and jail terms of up to sixty days. In Virginia and North Carolina,
assistant commissioners permitted agents to hear cases to which blacks were parties and in which the punishment did not exceed a $100 fine or confinement for more than thirty days. In all states serious cases, such as burglary, rape, horse stealing, arson, murder and sometimes assault were tried by military commissions.25

In most states, the method which Bureau officials adopted for adjudicating cases lacked procedural sophistication. Agents, responsible for all aspects of Bureau operations within their bailiwicks, usually heard and acted upon cases according to their own notions of equity and justice. North Carolina agents, responsible for large geographical areas, informally settled disputes and redressed grievances which came to their attention. One North Carolina agent, for example, reported settling as many as 180 cases in a single day. Even in Mississippi, where Assistant Commissioner Samuel Thomas attempted to establish a more formal method of deciding cases, Bureau administration of justice remained informal. As Thomas assigned agents to duty, he authorized them to open provost dockets and to settle minor cases involving blacks. In early August, however, Thomas attempted to establish Bureau courts manned by officers with some knowledge of the law at Vicksburg, Natchez and Jackson. Thomas did not design the courts to systematize Bureau administration of justice since he did not give them appellate jurisdiction of cases heard by agents. He merely hoped that they would give Bureau administration of justice in the
vicinity of three of the state's most important towns more expertise, formality and thoroughness. However, these courts barely began hearing cases before Bureau and military officials returned jurisdiction in cases involving blacks to the civil authorities.26

In Tennessee, Assistant Commissioner Clinton B. Fisk attempted to regularize agents' exercise of jurisdiction by ordering them to use state law as the standard by which to decide cases, directing them to adjudicate cases by reference to Tennessee law "except insofar as these laws make distinction on account of color." However, this did not end informality in Bureau administration of justice in the state. Since agents tried only minor cases, they were able to exercise the great discretion which state law gave justices of the peace. Moreover, except in Memphis, where Bureau officials detailed a special officer to adjudicate cases involving blacks, Tennessee agents were responsible for large geographical areas and continued to try cases in addition to their other duties. Undoubtedly they were forced to deal with cases in the same informal fashion adopted by agents in most other states.27

In Virginia, assistant commissioner Orlando Brown established a much more extensive system of courts. During the summer of 1865 he divided the state into eight districts (later ten) and appointed a superintendent for each district. Army provost marshals generally acted as assistant superintendents and, in most parts of the state, tried
minor cases involving blacks. In one district where assistant superintendents were full-time Bureau agents, Army provost marshals continued to adjudicate blacks' cases. In another, the Bureau superintendent and the commander of the military district jointly appointed an officer to serve as provost judge of a freedmen's court. Although this system gave Army commanders and provost marshals a great deal of influence over freedmen's affairs, it provided a more extensive means of adjudicating cases to which blacks were parties than existed in any state except South Carolina.

In September, 1865, Brown established a new system of courts. Blacks and whites in each sub-district selected a person to represent them, and these representatives joined with the assistant superintendent to form the new Bureau court. Since there was a large number of these three-man tribunals and since they met on a regular basis, the new courts handled judicial business more efficiently than was the case in most other states. Because the civilian members of these courts were often men of local prominence (Bureau officials stipulated that blacks had to choose white men as their representatives), the civil authorities sometimes aided in enforcing the decrees of the courts. Moreover, in some sub-districts the civilian members were lawyers, thus providing the courts some degree of procedural formality. In the Yorktown sub-district there was even a black attorney, a native of Massachusetts, who defended blacks tried in the Bureau court.28
In South Carolina, where Army provost courts adjudicated all minor cases involving blacks, perhaps the greatest degree of procedural sophistication obtained. The department commander divided the state into several districts, and district commanders divided these districts into subdistricts of from one to several counties each. In each subdistrict a circuit provost court, composed of one of the members of the superior court and two civilians, sat at various points in the subdistrict and had concurrent jurisdiction with the superior court. This system provided tribunals which met in all parts of the state on a regular basis and permitted efficient and thorough handling of judicial business. It also gave a measure of formality missing in most other states. The civilians associated with the courts were, in many cases, civil magistrates or prominent local lawyers. Their knowledge of the law brought greater procedural regularity to military administration of justice in South Carolina than in most other states. Moreover, appeals could be taken from circuit to superior provost courts, thus providing a means of redress for those who felt that they had been unfairly treated by the circuit courts. 29

Regardless of their level of procedural sophistication, these Bureau and military "courts," when run impartially, were important in protecting blacks from violence and injustice. One of the most important functions of the "courts" was trial and punishment of petty crimes committed
by blacks. This removed freedmen charged with crime from the jurisdiction of southern judges and magistrates who often convicted blacks on the basis of inadequate evidence and punished them with undue severity. The "courts" also provided forums in which cases between blacks could be decided. This was important because blacks were often unable to pay the fees which many local officials demanded before they would consider a case. Even if blacks were able to pay the fees demanded, many judges and magistrates were simply unwilling to have anything to do with disputes between blacks. Bureau and military courts, however, provided an inexpensive means of resolving disputes between blacks concerning ownership of property, debts and marital relations. Moreover, they offered blacks redress against whites who treated them unjustly. Many civil officials refused even to consider complaints which freedmen brought against whites. Others heard complaints made by blacks against whites, but failed to mete out impartial justice. Many agents and military provost courts heard blacks' complaints and attempted to bring whites who maltreated blacks to justice.30

Yet Bureau-military adjudication of cases to which blacks were parties often failed to provide adequate protection for freedmen. In no state did the Bureau have sufficient personnel to establish an extensive system of courts. Assistant commissioners--the men responsible for directing Bureau affairs at the state level--were dependent upon
department commanders to detail officers to the Bureau for duty as agents, and department commanders, even if they were willing, were often unable to assign many officers to duty with the Bureau. Throughout the summer and fall of 1865, the Army underwent rapid demobilization and commanders therefore had fewer officers to spare for Bureau duty. Moreover, Bureau organization itself was frequently wracked by demobilization, for when regiments were mustered out, officers from those regiments on duty with the Bureau were also mustered out. In August, for example, Orlando Brown noted that several regiments on duty in the Department of Virginia were scheduled to be mustered out, and that they would take with them "about forty of the officers and men now doing duty in the Bureau." 31

War Department officials ordered commanders to replace officers whose services were lost to the Bureau because of demobilization. However, commanders often lacked sufficient officers to comply with the order, and in many states demobilization continued to erode Bureau strength. Not until late August, after Howard discussed Bureau personnel problems with General U.S. Grant, the Army's Commanding General, did the War Department come to the aid of the Bureau. On August 26, Grant's chief of staff, reversing War Department policy, announced that the Bureau might retain officers who could not be replaced when their regiments were mustered out until replacements for them could be found. At the same time, Army Headquarters made available the Veteran
Reserve Corps as an auxiliary source of personnel for the Bureau. This was a great boon since VRC officers were not members of volunteer regiments and not subject to precipitate discharge. However, since the number of officers available to the Bureau from the VRC was not sufficient to staff an extensive system of Bureau courts it by no means solved the Bureau's personnel problem. 32

In every state except South Carolina and perhaps Virginia, personnel for extending jurisdiction over cases to which blacks were parties was totally inadequate. In North Carolina, assistant commissioner Eliphalet Whittlesey instructed agents to settle difficulties between whites and blacks by "counsel and arbitration" and to punish minor offenses by fines. However, they had from two to eight counties in their districts and thus found it difficult to exercise jurisdiction in all or even most cases involving freedmen. Georgia and Florida, which remained under the jurisdiction of the assistant commissioner for South Carolina until September, had fewer than a dozen agents between them. In August, assistant commissioner Thomas Conway could claim only eighteen agents to supervise freedmen's affairs in all of Louisiana, and many of these agents were attending to Bureau affairs and their regular military duties at the same time. In Arkansas, Tennessee and Kentucky there were also critical shortages of personnel. 33

The rural nature of southern society and the violent response of southern whites to emancipation made it
impossible for the understaffed Bureau to offer blacks adequate protection. Although there was a significant increase in the black population of southern towns and cities during Reconstruction, most blacks remained in the countryside. There the transition from slavery to freedom resulted in a great deal of violence against blacks. In most parts of the rural South communications and transportation facilities were poor. In Mississippi and Arkansas local transportation was so bad that agents found it all but impossible to make regular tours of inspection in their districts. In other states the situation was not much better. Consequently, a Bureau agent with an entire county or several counties to supervise found it difficult to learn of and redress instances of violence and injustice against blacks.

Complaints which came from remote parts of an agent's district were particularly difficult to investigate. "Many cases come to my notice even in this parish [Lafourche]," reported a Bureau official, "where the Provost Marshal cannot reach them or if he does it cannot be to afford relief in a thorough manner." Although freedmen in northwestern Mississippi reported to the Bureau agent at Helena, Arkansas that "there was nothing in the worst days of slavery to compare with the present persecutions," there was no agent in that part of Mississippi from whom they could seek justice.34
In late summer, the Bureau's ability to protect freedmen further deteriorated as the number of mounted troops stationed in the South declined. War Department officials had mustered many cavalry units out of service and had transferred others to duty in the West. Mounted troops possessed the power, mobility and range necessary to reach and correct much of the violence committed against blacks, and with cavalry unavailable, agents found it more difficult than ever to deal with cases of violence which arose in their districts. "If I had but one county I would need some cavalry," complained an agent in southeastern Arkansas, "and with twenty or twenty-five [counties] and a small company of infantry I hope to keep peace and do justice to all parties throughout the entire district." An officer in command of troops at Anderson, South Carolina declared that the condition of the freedmen "is worse than bondage itself—and ever will be until this Sub District is flooded with [United] States cavalry. . . ." 35

Bureau and military personnel soon realized that instances of injustice were too numerous and geographically scattered to permit them to investigate and take action in every case. "The Freedman is . . . much injured by the people of this District and it is my opinion that . . . we can detect and punish a very small proportion of those who commit grave crimes upon him," reported General Adelbert Ames from Columbia, South Carolina. Given this situation, Bureau and military officials hoped that by dealing firmly
with cases which they could reach, they would set examples to deter others from maltreating blacks. "I consider it of vital importance to let these people know that they cannot violate the law with impunity," asserted a Mississippi agent after fining a white man $100 for whipping a freedman. 36

Moreover, quality as well as quantity of agents posed problems for Bureau officials in their attempts to see that justice was meted out to blacks. Many Army officers assigned to duty with the Bureau or who had charge of freedmen's affairs were Negrophobes who were unwilling to extend justice and protection to blacks. These men often developed close relations with native whites and used military authority to strengthen the control of white landowners and town officials over blacks. In Virginia and South Carolina, for example, Bureau and military agents were numerous, but often treated freedmen cruelly. "The Provous marshall donot show the colored people any Respect in the world," complained Louisa County, Virginia blacks. "He holds with the white people & dous Everything to discourage the colored people." On several occasions Orlando Brown, the assistant commissioner, was forced to petition military authorities to remove provost marshals who ill-treated freedmen. In Louisiana, where many provost marshals acted as Bureau agents, there were also instances of cruelty to blacks. One Louisiana Bureau official, after a tour of inspection, reported that the provost marshal at Houma "systematically outraged" blacks and boasted of his pro-slavery views. Yet
the alternative to refusing to take officers who were assigned by department commanders was to go without agents. General Clinton B. Fisk, the assistant commissioner for Kentucky and Tennessee, demanded that his agents be the "right sort of men." But Fisk's choosiness stunted the growth of his organization; by the end of July, he had fewer than half of the agents he needed.  

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In many states, military commanders interfered with Bureau adjudication of cases involving blacks. Although theoretically the Bureau was separate from the Army chain of command, in practice, department commanders were able to exercise a great deal of control over freedmen's affairs. Many commanders on duty in the South--Henry Slocum, James B. Steedman and John M. Brannan, for example--were very conservative on the issue of race and reconstruction. These men were less willing than most Bureau officials to interfere with the civil authorities to protect the freedmen or to press state officials to grant blacks equal rights. In several instances they directly destroyed or limited Bureau jurisdiction in cases involving freedmen. Moreover, they were able to exert a great deal of control over Bureau policy in more subtle ways. Assistant commissioners were dependent upon department commanders for personnel. If the policies they pursued alienated commanders, as happened in Georgia and South Carolina, it became almost impossible for
them to get officers detailed for Bureau duty. It was also important that assistant commissioners have good working relations with department commanders to ensure that troops be available to support Bureau agents when necessary. Thus assistant commissioners were usually careful not to adopt policies which did not have the support of department commanders.

In South Carolina, General Quincy Gillmore simply refused to allow Bureau agents to adjudicate cases involving blacks. In the months after Union troops occupied the state, most local commanders established provost courts to try minor cases involving citizens, black and white. Since there were no state judges, justices of the peace or magistrates recognized by the military authorities, the provost courts were necessary to preserve order. In late June, General Rufus Saxton, assistant commissioner for South Carolina, ordered his agents to assume jurisdiction over all minor cases involving blacks. Gillmore, however, refused to recognize Saxton's order, and provost courts retained jurisdiction of all minor cases involving civilians.

Gillmore's action reflected his belief that the military authorities should govern the state without interference until a civil government had been created and recognized by the "proper authority." But it also reflected his distrust of Saxton and Saxton's subordinates. "General Gillmore is concerned . . . on account of several very radical men of strong prejudice whom General Saxton has
assigned to duty in his department," reported Colonel James
Fullerton in mid-July. Thus by fiat Gillmore was able to
keep judicial authority out of the hands of men whom he
distrusted. 38

Military authorities in Georgia responded similarly
when Bureau agents in that state asserted jurisdiction over
cases to which blacks were parties. Throughout the summer,
there were only a handful of agents in the entire state.
They were under the immediate direction of General E.A.
Wild, who had been appointed acting assistant commissioner
of the state by Saxton. Wild authorized his agent in
Augusta, Captain J.E. Bryant, to adjudicate all cases
involving freedmen. However, military authorities in
Augusta and the commander of the Department of Georgia,
General James B. Steedman, soon ordered Bryant to close his
court. "A couple of weak, fanatical men--... Genl Wild
and Capt Bryant--sent here by Genl Saxton... have caused
some trouble and occasioned a great deal of alarm in the
minds of the people by inciting a turbulent spirit among the
blacks," Steedman noted in a letter to Andrew Johnson, "but
I corrected some of their abuses and everything is moving
quietly now." As in South Carolina, Army provost courts
took charge of cases involving blacks. 39

In Louisiana, Thomas Conway and General E.R.S. Canby,
the department commander, enjoyed fairly good relations with
one another. Yet Canby's reluctance to interfere with the
civil authorities limited Conway's attempts to secure
justice for blacks. Since Louisiana courts admitted black testimony without qualification, Canby refused to permit his provost marshals to assume jurisdiction in cases to which blacks were parties. Conway, however, soon came to understand that admission of black testimony did not ensure justice, since white judges and juries could and did ignore blacks' testimony. Thus in a circular of July 14, he ordered his agents to assume jurisdiction in all cases in which the civil authorities failed to extend freedmen "impartial justice." However, Conway had few agents who were responsible only to him; most of his agents were provost marshals who reported to him in matters concerning freedmen's affairs, but continued to perform their regular military duties and remained within the Department of Louisiana's chain of command. Thus they were bound to obey orders from department headquarters which allowed civil authorities to retain jurisdiction in cases involving freedmen as long as they received black testimony.40

When towns and parishes began to enforce discriminatory police restrictions against freedmen, Canby intervened. He ordered the civil authorities to turn over to the Bureau for trial and punishment all blacks arrested for vagrancy "and not charged with any other crime." Conway used this order to prod Bureau agents into assuming jurisdiction in all cases in which the civil authorities, in any manner, denied blacks justice. However, Army provost marshals on duty with the Bureau remained under instructions to take jurisdiction
only in vagrancy cases or when the civil authorities refused to admit blacks to the witness stand. As a result, only a small portion of Louisiana agents exercised jurisdiction in all cases in which the civil authorities dealt unjustly with blacks. 41

In Mississippi, the department commander, General Henry Slocum, pressed Samuel Thomas to surrender jurisdiction to the civil authorities as rapidly as possible. In early August, Slocum demanded that agents allow civil courts granting blacks "the same privileges as are accorded white men" to try cases to which blacks were parties. "The object of the Government is not to screen this class from just punishment . . . ;" he argued, "but simply to secure the rights of freemen, holding them at the same time, subject to the same laws by which other classes are governed." Thomas protested that Slocum's order would result in injustice to the freedmen. In a letter to Howard, he contended that the civil authorities might grant blacks the form, but would never grant them the substance, of equal rights. However, Howard failed to intervene in the matter, and Thomas instructed his officers not to interfere with civil officials acting under Slocum's order. 42

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Although during the summer of 1865 Bureau officials faced a number of problems in their attempts to protect blacks, most assistant commissioners had come to believe
that it was essential to keep cases involving blacks out of the hands of the civil authorities. In Alabama, however, assistant commissioner Wager Swayne attempted to transfer jurisdiction to the civil authorities. On July 29, less than ten days after his arrival in Montgomery, Swayne discussed the legal status of the freedmen with Provisional Governor Lewis Parsons. The assistant commissioner urged Parsons to issue a proclamation suspending those parts of the state code which discriminated against free blacks, in particular the discriminatory laws concerning black testimony. He argued that the President, acting under the war power and the constitutional mandate that each state be guaranteed a republican form of government, had appointed Parsons provisional governor. Thus, Swayne contended, Parsons and the state and local officials who served under him were military agents, responsible for governing and preserving order in the state until a loyal, republican government was established. As military agents, Parsons and his subordinates were to administer martial law--the will of the commander. Johnson, as Commander-in-Chief, the assistant commissioner suggested, had directed provisional governors to use the constitutions and laws of their states "for a method of procedure and government ad interim," except where they were at odds with national policy. Johnson's approval of Bureau Circular No. 5 was, according to Swayne, an expression of the president's desire that blacks be admitted to the witness stand. Therefore, he argued,
Parsons, as a military agent responsible for executing the will of the President, was bound to order Alabama judges and magistrates to receive black testimony. 43

Although Swayne drafted a formal statement of his position and presented it to Parsons, the governor refused to issue the proclamation for which Swayne asked. He admitted the logic of Swayne's argument, but felt that it would be politically inexpedient for him to take the lead in securing admission of blacks to the witness stand. As did many other southern politicians and lawyers, Parsons knew that it was in the best interest of the South to meet the Bureau's demands on the testimony issue. To do so would end trial of cases involving blacks by military courts, while at the same time allowing white judges and jurors to evaluate the credibility of testimony offered by blacks. However, Parsons realized the symbolic importance of the exclusion of black testimony; many southern whites saw exclusion as an affirmation of black inequality and, on an emotional level, viewed admission of blacks to the witness stand as a blow at black subordination. As an aspiring politician, he was unwilling to have his name associated with "nigger equality" by white Alabamians. Moreover, he feared that a gubernatorial order making black testimony admissible in all cases might make the testimony question the most important issue in the canvass for delegates to the constitutional convention. And if that happened, extremists might exploit the
issue to gain election to the convention and produce a constitution unacceptable to the North.44

Upon learning of the governor's decision, Swayne immediately asserted Bureau jurisdiction over cases to which blacks were parties. However, rather than authorizing military agents of the Bureau to hear cases involving blacks, he invited the judicial officers of the provisional government to become agents of the Bureau. He offered to allow judges and magistrates who signified their willingness to act as Bureau agents to try cases to which blacks were parties. In doing so, they were to "take for their method of procedure the laws now in force in . . . [Alabama], except insofar as those laws make distinction on account of color." In cases where judges and magistrates refused to act as agents of the Bureau and grant blacks equal rights under state law, Swayne threatened to establish military courts to adjudicate cases involving blacks.45

Swayne's policy was well received by Alabama's political leadership. On August 18, two weeks after Swayne offered to allow judges and magistrates to act as Bureau agents, Parsons issued a public statement urging state judicial officials to accept Swayne's offer, and throughout August and early September, large numbers of state judges and local magistrates signified their willingness to act as judicial agents of the Bureau. Moreover, the state convention, which met in September, gave support to Swayne's system. By an overwhelming majority, the convention passed
an ordinance requiring judges and magistrates to act as judicial agents of the Bureau under the regulations announced in Swayne's order of August 4.46

Swayne's policy, however, was sharply criticized by several assistant commissioners. Clinton Fisk originally had allowed Tennessee judges and magistrates who granted blacks equal rights to try cases involving blacks. However, he and his subordinates had subsequently been forced to assume jurisdiction in such cases because state authorities mistreated blacks. In a letter of September 2, 1865, Fisk informed Howard that blacks would receive justice only so long as the Bureau retained jurisdiction of cases to which freedmen were parties. Moreover, he charged that Alabama blacks had been maltreated since the advent of Swayne's policy. "It [Swayne's policy] is being used," he complained, "by the magistrates as a means of re-enslaving rather than guarding the liberties of the freedmen."

Similarly, Orlando Brown criticized the notion that the right to testify against whites would be adequate protection for blacks. He doubted that judges and magistrates "would give such testimony its proper weight[,] especially where their white neighbors were parties to the suit." Samuel Thomas was even more outspoken in his opposition to Swayne's policy. In a letter of September 21, he told Howard that he felt that "Swayne had made a mistake . . . and . . . would defeat the very policy for which the Bureau was laboring."

Thomas had seen the results of returning jurisdiction to
Mississippi civil authorities and had been appalled. He argued that black testimony could not secure justice for the freedmen because such testimony was disregarded by white judges and jurors. According to Thomas, the freedmen would receive justice only as long as military tribunals tried their cases.\(^{47}\)

Howard, however, concurred in Swayne's action and strongly recommended that other assistant commissioners adopt a similar policy. In a circular letter of September 6, he lauded Swayne's course and ordered assistant commissioners to "endorse any action that will secure the same plain recognition of the rights of the freedmen." Howard did not ignore the critiques of Swayne's policy offered by Fisk, Brown and Thomas. He admitted to his close friend Fisk that the short-run results of Swayne's policy would, in many instances, result in injustice to blacks. Yet the commissioner believed that he was acting in the best interest of the freedmen. His endorsement of Swayne's policy was the result of a fusion of his assumptions about the nature of government, his awareness of the immediate institutional and political problems which hindered Bureau operations, and his own commitment to equal rights for blacks.\(^{48}\)

The lack of an adequate number of agents to exercise jurisdiction in cases involving blacks played a part in shaping Howard's course. Throughout the summer of 1865, rapid demobilization of the Army had made it difficult for
assistant commissioners to obtain officers to serve as Bureau agents. Consequently, most assistant commissioners simply had too few agents to exercise effective jurisdiction in cases to which blacks were parties. Swayne, for example, argued that it was impossible for him to adjudicate cases involving blacks because he could not get "officers enough for a judiciary at all adequate." If, however, Bureau officials could persuade state judicial officers to grant equal rights and mete out even-handed justice to blacks, they could provide a more extensive system for redressing blacks' grievances than was possible through a few scattered Bureau agents. 49

Andrew Johnson's policy toward the South also shaped Howard's decision to support Swayne. Throughout the summer and into the fall of 1865, Johnson pursued a policy which was designed to return the rebel states to their ante-bellum constitutional position as rapidly as possible—slavery, of course, excepted. By late summer provisional governments had been established throughout the South and plans for constitutional conventions well advanced. Most Americans believed that reconstruction would be a brief process, and, in early September, the progress of Johnsonian policy confirmed that belief. 50 Moreover, Republican politicians (who would control the Thirty-ninth Congress and pass judgment on Johnson's handiwork) gave little indication of opposition to presidential policy. 51 Given the nature of Johnson's reconstruction policy and public
response to it, Howard assumed that the southern state
governments would soon have jurisdiction over the freedmen.
Mid-nineteenth century American federalism dictated that
as soon as the southern states were restored to their normal
constitutional relations with the Union, virtually all
cases—including those to which blacks were parties—would
be tried in state courts and under state laws. Thus Howard
felt that it was more important to make fundamental reforms
in southern state legal institutions than to exercise a
brief military jurisdiction over cases to which blacks were
parties.

Moreover, Howard, as a War Department official, was
ultimately responsible to Johnson. As a professional
soldier with no personal wealth and at least some desire
for advancement, he knew that opposition to presidential
policy might cost him his office and inhibit his profes-
sional aspirations. In August, 1865, Colonel J.S. Fullert-
on, Howard's adjutant and close friend, warned the
commissioner against interfering with presidential policy.
"Mr. Johnson is kindly disposed toward you and the Bureau,"
Fullerton confided, "but if we attempt to work against him
or oppose his policy, then 'watch out for breakers.'"
Howard was sensitive to his relations with the President and
frequently spoke of Johnson's regard for him. "I have had
frequent interviews with the President," he informed his
wife, "and am quite apprehensive that the freedmen's rights
will not be cared for so much as I could wish. Yet the
President is cordial to me and so are his household officers (a test of their good will). . . ." Howard was no mere opportunist, but he was unwilling--especially at a time when congressional opposition to Johnson had not crystallized--to risk his office by challenging the president.\textsuperscript{52}

Thus events in late August and early September--the period in which Howard first learned of Swayne's policy\textsuperscript{53}--were probably important factors in the commissioner's endorsement of Swayne's course. In late August, Johnson underscored dramatically his intention to return governance of the South to southern civil authorities as quickly as possible. When the commander of the Department of Mississippi attempted to stop state authorities from organizing a state militia, he received a stinging rebuke from the White House. The incident received widespread coverage in the press and reverberated throughout the War Department and the Army. It, combined with frequent and lengthy discussions between Howard and Johnson in early September, warned Howard that presidential policy aimed at speedy restoration of civil government in the South. In light of this, reform of state legal institutions--while the Bureau still possessed some leverage--became more important than ever.\textsuperscript{54}

Moreover, Johnson's displeasure with Bureau land policy came to a head during the first week in September and made Howard anxious to avoid further disagreement with the President.\textsuperscript{55} Consequently, Howard saw Swayne's policy as a way to bring the Bureau into line with Johnson's attempt to
restore the southern civil authorities to control of affairs in the South and thus a way to placate and avoid further conflict with Johnson.

The most important factors in Howard's decision to support Swayne, however, were his assumptions about government and political economy. Political problems narrowed the alternatives open to Howard and made him more disposed to synchronize Bureau policy with presidential policy. But his assumptions about government and political economy allowed him to support Swayne's policy as the best course. Swayne's policy, by providing blacks with equality before state law and reducing the need for such an anomalous institution as the Freedmen's Bureau, was a natural product of mid-nineteenth century American political culture. The intensely individualistic nature of mid-nineteenth century American thought and society led Howard to assume that if blacks possessed equal rights they would be able to fend for themselves. Moreover, Americans of the 1860's were products of a state-centered federal system and the world's least governed society. To them, the thought of creating a permanent department of the national government to care for the freedmen was anathema. Such an agency, by providing blacks with special protection not given other citizens, violated the individualistic credo that government should not give special advantage to any segment of society. By creating an expensive new national bureaucracy to protect blacks, it also violated contemporaries' notions of fiscal
responsibility and took protection of state residents away from state governments, where it properly belonged. Freedmen were to be treated as free men, not as a separate class that needed to be protected by a specially created department of the national government. As free men, they were to have rights and duties which were defined in state law and, for the most part, enforced in state courts.56

These notions led Howard to use the Bureau to reform state legal institutions. Only in this way, he felt, could an impermanent agency like the Bureau provide long-term protection for blacks. He considered the Bureau "abnormal to our system of government" and, from the time he assumed his duties as commissioner, attempted to transfer the functions of the Bureau to state authorities as rapidly as possible. In the interim, however, he attempted to provide the freedmen with the wherewithal to sustain their freedom after the Bureau had ceased to exist. Thus he advised his subordinates to return jurisdiction in cases involving blacks to civil officials who were willing to grant the freedmen equal rights. He maintained that once the principle of equal rights "is firmly established and incorporated in the laws of the State[s], the results in time can hardly be other than satisfactory." Similarly, Swayne contended that under his policy state legal institutions were molded and reformed rather than displaced by a "temporary antagonism of military power."57
State judges and magistrates' acceptance of the principle of equal rights did not strike discriminatory statutes from southern state codes. However, Swayne and Howard felt that such acceptance would ease the way for writing equality for blacks into state constitutions and statutes. Swayne argued that if blacks were granted equal rights by military courts, whites would react unfavorably to the idea of equal rights. If, however, state judges and magistrates introduced equal rights, southern whites would react to the change with less hostility. Moreover, Swayne knew that many magistrates would be delegates to the state constitutional convention and believed that if they granted blacks equality in their own courts, they would be inclined to work for equal rights in the convention. Howard agreed, terming Swayne's policy "a long step gained to secure the negro's testimony in the Southern courts." Throughout late 1865 and early 1866, he ordered assistant commissioners to urge members of state constitutional conventions and legislatures to draft constitutions and statutes which granted blacks equal rights.58

Howard's endorsement of Swayne's policy also reflected the preference of contemporaries for civil rather than martial law. "The colored people," Swayne assumed, "must some day be left to the civil courts." Americans of the 1860's were not disposed to subject the defeated South to a long period of military government. They assumed that the civil liberties of southern whites need not be diminished
to secure blacks the rights of free men. If freedmen possessed equal rights in state law, trial of cases to which blacks were parties by military courts—which restricted the civil liberties of southern whites—could be eliminated. Then both blacks and whites could secure justice through the normal channels of the civil courts. 59

Implicit in Howard's decision to encourage assistant commissioners to return jurisdiction to the civil authorities was the assumption that traditional governmental-legal institutions would provide adequate protection for blacks. As previously mentioned, Howard realized that whites' prejudice would, in some instances prevent blacks from obtaining justice from state and local authorities. However, Howard and many other Bureau officials felt that such prejudice would, in time, wear away. They assumed, or perhaps just hoped, that with the return of order to the South, the South's "best men" would return to control of state and local government and public opinion. These men would not share the passionate and unreasoning hatred of the black man held by lower class southern whites. They would realize that in order to restore the confidence between black laborers and white employers necessary to social order and economic prosperity, southern civil authorities would have to treat blacks justly. Thus many Bureau officials felt that through a rational appraisal of their own self-interest, southern leaders would mete out even-handed justice to the freedmen. 60
Moreover, in the late summer of 1865, Howard and most of his subordinates were unable to predict the persistence and intensity of white violence against blacks. They assumed that military and civil authorities would soon return order to the South. And with the return of order, violence against blacks, which they assumed resulted from the social dislocation caused by war, would die out. In early September, Howard had not toured the post-war South and therefore had no firsthand knowledge of the nature of violence against blacks. Thus he had little reason to suspect that traditional governmental-legal institutions would fail to protect blacks. In late summer even many of the assistant commissioners viewed violence against blacks as an aberration which would disappear with the return of order. 61 "I think that the worst is past . . . ," proclaimed Samuel Thomas at the end of July. "As law and order is established the abuse of Freedmen will cease." 62

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After Howard's endorsement of Swayne's policy on September 6, assistant commissioners in other states attempted to return jurisdiction to the civil authorities. In Mississippi, Samuel Thomas and William Sharkey, the provisional governor, reached an agreement concerning jurisdiction over blacks. Although Thomas continued to believe that blacks would suffer injustice at the hands of the civil authorities, he felt obliged to end Bureau jurisdiction over
cases involving blacks. Howard's support of Swayne and his suggestion that other assistant commissioners adopt similar measures was, of course, an important factor in Thomas' decision to return jurisdiction to the civil authorities. However, Thomas also knew, from Johnson's handling of the militia affair, that presidential policy demanded speedy restoration of civil authority in the South. With both Bureau and presidential policy against him, Thomas felt that he had no choice but to return jurisdiction to the civil authorities. 63

On September 18, Sharkey, in response to an inquiry from Thomas, informed the assistant commissioner that blacks might sue, be sued and testify in Mississippi courts. "Their rights," Sharkey explained, ". . . are fully covered by the principle of the constitution [of 1865], which abolishes the whole system of slavery . . . and any measures of policy that grew out of that system." Two days later, Thomas drew up an order allowing state judges and magistrates who signified their willingness to apply to blacks the same laws, rules and procedures which they applied to whites to try cases involving blacks. On September 24, Thomas sent one of his staff officers to Jackson to request that the governor give state judges and magistrates "such instructions as will remove all necessity for Freedmen['s] Courts." Sharkey accepted Thomas' proposal and several days later issued a proclamation ordering state judges and magistrates to receive black testimony in cases in which at
least one party was black. Throughout October, state judicial officials informed Thomas of their willingness to conform to the September 20 order, and on October 31, Thomas abolished all remaining Bureau courts.

In response to Howard's endorsement of Swayne's policy, Thomas Conway reluctantly attempted to reach an agreement concerning jurisdiction with Louisiana Governor J. Madison Wells. On September 23, Conway issued a circular offering to allow judges and magistrates who pledged their willingness to receive the testimony of and deal justly with blacks to try cases to which blacks were parties without Bureau interference. The same day he sent a copy of the circular to Wells and asked that the governor issue a public statement encouraging judicial officers to accept the Bureau's offer. Four days later Wells responded, refusing to grant Conway's request. He pointed out that Louisiana law already gave blacks equal rights and argued that it was an insult to require state judges and magistrates, who had already taken oaths of office, to promise to obey state law. "You are in error," Wells contended, "in supposing that it is discretionary with the officers of the court to obey the law." Bureau officials, he asserted, should assume that state officials would obey state law; if a few officials proved unworthy of trust, they could be dealt with through the governor.

However, most Louisiana judges and magistrates granted blacks equal rights and therefore continued to exercise
jurisdiction in cases to which blacks were parties. Although Conway exhorted agents to interfere in cases in which the civil authorities refused to do "impartial justice," there was little Bureau interference with civil officials in the fall of 1865. In many cases, it was difficult for agents to prove that judges and magistrates denied blacks justice. Moreover, many Bureau agents, under instructions from department headquarters, refused to interfere with civil authorities as long as they granted blacks the form of equal rights.

In Georgia, Davis Tillson cooperated with the governor and state constitutional convention in appointing local magistrates and other civilians to serve as agents of the Bureau. In a letter of October 25, Tillson requested Provisional Governor James Johnson to ask justices of the peace to act as agents of the Bureau. Johnson referred the matter to the constitutional convention, which was sitting at the time; several days later, Tillson travelled to Milledgeville to address the convention and to press delegates to act on the suggestion which he had made to the governor. On October 30, the convention passed a resolution encouraging justices of the peace and other citizens to accept appointment as Bureau agents. Tillson, relying on those whom he conceived of as Georgia's best citizens, agreed to appoint as agents in each county men nominated by the county's delegation to the convention. In late 1865 and early 1866, the assistant commissioner appointed some 244 civilians to
serve as Bureau agents and directed that they adjudicate
minor cases involving blacks where state courts refused to
receive black testimony. 67

In Florida, assistant commissioner Thomas Osborne
developed a plan similar to Swayne's. In a circular of
November 15, he invited probate judges and justices of the
peace to become Bureau agents. Those who accepted the
invitation were to try cases involving blacks which came
within their jurisdiction under state law. As Bureau agents,
they were to grant blacks the same procedural rights which
whites enjoyed under Florida law and to apply to blacks the
same laws which governed whites. Governor William Marvin
came to Osborne's support by advising probate judges and
justices of the peace to accept the Bureau's invitation.
As a result, Florida judicial officials rapidly assumed
jurisdiction of cases to which blacks were parties. 68

In Virginia and North Carolina assistant commissioners
made unsuccessful attempts to barter Bureau jurisdiction in
cases involving blacks for equal rights. On September 11,
Orlando Brown suggested to Governor Francis Pierpont that
Virginia judges and magistrates be instructed to act as
Bureau agents for the administration of justice. However,
Pierpont refused to accept the assistant commissioner's
suggestion and Bureau courts in the Old Dominion continued
to adjudicate minor cases to which blacks were parties. In
a letter of September 13, Howard informed Governor W.W.
Holden of the policy which had been adopted in Alabama and
urged that a similar course be pursued in North Carolina. Although Holden refused to accept Howard's proposition, assistant commissioner Eliphalet Whittlesey asked members of the constitutional convention to nominate citizens in their counties to act as judicial agents of the Bureau. However, the response to Whittlesey's proposal was poor, and Bureau agents continued to adjudicate cases to which blacks were parties.69

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Although in several states the Bureau was successful in getting civil authorities to receive black testimony and, in some instances to grant blacks equal rights, Bureau officials soon learned how easily local officials could subvert these rights. The months following Howard's endorsement of Swayne's policy proved Fisk's, Brown's and Thomas's predictions correct. Howard had admitted that prejudice against blacks would, in some instances, lead to injustice against blacks when their cases were turned over to the civil authorities. But he had failed to understand the depth or to predict the persistence of white southern prejudice and how easily it could make a sham out of blacks' right to equality before law. In some places, judges and magistrates, even after being urged to do so by provisional governors refused to allow blacks to testify against white men and continued to countenance patently discriminatory laws and ordinances. Moreover, many of the judges (and
juries) who actually received black testimony completely disregarded it and continued to deny blacks justice.

However, it was the persistence and increase of white violence against blacks which most shocked and dismayed the men of the Bureau. Violence had existed throughout the summer, to be sure, but many Bureau officials had thought that it would pass away as order was restored to the South. Yet violence against blacks persisted long after the provisional governments and the Bureau came into existence.

"That . . . outrages are of lamentably frequent occurrence here," complained Wager Swayne, "is . . . apparent from the incontestible evidence of negroes who present themselves at the military agencies of this Bureau having been shot, stabbed or otherwise severely injured." Not only did violence persist, but in many places it actually increased. Throughout the fall and winter of 1865, demobilization continued to diminish the number of troops on duty in the South, and as troops were withdrawn from various localities, violence against blacks spread apace. "The withdrawal of troops has, in every instance," reported a Bureau official from Natchez, Mississippi, "been the signal for the perpetration of the grossest outrages upon the negroes." In some places, Bureau agents, fearing for their own lives, refused to remain on duty when troops were withdrawn. 70

The problem was exacerbated by the way in which the civil authorities dealt (or failed to deal) with personal violence against blacks. In some places, particularly in
parts of Mississippi, Louisiana, Arkansas and Texas, formidable outlaw bands were the chief perpetrators of violence against blacks. In most instances, local officials were unable to bring these desperadoes to justice. However, it was the spontaneous assaults committed by normally law-abiding white citizens that posed the greatest threat to blacks' security. Many civil officials were willing to arrest and punish whites for assaults on blacks, but public opinion prevented them from doing so. "I doubt if the sheriff can live here, much less exercise his functions," commented an agent in Sevier County, Arkansas. Many local officials, because of empathy with white assailants, made only faint attempts to bring to justice whites guilty of assaults on blacks. In many instances, the civil authorities simply refused to act. 71

The refusal of civil officials to admit blacks to the witness stand and their persistence in enforcing discriminatory regulations was the easiest of these problems to deal with. Bureau officials' agreements to surrender jurisdiction in cases involving blacks were conditional; they agreed to return jurisdiction if the civil authorities granted blacks equal rights (or at least accepted their testimony in cases in which one party was black). If civil officials refused to keep their part of the bargain, Bureau officials were completely justified in reasserting jurisdiction. Yet assistant commissioners were loath to see their agreements fail and therefore reluctant to re-establish Bureau courts.
Thus instead of immediately resuming jurisdiction in places where judges and magistrates were remiss in keeping their agreements, assistant commissioners usually prodded civil officials to receive black testimony or to dispense with enforcement of discriminatory laws.72

Bureau officials were even more reluctant to interfere with judges and magistrates who received black testimony but denied blacks justice. These officials, on the surface at least, kept their agreements with the Bureau, and it was therefore more difficult to interfere with them. Much injustice against blacks was subtle enough that civil officials could claim that they dealt with blacks fairly and without discrimination. In Mississippi, for example, justices of the peace, in strict accordance with state law, released whites accused of assaults against blacks on bond, requiring the accused to appear before the following session state circuit court's grand jury. "The result being," noted one Mississippi Bureau official, "that no [true] bill will ever be found against them [by the grand jury], and in all such cases the parties implicated entertain no fear that they will ever be caused to appear and defend."73

If Bureau officials did intervene to correct subtle injustices, they opened themselves to charges of violating their agreements with the civil authorities. In Orleans Parish, Louisiana, for example, a Bureau agent interfered with a justice of the peace who had fined a black woman from Plaquemines Parish. The justice had fined the woman
ten dollars for selling vegetables from a market cart which
had not been licensed in accordance with Orleans Parish
ordinance, and since the woman was unable to pay the fine,
local authorities seized her cart. Although the ordinance
under which she was fined was non-discriminatory, the local
Bureau agent thought that the woman had been denied justice.
He felt that the magistrate, who had consistently oppressed
the freedmen, had chosen to enforce the ordinance against
the woman to discourage blacks from peddling in the parish. 74
However, when the agent released the woman's cart by mili-
tary force, the justice brought the matter to the attention
of the governor, and in turn, the governor protested the
agent's action to Louisiana Bureau headquarters. Within a
week, the new assistant commissioner, James Fullerton,
ordered agents to refrain from interference "in any manner
with the proceedings of the courts or the execution of the
law." 75

In Alabama and Mississippi, Bureau officials were
especially cautious in dealing with the civil authorities.
Swayne, a man of conservative, legalistic bent, was reluc-
tant to admit that the traditional American legal system
provided inadequate remedies for southern blacks. He was
also, of course, loath to admit that the system which he
pioneered was a failure. Throughout the fall of 1865, he
remained reluctant to interfere with judges and magistrates
as long as they admitted blacks to the witness stand.
Rather, he ordered agents to report to headquarters cases
in which judges and magistrates received black testimony but denied blacks justice. Swayne then usually wrote to the wayward officials, admonishing them to do justice in the future; rarely did he authorize Alabama agents to interfere with civil officials. In Mississippi, Samuel Thomas, demoralized by Howard's decision to support Swayne and intimidated by presidential policy, followed a similar course. 76

In cases in which civil authorities refused to act when blacks made complaints against whites for serious offenses, assistant commissioners attempted to use military power to bring offenders to justice. In some instances they dispatched troops to arrest wrongdoers, and, on occasion, the troops apprehended these parties and turned them over to the department commander for trial by military commission. However, since there were increasingly fewer troops, especially cavalry, in the South Bureau officials often lacked sufficient troops to make arrests in all of these cases. Consequently, this method was too spotty to provide blacks adequate protection. 77

Not only did agreements entered into with the civil authorities fail to provide justice for blacks, but they also failed to provide blacks with complete equality of civil rights. In Georgia, Tillson required only that the civil authorities admit blacks to the witness stand before he permitted them to assume jurisdiction of cases to which blacks were parties. Assistant commissioners in Alabama and
Mississippi had demanded that judges and magistrates apply to blacks the same law and procedure which they applied to whites. However, Governors Parsons and Sharkey, in their public statements urging judges and magistrates to accept jurisdiction under the auspices of the Bureau, did not direct judicial officials to extend complete equality of civil rights to blacks. They merely urged judges and magistrates to accept black testimony in cases in which one of the parties was black. Although some judicial officers, in their letters of acceptance, pledged to grant blacks complete equality of civil rights, most followed the lead of the governors. Thus some judges and magistrates continued to deny blacks the right to testify in cases in which both parties were white and enforced discriminatory penalties against blacks for crimes such as rape or attempt to rape a white woman. 78

Moreover, as autumn progressed, the goal of equal rights in state law appeared more and more irrelevant. It rapidly became apparent that agreements with state governors did not guarantee that state conventions and legislatures would grant blacks equal rights in state law. As Parsons' reluctance to champion equal rights publicly indicated, equal rights was a thorny issue in southern politics. Thus when the question of the legal status of the freedmen came up in constitutional conventions in the fall of 1865, the conventions invariably passed it on to the legislatures for consideration. However, as state legislatures began to
convene, there were indications that many legislators were equally reluctant to grant blacks equal civil rights. In Mississippi, for example, black testimony was an important issue in the fall legislative elections, and a group of candidates opposed to changing the state's discriminatory testimony law won a number of seats in the legislature. In Tennessee, where the legislature convened in early October, a large number of legislators immediately proclaimed their opposition to equal rights. 79

Thus at the end of October, 1865, the legal status of southern blacks remained in doubt. In several states governors had refused to accept the Bureau's offer to exchange jurisdiction in cases involving blacks for state judges and magistrates' pledge that they would grant blacks equal rights in state law. And even in states such as Mississippi where such agreements had been made, state conventions and legislatures seemed to be in no hurry to incorporate equal rights into state law. Moreover, men like Howard and Swayne were becoming aware of the ease with which equal rights could be subverted. They had originally felt that southern officials, in a rational pursuit of social order and economic prosperity, would treat blacks justly. Therefore they had believed that if blacks were granted equal rights in state law, they would be able to protect themselves through the normal means afforded by the traditional American legal system. However, southern violence and prejudice—"irrational" factors which Howard and Swayne had failed to accept
as long-term realities of southern life--made a sham of the black man's claim to equal rights. Although Howard did not give up his faith in equal rights as the basis upon which blacks could ultimately secure justice, he and his subordinates began to search for ways in which blacks could be protected in the substance as well as the form of equal rights.
Chapter II

"The Wicked Leaven of Slavery"

In viewing equal rights in state law as a firm basis for blacks' freedom, Bureau officials had turned to a device which the northern egalitarian myth fully sanctioned. Similarly, in dealing with the problem of free black labor, they developed a policy which rested on an idealized conception of the way in which the North's hallowed free labor system operated. As Bureau officials confronted the labor question during the summer of 1865, they found a great deal of disorder and dislocation. Large numbers of freedmen, displaced by the war, crowded southern roads and many freedmen left the plantations and flocked to the towns and military posts. Moreover, planters, unwilling to relinquish the control which slavery provided, sought in a variety of ways to perpetuate their authority over blacks. Not only was this unwillingness to accept the full implications of emancipation a threat to the triumph of freedom, but, by prompting blacks to escape from recalcitrant planters, it contributed to disorder.

Against this background of disorder and animosity, Bureau officials sought to develop a labor policy which would restore order and, at the same time, establish in the
South a progressive, smoothly-functioning free labor system similar to that which they perceived as flourishing in the North. Although many Bureau officials felt that the Bureau should make blacks landowners, when this proved impossible they turned to the contract labor system. By encouraging workers and employers to enter into written contracts which would be enforced by Bureau agents, they believed that both planters and laborers would learn the importance of complying with their agreements. Planters would find that laborers worked better when treated fairly and laborers would find that they prospered when they worked diligently. As a result, harmony would prevail, southern society would prosper economically and blacks would have a firm economic basis for their freedom. The system, however, was based on the dubious assumption that planters would take a dispassionate view of the situation and perceive that it was in their best interest to treat blacks fairly. By the end of 1865, this assumption had not been vindicated.

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In the spring and summer of 1865, federal troops charged with occupation of the South encountered the social dislocation which resulted from four years of war and the destruction of slavery. During the war military officials had developed policies which had effectively stabilized and controlled the black population within Union lines. However, in the aftermath of the war Army commanders and Bureau
officials faced problems larger in scope and more subtle in implication. Prior to Appomattox, Army commanders had been more concerned with crushing the Confederacy than deciding the ultimate fate of the former bondsmen. Consequently, Army policy toward blacks had aimed at stabilizing and controlling blacks within Union lines and making sure that they contributed to rather than impeded the Union war effort. Although Bureau and military officials continued to be concerned with maintaining order in the South, the end of the war brought a subtle shift in the focus of national policy toward blacks. As a result, federal officials began to give more serious consideration to the position which the freedmen would occupy in the post-war period.¹

The problems which confronted federal officials in the months after Appomattox were larger in scope than those which war-time commanders encountered. During the war, large numbers of Union troops had occupied relatively small areas of Dixie, thus enabling commanders to develop and implement a thorough administration of freedmen's affairs. In the months which followed the collapse of the Confederacy, however, federal officials became responsible for occupation of the entire South. This not only expanded the geographical area which they had to administer, but forced Bureau and military officials to deal with vast areas in which slavery was in its death throes. For as troops moved into or near parts of the South which had remained outside of Union lines during the war, the slave system began to
break down, resulting in violence and disorder. Moreover, the demobilization of the Army which occurred throughout 1865 meant that commanders had insufficient personnel to deal with their expanded responsibilities.

Much of the dislocation which federal officials encountered was a product of the war. During the war planters in parts of Virginia, South Carolina, Mississippi, Louisiana and Arkansas threatened by either occupation or raids by Union troops had taken their slaves to places remote from the enemy. In the face of Union campaigns in the Mississippi and Red River valleys, for example, Louisiana and Arkansas slaveholders had sent around 150,000 slaves to Texas. Although many of these black refugees remained at work on East Texas plantations until the end of 1865 and after, some began to return to their old homes during the summer of 1865. Since planting operations in Louisiana and Arkansas were well advanced when they returned, many of the refugees were unable to find employment and became threats to social order. Even when blacks remained in places where their owners had taken them during the war, they presented problems. In the vicinity of Demopolis, Alabama, where many Mississippi planters had sent their slaves, there was a surfeit of blacks at the end of the war, and, as a result, many were unemployed and had to be fed and clothed by the Army. Moreover, the movement of black refugees back to their old neighborhoods during the summer of 1865, contributed to the dislocation and the impression that, with the
restraints of slavery removed, blacks would refuse to work and wander about aimlessly.\(^2\)

In some parts of the South there were accumulations of black refugees who had escaped into Union lines during the war. On Virginia's James Peninsula, which Union troops had occupied since 1861, the black population had increased by more than one hundred percent during the war years. Although many of these refugees eventually returned to their former homes, a vast majority of them remained on the peninsula throughout 1865. There they were able to make a living by fishing and oysterling, taking odd jobs in towns and at army posts, and cultivating small tracts of land which they rented or on which they squatted. They not only earned their subsistence, but were more independent of whites than they would have been had they returned to their old homes. And as they learned—from newspapers and freedmen who came to the peninsula from the hinterland—of planters' attempts to reassert firm control, the refugees became more reluctant to leave the peninsula. "The freedmen love this shore," commented the Bureau agent at Fort Monroe, "where living is so easily picked up, and they can all be together." However, Bureau and military officials saw the peninsula's swollen and unsteadily-employed black population as a threat to social order.\(^3\)

The break-up of black families during the war also contributed to post-war dislocation. Prior to Appomattox, many of the slaves who had fled into Union lines had left behind
members of their families who were either very young or very old; in some instances, husbands had left their wives and children when they escaped. The provost marshal at Columbus, Mississippi reported that around 2500 blacks followed his unit from the interior of Alabama into western Mississippi in the spring of 1865. Almost all of the refugees were women and children whose husbands had abandoned them during the war. As a result, the provost marshal was unable to send them back to their old homes and, because planters were reluctant to hire women with dependent children, unable to find employment for them in the vicinity of Columbus. Although at the end of the war many planters allowed the women, children, and infirm who had been their slaves to remain on their plantations, some planters drove "unproductive" blacks from their premises. In most cases, these freedmen were unable to find employment on neighboring plantations and drifted to the towns and army posts. In the mid-summer, 1865, the Bureau agent at Petersburg, Virginia reported that 300 destitute blacks had been sent to him from Charlotte Court House, where there were neither quarters nor employment for them. "[I]t is even worse here," he complained, "for every vact. kitchen & hovel in the city is filled. . . ."  

Moreover, families had been separated when black men enlisted in the Army. In many instances black soldiers' wives were unable to work because they had too many children to care for, and even if they sought employment, planters
were generally unwilling to hire women encumbered with children. During the war military authorities had established refugee camps and government farms to care for white and black refugees, including soldiers' families, when they were unable to find employment. Since a large number of black regiments remained in the Army throughout 1865, many soldiers' wives and children had to remain in the camps after the war.\(^5\)

As troops and Bureau officials spread across the South in the spring and summer of 1865, large numbers of blacks flooded into southern villages, towns and cities. Some contemporaries and, subsequently, many historians interpreted this movement as evidence that, once the restraints of slavery were removed, blacks became intoxicated with liberty. However, as many Bureau agents realized, blacks did not usually wander about aimlessly. Many planters did not tell their slaves that they were free, and when blacks learned of their freedom through the slave grapevine, they often travelled to the nearest Bureau agency or military post to learn particulars. "The freedmen have become more troublesome than I anticipated . . . ," complained a Bureau agent in Lexington, Mississippi. "[O]ur presence becoming known to them at a greater distance causes them to come in great numbers to see what the Government proposes doing with them." Even when planters informed their slaves that they were free and offered to pay them for their labor, many blacks remained skeptical. They carried a deep distrust of
their former masters into freedom and wanted to learn of their freedom from the bluecoats. The Bureau agent in Shreveport, Louisiana noted that freedmen, who travelled up to fifty miles to reach his office, exhibited an "entire lack of confidence in the planter." The freedmen, he said, were willing to enter into labor contracts, but first wanted to have the arrangements explained to them by the "Freedman's man." "Shall I sign dat are paper when I don't know what it means," inquired one old black man. "I can't read it and I am afraid that it will bind me to slavery again."6

For many freedmen the act of forsaking the plantation for the town was a test of freedom. As slaves they had not been allowed to leave the plantation without a pass; as freedmen they would test their freedom and taste the fruits of that freedom by leaving the plantation without permission from a white man. Although many of these freedmen soon returned to the plantations on which they had lived as slaves, some left the "home" place for good. They fled, not from labor, but from slavery. According to the agent at Shreveport, many blacks feared that "if they remained on the old place, their rights would be compromised and their status unchanged." Some sought employment on different plantations, while others attempted to find work in the towns, where they would have greater freedom from white domination. Because of the large number of blacks who migrated to the towns, however, many were unable to find
jobs. "I found on my arrival in this city in May . . . ," reported a Bureau agent from Montgomery, Alabama, "the city crowded with idle freedmen and the tendency on the part of many more . . . to come here & seek employment." 7

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White reluctance to accept emancipation generated much of the dislocation and disorder which Bureau and military officials encountered. Some whites recognized the freedom of their former slaves and accepted the spirit as well as the form of the free labor system. A planter in southeastern Arkansas enthusiastically informed General J.W. Sprague that he and his neighbors would make their county "a Model of the free labor system." The Bureau agent at Shreveport reported that a few planters, exhibiting the "foresight and sagacity . . . [of] the successful man of business," offered their former slaves good wages and hired discharged Union soldiers as overseers. Thus some planters realized that "their fine plantations are not worth a farthing without . . . [the freedman's] labor" and treated their former slaves with fairness. 8

However, most were unwilling to accept the full implications of emancipation. In early July, newspapers in Jackson, Mississippi challenged the constitutionality of the Emancipation Proclamation and argued that blacks were still slaves. Several days later, the commander of an Army post near Jackson reported that planters predicted that they
would have their slaves back within a year. "You have nothing but Lincoln's proclamation to make them free," they claimed. "The Constitutional Amendment--if successful--will be carried before the Supreme Court before its execution can be certain, and we hope much from that court."  

These expressions were emotional responses to defeat and forced emancipation, not considered statements of white southerners' expectations. Rather than dwelling on hollow legalistic arguments, most southerners turned to consideration of ways in which they could control the emancipated bondsmen. A Mississippi Bureau official reported that whites enthusiastically discussed the prospective status of the freedmen, but exhibited a desire "to establish some relation which evades the simple recognition of the freedom and manhood of the negro." While on a train near Grenada, he overheard one Mississippian explaining to another the relation of the emancipated Roman slave to his former master. The two agreed that "some such relation of dependence & subordination should obtain among the freedmen." Observers in other states noted that whites were nearly unanimous in their desire to use state law to circumscribe blacks' freedom.  

The beliefs and assumptions which had grown up around slavery and been hardened by the pro-slavery argument made southern whites doubt the reliability of blacks as free laborers. For years southerners had told themselves that blacks were uncivilized brutes and that they would not labor
without being compelled to do so. The free blacks of ante-bellum mythology were shiftless, lazy and criminally-inclined and warned southerners what to expect when the restraints of slavery were removed. Whites' interaction with blacks in the war's aftermath often reinforced these assumptions. Many planters, fearing that their slaves would not work well as free laborers, attempted to maintain slave discipline. And when blacks responded by leaving the plantation or becoming difficult to control or demoralized, planters became more firmly convinced that blacks would not work without compulsion. "Every planter with whom I have talked," reported a Mississippi Bureau official after a tour of Madison, Holmes and Yazoo counties, "premised his statements with the assertion that 'a nigger won't work without whipping.'"\(^{11}\)

Planters' dependence on a reliable work force made them especially sensitive to blacks' alleged irresponsibility. There were certain times--planting, cultivating, harvesting and preparing the land for the next crop--which were of critical importance. If planters were short-handed or their hands refused to work well at any of these times, the crop, and therefore the planter's investment, would be endangered. In the cotton-growing regions, for example, the crop had to be intensively cultivated, or kept "out of the weeds," in early summer. If a planter's labor force dwindled at this time, his crop might easily be lost. Planters worried that, with the old restraints removed, their hands might
leave them at these crucial times and cause them great financial loss. Consequently, they demanded that they be able to use force, if necessary, to keep their hands from leaving them; if laborers did leave, planters urged that either the civil or military authorities return them.

Consider the case of Lorenzo James, a southeastern Alabama planter. In August he informed Wager Swayne that two of his employees had, without provocation, left his plantation and fled to Mobile. He recommended that the provost marshal at Mobile arrest the two freedmen, punish them severely, and send them back to the plantation "as an example to those remaining." "If they go unpunished," the planter contended, "it will have a very bad effect, not only on my plantation, but upon the surrounding country; and if they are allowed to violate a contract ... the agricultural interests throughout the country must suffer."12

However, planters' concern went far beyond economics; they also feared that emancipation might end blacks' subordination to the white man. The tremendous control which planters had exercised over their slaves was an integral part of race control in the Old South. Planters had used corporal punishment and their authority to sell recalcitrant slaves away from friends and family to command discipline and deference from their chattels. With the destruction of slavery many planters feared that, unless they remained unfettered in dealing with blacks, their former slaves would become unmanageable.13
Planters' fear of losing control over blacks was heightened by the threats which emancipation and occupation posed to their authority. Planters who lived near military posts or Bureau agencies found the new situation particularly obnoxious. Bureau agents and military officials not only visited plantations and negotiated contracts between planters and their hands, but also took blacks' complaints against planters and, in some instances, punished planters for ill-treatment of their employees. This removed the nearly absolute power which planters had exercised over their slaves and encouraged blacks to be more conscious of their rights. An Arkansas agent, for example, noted that after his arrival the blacks in his district became more assertive than they had been before. "[T]he planters," he reported, "or at least a good portion of them could not recognize that the colored man was free [. C]onsequently their representations were such as to dissatisfy the freedmen."14 Even in areas remote from federal officials, many blacks learned that military commanders and Bureau officials had promulgated emancipation orders and became restive. Although planters in these areas remained unfettered by the Bureau in dealing with their slaves, they often had to resort to drastic means to control them.15

Unless they needed assistance in disciplining unruly and uncontrollable blacks, planters bitterly resented Bureau officials' interference in matters of labor relations. A Bureau agent in Georgetown County, South Carolina reported
that planters were "disposed to act independently of the Government as long as they can get along without assistance." The planters, he noted, felt it essential that their hands "look to them rather than the agents of the Government as the authority to be respected in all questions of labor." In several instances planters murdered or attempted to murder Bureau agents who entered their neighborhoods to compel and supervise contracting. In mid-July a corporal assigned to duty with the Bureau in Louisiana was murdered while negotiating contracts in Caddo Parish. "The circumstances of the case," reported the Bureau agent who investigated the murder, "are such as to lead to the belief that the planters in the vicinity connived at his death."16

Planters were also disturbed when Bureau agents took blacks' complaints against whites. The intensity of their anger and the ends to which they went to prevent blacks from seeking redress from Bureau agents betray their anxiety for maintaining authority over blacks. The agent in Mathews County, Virginia reported that when he accepted blacks' testimony against whites, "their [the whites] rage knew no bounds[, and] they cursed and threatened me." Many planters resorted to violence to discourage blacks from taking complaints to Bureau agents. A South Carolina Bureau official reported that a band of white "regulators" prowled around northwest Colleton County and tied up by the thumbs
or whipped blacks who were unruly or who made complaints to military officials. 17

Landowners resorted to a variety of means to protect the authority over blacks which emancipation and occupation threatened to destroy. In many places, planters refused to hire blacks who had belonged to others before emancipation. Planters realized that if blacks were able to leave the plantations on which they had lived as slaves, they would gain a sense of independence and become difficult to manage. Moreover, if blacks could move from one plantation to another, they would be able, in times of great demand for laborers, to play one planter off against another for better wages and more favorable working conditions. In Virginia, planters' meetings held in at least seven counties adopted resolutions designed to control black laborers. All of the sets of resolutions stipulated that planters not pay blacks more than five dollars per month, and that they refuse to hire blacks without a "certificate of recommendation from his late master as to character &c." In other places planters had tacit agreements not to hire blacks whom they had not owned. Although many of these agreements broke down because of competition among whites for laborers, in some places there was adequate community pressure to make the agreements work. 18

Keeping blacks from renting land was another way in which whites attempted to control freedmen. Although there were planters who were willing to rent land to blacks, most
remained unalterably opposed to blacks farming "on their own hook." The resolutions passed by the Virginia planters' meetings, for example, demanded that "no land will be rented to blacks under any consideration." Planters feared that blacks were neither responsible nor knowledgeable enough to farm without direction, and that they would damage any property which was placed under their control. They also feared that if some planters agreed to rent to freedmen, blacks might leave planters who declined to rent them land. This would make it difficult for planters who refused to rent to retain their hands, and would result in competition among whites for laborers.19

Refusal to rent land to blacks, however, was also a way to ensure that blacks did not become independent of whites. If blacks continued to work in gangs, under the supervision and direction of whites, planters could maintain the old controls over their hands and make sure that they did not become too independent. In Culpepper County, Virginia, where there was no formal planters' meeting, planters tacitly agreed that they would not hire blacks "unless they will work under exactly the same rules . . . as when they were slaves." A Louisiana plantation owner put the matter more bluntly, declaring that she "would rather see her plantation grow up in weeds than let a Nigger cultivate it for his own use."20

In many parts of the South local governmental officials aided planters in maintaining control of blacks. In
the ante-bellum years, local governmental institutions had, when necessary, aided planters in controlling their slaves. Sheriffs and justices of the peace had captured runaways and remanded them to their owners, while slave patrols, especially during insurrection scares, made certain that blacks did not stray from their owners' plantations without passes. Louisiana planters who met in New Orleans in February, 1863 to help General Nathaniel Banks formulate labor regulations highlighted the importance of governmental institutions in controlling blacks. They recommended that Banks restore local government in the occupied parishes and authorize local officials to establish patrols which would aid planters in maintaining control of black laborers. 21

In parts of Louisiana and Alabama local governmental institutions played an important role in protecting the planters' authority over his employees. Police juries in several Louisiana parishes revived the patrol system and enacted ordinances designed to force blacks to remain with their former owners. A St. Landry Parish ordinance required that every freedman be "in the regular service of some white man, or former owner" and stipulated that any black found within the parish without a pass be arrested and subjected to imprisonment or corporal punishment. Moreover, blacks were not to hold meetings after sunset or to rent houses within the parish. The police jury of Bossier Parish enacted a similar ordinance. In Point Coupee Parish the police jury passed no ordinance restricting blacks' freedom,
but whites revived the parish patrol and used it to arrest blacks who travelled without passes. In the western Alabama black belt, planters organized patrols which arrested, and either beat or jailed, blacks whom they found off plantations without passes.  

Use of local governmental institutions to control blacks shaded into less formal measures. In northern Rockbridge County, Virginia, whites formed a "mutual aid club" to control blacks. In early June, members of the club arrested Alfred Franklin, an unmanageable black, and forced him to leave the neighborhood. Franklin fled to Staunton, but returned a short time later with a copy of the emancipation order which military authorities had issued. In response, local whites arrested Franklin, whipped him severely and again ran him out of the county.

In parts of the South which were remote from Bureau and military officials, planters resorted to violence to control their former slaves. Throughout the summer and fall, Mississippi Bureau agents reported that in places which were beyond the reach of federal officials, planters or groups of planters resorted to violence to retain control of their laborers. "Here also the grossest abuses of the freedmen are reported," wrote a Bureau official from Canton. "Two more have been shot in connexion with the matter of running away from the plantations." In southwestern Alabama, outside of Mobile, where there were no Bureau agents and few troops, planters remained unfettered in dealing with their
hands. The Bureau agent in Meridian, Mississippi, near the Alabama state line, reported that many blacks had fled into Mississippi from Sumter and Choctaw counties. "Whipping and the most severe modes of punishment are being resorted to," he commented, "to compel the freedmen to remain at the old plantations and the negro is kept in ignorance of his real condition." The agent at Mobile corroborated this account. "There is scarcely a day that passes," he reported, "that some complaint is not entered in this office of robberies, murders &c. committed in [Monroe, Clark, Washington and Choctaw counties]. . . ." After a trip to the interior the agent commented that "the freedmen that remain here have a peaceful time--they dare not attempt to escape and they remain subject to hard labor without a hope of compensation." 24 

These attempts by planters to retain control of blacks resulted in a good deal of disorder and dislocation. Planters' attempts to keep news of the military emancipation orders from their slaves generally failed, and many blacks became difficult to control when they learned of the orders and the presence of troops. When planters resorted to violence to retain control of their former chattels, blacks often fled to already crowded towns and military posts. Large numbers of Alabama blacks emigrated from Choctaw, Washington, Monroe and Clarke counties, where violence was widespread and systematically applied. The black population of all of these counties (with the exception of Clarke)
dropped by more than five percent between the federal census of 1860 and the state census of 1866, and contemporaries noted that much of this emigration was prompted by the violence which occurred in 1865. In Virginia's Shenandoah Valley, Bureau agents noted a similar pattern of black migration. An agent in Staunton reported that whites were reluctant to relinquish the old controls over their laborers. Such conduct, he said, "tends to create [among the freedmen] distrust and a desire to emigrate, and to keep near the villages where they feel more secure, and think they can get warning of any change of affairs."25

Although whites' attempts to maintain control of their former slaves prompted a great deal of black migration, many whites intentionally drove freedmen from their plantations. In many places in which small farmers predominated and whites did not depend upon black labor, whites drove the hated freedmen away. A Bureau official who toured northwestern Arkansas during July reported that he saw fewer than a dozen blacks during his entire trip. The prejudice against blacks, he commented, "takes [such] a malignant form among the Refugees and among the union Arkansas soldiers [that] it amounts to a hatred so deadly as to render the safety of the colored people doubtful... The negroes have absolutely been expelled from this part of the state."26

Moreover, even in parts of the South which were heavily dependent upon black labor, planters occasionally drove unproductive blacks from their plantations. They were
concerned, not with "whitening" their neighborhoods and counties, but with ridding their plantations of excess blacks whom they were unwilling or unable to feed. In the wheat and tobacco-growing regions of Virginia and the cotton-producing areas of the deep South the crops had to be intensively cultivated in the early summer to keep them "out of the weeds." However, after laborers had cultivated the crop, there was little to do until harvest time. Consequently, many planters drove the least efficient of their hands away after the crop had been "laid by" so that they would not have to provide for them during the slack season. And, like the blacks who were driven out of the Arkansas, Alabama and Tennessee hill country, these blacks often fled to the military posts and towns.27

*   *   *   *   *

Given the disorder and dislocation which existed in the South, Bureau officials agreed that they needed to develop policies for dealing with labor relations. However, they soon found the number of policy alternatives limited. Many historians now believe that the national government's failure to make freedmen landowners was central to the failure of reconstruction. Certainly, as these historians have argued, a successful program of land redistribution would have given blacks an economic basis for their freedom and greater independence of whites than they subsequently achieved as wage laborers and tenants. However, political
and legal realities and conditions in the South prevented Bureau officials from resorting to root and branch land reform as a solution to the problems posed by labor and race relations.\textsuperscript{28}

This is not to say that contemporaries were ignorant of the importance of making land available to freedmen. Many Bureau and other War Department officials were, by experience and arguments in favor of land reform advanced during the war, aware of the importance of making blacks landowners. Captain A.S. Flagg, a Bureau agent in Virginia, contended that if blacks became wage laborers, they would remain under the thumb of white landowners. Flagg argued that "the . . . system of hiring out colored people . . . [is] not calculated to . . . benefit the race" and recommended that Bureau officials place black families on "small tracts of those lands most likely to be confiscated." "The blacks must be made more independent of the whites than this 'hiring out' system promises," he concluded. Rufus Saxton believed that land ownership was essential to development of the independence and self-reliance necessary if blacks were to prosper as free men. "The location of freedmen on forty acre tracts should be encouraged," he informed a subordinate. "When he is made a land holder he becomes practically an independent citizen, and a great step toward his future elevation has been made."\textsuperscript{29}

Although Saxton was the most vigorous advocate of land redistribution, other War Department officials were alive to
the importance of making blacks landowners. Orlando Brown, Thomas Conway, Samuel Thomas and Clinton Fisk supported land reform, as did Howard. Secretary of War Edwin M. Stanton, who had been impressed with blacks' capacity for independent farming when he visited the South Carolina sea islands in January, 1865, was also eager to see blacks become landowners. Even the conservative Montgomery Meigs, Quartermaster-General of the Army, realized that unless the black man owned land, "suffrage or no suffrage . . . he seems to be in the absolute power of the landowner." 30

Yet Howard and his subordinates realized that there were definite limits to the land reform that they would be able to carry out. Congress had authorized Bureau officials to take charge of all abandoned and confiscated property in the rebel states, divide it into tracts of not more than forty acres and rent and eventually sell these tracts to freedmen. In early June, Andrew Johnson ordered Treasury and War Department officials who held abandoned property to turn it over to the Bureau. Although Johnson's order said nothing about land already confiscated, Bureau officials could, presumably, petition United States courts to turn over to the Bureau property which the court had confiscated but not yet sold. However, Treasury Department officials had seized land as abandoned only in those areas that had come under federal control during or immediately after the war, and federal attorneys had initiated proceedings under the Confiscation Act of 1862 only in those places in which
United States district courts had remained open during the war. Consequently, in the spring and summer of 1865, the Bureau gained control of about 850,000 acres of land, or enough to provide 21,000 black families with forty acre homesteads. In the spring of 1865, officials did not know precisely how much property the courts and the Treasury Department would transfer to the Bureau or how much additional property federal officials might seize for confiscation. However, they soon realized that the amount of land under Bureau control would be inadequate to provide most black families with homesteads.\(^{31}\)

War Department officials, moreover, realized that redistribution of even this much property would encounter tremendous resistance from southern whites. Southerners, they predicted, would resort to violence to drive blacks off land which they acquired from the Bureau and, particularly in remote areas, Bureau and Army personnel would be unable to protect them. Shortly after Howard assumed his duties as commissioner, General William Tecumseh Sherman warned him that he could not "fulfill one tenth of the expectations of those who framed the Bureau." Sherman also predicted that if Howard attempted to sell confiscated and abandoned land to blacks, he would need ten times the revenue produced by the sale of the land "to pay the troops that will be needed . . . to maintain possession of the purchasers."\(^{32}\)

It was soon apparent that Sherman's prediction was not wide of the mark. By late summer the threat of violence
forced Thomas Conway to limit the amount of land he planned to rent to blacks. Conway informed Howard that freedmen should be given lands only on the Mississippi River because, being "under the influence of travel, trade and commerce," they would be "the most secure" there. "The present temper of the old slave holders," he informed Howard, "increasing in intensity every day renders the distribution of land in the interior very unpromising and dangerous." Similarly, several weeks later Samuel Thomas noted that, because of "opposition from all parties," he had given up his plan to lease blacks small farms. "It would require a hero to execute it, and military force to protect the freedmen during their term of lease," he explained.  

The most immediate obstacle, however, was the uncertain legal status of abandoned land. Confiscated land had been libelled by United States courts under the Confiscation Act of 1862 and title to the land had passed to the United States. However, title to abandoned land, which constituted the bulk of land which came under the Bureau's control, had not passed to the government. The Captured and Abandoned Property Act of 1863, under which Treasury agents had originally seized abandoned property, authorized federal officials to seize and, without judicial process, send to the North for sale property captured by the Army or abandoned by a rebel owner. Since federal officials could not send abandoned land to the North for sale, they could only hold it and institute confiscation proceedings against it.
when the federal district court for the state in which the land was located opened its doors. However—and this was the crucial point—owners of abandoned land retained title to their property until it was condemned by a district court. 34

Since title to abandoned property had not passed to the government, it was questionable whether the Bureau could legally maintain possession if owners petitioned for restoration of their property. Attorney General James Speed's interpretation of the statute creating the Bureau seemed to leave little doubt that Bureau officials could hold abandoned property and parcel it out to blacks. Congress' primary concern in enacting the statute creating the Bureau, Speed wrote, was that "[abandoned and confiscated] land should be made use of to conserve the interests of the refugees and freedmen." However, in his opinion, the Attorney General failed to address himself to the crucial issue of the effect of presidential pardon on Bureau control of abandoned land. Seizure of property under the Captured and Abandoned Property Act and judicial condemnation of property under the Confiscation Act was punishment for engaging in or aiding the rebellion. Consequently, presidential pardon, which forgave and removed the consequences of such crimes, could destroy the basis for holding and commencing confiscation proceedings against abandoned property. Congress obviously intended, as Speed suggested, that the Bureau distribute abandoned and confiscated land to
freedmen, but had done nothing to prevent owners from regaining their property through presidential pardon. 35

Nor was pardon an academic concern at the end of the war. Both Lincoln and Johnson used pardon to encourage loyalty among southern whites. In December, 1863, Lincoln, in an attempt to draw southerners away from the rebel government, offered pardon "with restoration of full right of property" to those who swore future loyalty to the Union. And at the Hampton Roads Conference fourteen months later, he assured southern representatives that he would enforce the Confiscation Act with "utmost liberality." Although Johnson appeared ready to pursue a harsh policy toward wealthy southerners and rebel leaders, his policy aimed at creating broadly-based (white) loyal governments in the South. He ordered the Secretary of Treasury to direct Treasury agents to halt sale of land within the insurrectionary states for non-payment of the direct tax, a measure which was much more menacing to southern landowners than the Confiscation Act. In his amnesty proclamation of May 29, 1865, he offered most southerners pardon on the same terms that Lincoln had offered in 1863. True, he excluded from general amnesty more groups of rebel leaders, including those worth more than $20,000, but, in practice, this did not lead to an assault on propertied southerners. Those who were excluded from the general amnesty could apply to Johnson, through their provisional governor, for a special pardon. The provisional governors, intent on gaining the
support of the South's traditional leadership, endorsed most of the applications they received and passed them on to Johnson, who invariably granted the pardons which the governors requested. 36

Johnson's policy did not lead to widespread punishment of those excluded from the general amnesty. He ordered Speed to direct federal attorneys to enforce the Confiscation Act, but this seems to have been designed to prod wealthy southerners into applying for amnesty rather than an attempt to punish wealthy rebels. During the early summer of 1865, federal judges, attorneys and marshals in most parts of the South were busy re-establishing their jurisdiction and probably found it difficult to direct their full attention to confiscation. In other states, such as Virginia, where district courts remained open during the war, the district judge did not hold court until September, thus preventing a hearing of confiscation cases during the summer. By the time most district courts were ready to hear confiscation cases, many southerners excluded from the general pardon had received special pardons and their property was no longer confiscable. In Florida, where a United States district court, re-established during the war, had condemned a great deal of property under the Confiscation Act, Speed authorized Provisional Governor William Marvin to stop sale of the property. The attorney general also gave Marvin authority to veto all future confiscation proceedings, thus allowing him to induce prominent Floridians into loyalty and support
of Johnsonian policy. Finally, in early September, Johnson ordered Speed to stop confiscation proceedings and authorized those who had received special pardons to reclaim property which had been confiscated but not sold.37

Howard was sensitive to the legal problems which threatened Bureau control of abandoned property and realized that presidential pardons might prevent the Bureau from fulfilling Congress' promise of land to the freedmen. Within a week after taking office, he asked Speed whether southerners would be able to obtain pardon by complying with the terms of Lincoln's amnesty proclamation and, if so, whether the Bureau would have to return the land of those pardoned. While Speed's assistant, J. Hubley Ashton, declined to comment on Bureau jurisdiction over abandoned land, he informed Howard that those who had continued to aid the rebellion after learning of the proclamation could not qualify for pardon under it. However, Ashton warned the commissioner that Johnson would soon issue a new amnesty proclamation.38

Although Johnson's May 29 proclamation offered pardon "with restoration of full rights of property," Howard decided to implement the program of land redistribution outlined in the Bureau statute. Undoubtedly, he was encouraged by Speed's ruling, on June 22, that in the sections of the Bureau statute dealing with land, Congress had "looked primarily . . . to the personal and social interest of loyal refugees and freedmen." At any rate, he decided that he would continue to hold abandoned land, even when petitioned
for restoration by a pardoned owner. "I . . . will refuse to give up any property held by or for the use of loyal refugees or freedmen," he informed Speed on July 1, "unless you or the courts decide that I should do so or upon orders of the President or Secretary of War." 39

Yet Howard realized that pardoned rebels were beginning to demand that their property be returned and that, any day, Johnson might order him to restore abandoned lands to their owners. He was also aware that the May 29 proclamation did not require officials to return land which had been confiscated to its former owners. Consequently, after learning that Speed had ordered district attorneys to libel confiscable property, Howard attempted to expedite confiscation of abandoned land. On June 26, he ordered assistant commissioners to send him lists of abandoned land, complete with a description of the land and the name of the owner, which they needed to rent to freedmen. "It is necessary to have this done very soon," he emphasized, "to save the land." As soon as Howard received these lists, he passed them on to Speed, hoping that the attorney general would direct federal attorneys to bring suits against such property. However, by mid-July, the commissioner learned that his plans for confiscation of abandoned property had fallen through. "[P]erhaps there will be more [abandoned land] confiscated," he wrote Brown, "but I doubt it from present appearances." 40

Stopped in his attempt to preserve Bureau control of abandoned land through confiscation, Howard sought final
resolution of the questions which clouded Bureau control of abandoned property. "I hope to have some proper regulations on the subjects of abandoned and confiscated property soon," he informed Brown on July 19, "but it is extremely difficult for me to arrive at any well determined course when there are so many opinions." Howard planned to be away from Washington during August on a long-overdue vacation and undoubtedly wanted Bureau land policy clarified before he left. Assistant commissioners needed definite instructions concerning abandoned property in order to deal with the increasing number of pardoned rebels who were demanding that the Bureau return their property. Moreover, since blacks would begin, in the fall of 1865 to make employment plans for the next year, it was imperative that assistant commissioners prepare abandoned land for rental to freedmen as soon as possible. 41

In order to clarify the legal status of abandoned land, Howard arranged to have Stanton bring the matter before the cabinet. On July 19, he informed Stanton that the question of the legal status of abandoned land was "so important," that he wanted to "bring it before the administration." The Secretary, who had already advised Howard against returning abandoned land to pardoned owners, probably asked the commissioner to draw up a circular to that effect. He, Stanton, could then present the matter to the cabinet for discussion and approval. During the next four days, Howard drew up a circular instructing assistant commissioners to
retain abandoned land owned by pardoned rebels and to begin
to divide such land into homesteads which could be rented to
freedmen. "I have under advisement," he wrote Davis Tillson
on July 20, "a complete system [regarding abandoned land] to
be adopted as soon as I can arrive at a definite understand-
ing with the higher authorities. . . ." On July 24, he told
Brown that he had "laid before the Cabinet the matter of
'Abandoned Lands'" and that he expected an answer by
August 1.\textsuperscript{42}

On Friday, July 28, two days before he left for Maine,
Howard signed, but did not issue, the land circular. It is
probable that, before he left, he instructed Major William
Fowler, chief of the Bureau's Land Division, to issue the
circular--provisionally if the cabinet made no decision on
abandoned land or without qualification if the cabinet gave
its approval. However, since Johnson returned from a week-
end cruise to Fort Monroe very ill, the cabinet meeting
scheduled for August 1, was not held. Consequently, when
Fowler sent copies to assistant commissioners on August 1,
he warned that the circular had not been approved by John-
son. "Although this circular has not yet received the
approval of the President," he noted, "you are to be guided
by it as an expression of General Howard's views, pending
submission to the President."\textsuperscript{43}

While George Bentley and William McFeely have argued
that Howard had the circular issued in order to present John-
son with a \textit{fait accompli}, Howard's goal was probably more
limited. He realized that if the Bureau was to secure and retain abandoned property and make it available for freedmen to farm in 1866, assistant commissioners would have to take action soon. He had been trying for well over a month to establish firm control of abandoned land in order that assistant commissioners might begin to rent such land to blacks. And since July 19, he had attempted to bring the land question before Johnson for final determination. When, by August 1, the administration had taken no action on the matter, he ordered Fowler to issue the land circular provisionally. Assistant commissioners could, while awaiting Johnson's decision, proceed with the time consuming task of securing abandoned and confiscated land and preparing it for occupation by freedmen. 44

Howard knew that his plan needed presidential approval and realized that Johnson would not acquiesce simply because Bureau officials took the initiative. On July 19, he had specifically asked that the matter be brought before the administration, and between July 19 and August 1, he had awaited the decision of the cabinet. It was only when the process of gaining approval dragged on that he ordered provisional issuance of the circular. "The matter of abandoned lands is just now in abeyance, and conditions of retention or surrender will be fixed by the government very soon," he wrote South Carolina's Governor Benjamin Perry on July 29. "I have referred it for action to the President and Cabinet."

Even after the circular had been issued, Howard freely
admitted that it was provisional. "The plan of letting or selling abandoned lands is held in abeyance at present," he told a Kennebec, Maine audience on August 11. "The government policy in regard to such lands is not yet well defined, and while such lands has been described as lands left by the owners for purposes hostile to the government, it is deemed best at present not to dispose of them."45

Howard's circular never came before the cabinet, but in mid-August Johnson forced Bureau officials to restore abandoned property to pardoned rebels. On August 15, Johnson forwarded to Bureau headquarters the complaint of a pardoned Mississippian who had been denied restoration of his property. He noted that the letter was "but one of many earnest remonstrances daily received at this office" and ordered Bureau officials to see that "all such abuses [are] corrected as far as possible." The next day, Johnson directed Bureau officials to restore the property of a pardoned rebel, B.B. Leake of Nashville, and ordered that "[t]he same action will be had in all similar cases."46

Bureau officials quickly succumbed to pressure from the White House. On the day that Johnson informed Bureau headquarters of his decision in the Leake case, James Fullerton, Howard's adjutant, began to draft an order modifying the land circular. Two days later, he sent a letter of instructions to J.W. Sprague, explaining that the Bureau could not deny pardoned rebels restoration of their property. In a covering letter marked "private," Fullerton, concerned that
the Bureau not incur Johnson's wrath, asked Sprague to make the instructions public. "The President," he wrote, "is anxious for the country to know that his proclamation of Amnesty is more than wind, and that when a man is restored to 'rights of property' he is to have his land returned to him." On August 19, he informed Fisk that the land circular "will not be issued" and that abandoned property should be returned to pardoned owners upon application. Later that day, when William Fowler forwarded to Samuel Thomas the president's complaint about administration of abandoned land in Mississippi, he also told the assistant commissioner of Johnson's action in the Leake case.47

When he returned to Washington at the end of August, Howard found a note from Johnson requesting an "early conference" on Bureau land policy. After discussing the problem of abandoned land with the President, he drew up a circular aimed at reconciling Johnson's ruling that Bureau-held abandoned land be returned to pardoned rebels and his own desire that blacks be provided with land. The new circular reiterated Howard's belief that all confiscated and abandoned land under Bureau control could be leased or sold to blacks as provided by Congress in the Freedmen's Bureau Act. He instructed assistant commissioners to divide confiscated and abandoned property into homesteads and rent or sell them to freedmen "with as little delay as possible."

Although the circular recognized that assistant commissioners must return abandoned land to pardoned owners upon
application, it stipulated that the commissioner would have to approve such restorations, a potentially cumbersome process, and that the Bureau would not return property which had already been libelled or confiscated. Apart from the circular, Howard personally requested Johnson to require landowners who received special pardons to grant five to ten acre parcels of land to heads of families whom they had owned. The circular, ostensibly signed by Johnson and Howard, was promulgated by Bureau headquarters on September 4.48

However, someone at Bureau headquarters had released the circular prematurely; Johnson had not seen it, let alone given it his approval. When the new circular, which was published in the New York Times on September 6, came to Johnson's attention, he quickly ordered Treasury officials to stop transfer of abandoned land to the Bureau and requested another conference with Howard. The President, fearing that the new circular would permit assistant commissioners to lease or sell abandoned lands before those who had received special pardons could have their applications for restoration approved by Howard, demanded that the Bureau place no obstacles in the way of pardoned rebels regaining their property. Consequently, he took the matter of land policy out of Howard's hands and had a new version of the circular drawn up at the White House.49

The new circular made certain that those who had received pardons would be able to regain possession of their
property as expeditiously as possible. Assistant commissioners were authorized to restore abandoned property to owners who presented proof of ownership and their pardons. But before assistant commissioners could rent or sell land to freedmen, they had to obtain approval from Bureau headquarters. Moreover, the White House version of the circular directed federal officials to surrender to pardoned rebels property which had been libelled but not confiscated or confiscated but not sold. On September 12, Johnson ordered Howard to send out the new version of the circular, specifically stating that it was to supersede the circular issued September 4. 50

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Because of the uncertainty which surrounded the question of land reform, Bureau officials had to devise a policy to deal with blacks who worked for white landowners. However, on this score they were ambivalent as to the best course to pursue. Although no consensus had emerged on all the points in dispute, the drift of war-time discussion of the future of southern blacks had been that there should be no half-way house to freedom. Most northerners who had given serious consideration to the post-war status of the emancipated slaves had rejected the idea of resorting to paternalistic measures which would protect blacks, but restrict their freedom, damage their self-reliance and impose unwanted responsibilities on the national government.
Freedmen, they had come to agree, should be no more fettered than white men and should be free to move about and bargain with employers for the most favorable terms of employment. 51

Howard and most of his subordinates shared these beliefs and repeatedly proclaimed that black workers were "under the same common laws that govern free laborers throughout the North." Equal rights, they felt, would prevent whites from creating a bastard slavery through which they could control blacks as completely as before the war. Establishment of a system of free labor similar to the one which existed in the North would fulfill the nation's wartime commitment to freedom by making certain that all the vestiges of slavery were rooted out. "Russia frees her serfs," Howard commented, "shall America perpetuate any form of slavery?" Moreover, Bureau officials, like other north-erners, feared an indulgent, protective paternalism just as much as a paternalism which would deliver blacks into the hands of white planters. If the freedmen were helped too much their self-reliance would be destroyed rather than cul-tivated, and they would be hopelessly out of place in the individualistic universe of mid-nineteenth century America. 52

Yet the men of the Bureau feared that blacks would not work well if they were only subject to the minimal restraints which governed white workers. While their racial views were a melange of environmentalism, elements of the racist argu-ment and class bias, Bureau officials' concern was prompted
more by environmentalism than racist ideology. Many officials felt that blacks, as a race, differed from whites in their "mental and moral capacities" and refused to think of the freedmen--products of a culture which differed markedly from their own--as their peers. However, they disagreed with southern whites' and northern Democrats' arguments that Negroes, as a race, were incapable of freedom unless their liberty was severely restricted. Like many abolitionists, they contended that slavery had a debilitating effect on blacks and left them ill-prepared for freedom, but that with proper instruction they could become responsible members of society.53

Bureau officials disagreed as to how deeply-rooted the adverse effects of slavery were. Rufus Saxton, who had been in charge of freedmen's affairs on the Georgia, South Carolina and Florida sea islands since 1862, felt that there was "a great recuperative vitality in the race" and argued that blacks "only need to be educated and protected in their rights and all will be well with them." Samuel Thomas conceded white Mississippians' contention that many freedmen were "ignorant and stupid," but added that "Slavery has made them what they are." He argued that, in time, blacks would remove themselves from "the ruts of Slavery." In defense of his contention, he pointed to blacks in the vicinity of Vicksburg who had, in the two years in which they had been free, proved their worth as free laborers. Howard, however, was less sanguine that blacks could dispel the burden of
slavery so rapidly. In a letter written in late 1865, he admitted that "Slavery is a disease . . . which always prostrates the victim whatever the color, and he cannot always recover. . . ." Moreover, combining racism and environmentalism, he feared that "the seeds of the disease . . . [are] transmitted so the children are often materially affected by it." Yet Howard denied that blacks were biologically unsuited for full freedom and hoped that with "help and advice" the black man "might gradually acquire habits suited to his new state." 54

Even if they believed that the legacy of slavery could be eradicated, Bureau officials felt that the peculiar institution had left its mark and that blacks needed instruction in the obligations as well as the rights of free men. The welfare, not only of the freedmen, but of society as a whole, seemed to demand it. The economic and geographical expansion which had begun in the first half of the nineteenth century had eroded many of the traditional means of achieving order and stability—a highly visible class structure, a strong sense of class and status identity and powerful national institutions. Moreover, part and parcel of this expansion, many of the restraints which the legal order had traditionally imposed on the individual no longer existed. Nineteenth century American law aimed less at preventing individuals from harming themselves or society than encouraging them to exercise their creative energies. 55
In mid-nineteenth century America, the market provided discipline, order and direction. For Americans of Lincoln's generation, the market was the mechanism through which individuals, acting in what they perceived to be their best interest, propelled the nation along its economically dynamic course. Through economic inducements, it encouraged individuals to use their freedom in ways which would promote prosperity and the good order of society. However, the order which the market provided was dependent on an unpredictable element—the individual. The success of the market place society demanded that individuals assume the necessity of economically rational expenditure of their time and talents and the sanctity of contracts. If they did not, the paucity of external restraint which society imposed on its members would result in disorder rather than progress.

As sensitive and articulate men with Victorian middle class values, Howard and his subordinates were aware of the fragile base on which their society rested. Consequently, they feared that if the emancipated slaves possessed equal rights, but did not learn the responsibilities which accompanied freedom, they would threaten societal stability. Bureau officials felt that since, as slaves, blacks had been compelled to work but had never learned the virtue of labor nor received reward for diligent and industrious service, they would work fitfully as free men. The agent at Selma, Alabama echoed the fears of many of his superiors when he worried that, once they were "[r]elieved . . . from the
terror of the lash," blacks would not "come under sufficient power of motive to supply its place." 56

Moreover, many Bureau officials felt that slavery had denied blacks the independence which played such a crucial role in the development of the self-reliant and industrious individual. One of the most pervasive themes in Bureau officials' correspondence is the fear that slavery had robbed blacks of their "freedom and manhood" and made them dependent and irresponsible. Howard, for example, likened the freed-men to a white man who, after living in "absolute dependence" for sixty years, started an "independent business." "You might aid him and he might gradually acquire habits suited to his new state," he explained, "but it would be bad management to leave him without help or advice, and curse him because he was not a thorough business man." 57

As Howard's analogy suggests, Bureau officials' concern went beyond simple fear that, as free men, blacks would not work. Although they were alarmed by the dislocation which gripped the South in the spring and summer of 1865 and took firm measures to restore order, most officials realized that blacks did not equate freedom with idleness. However, they did fear that blacks, whose self-reliance and industry had been stifled by slavery, would not labor with the intelligence, punctuality, diligence and reliability which was essential to orderly operation of a market place society. Men like Howard assumed that profit (which demanded rational application of labor) rather than mere subsistence was
necessary to smooth an orderly operation of the market. If blacks failed to work in an intelligent disciplined manner or refused to put in extra hours when the success of the crop demanded it, they would threaten their own economic progress, as well as that of their employers and society as a whole.

The market system, based as it was on interdependence, also demanded that individuals fulfill their agreements with others. If they failed to do so, they not only injured the person with whom they made the agreement, but undermined the mutual trust which held the system together. Thus if freedmen who had not learned the obligation of contracts as slaves, broke contracts which they made with employers, they struck at the very sinews of the marketplace society—the credibility of business agreements. For employers who did not have reasonable assurance that their employees would remain with them until the end of the season would be unable to predict the number of acres they could profitably cultivate and the credit arrangements they should make.\(^ {58}\)

Moreover, as members of a society in which the pace of change was so rapid and order so uncertain, Bureau officials had a strong emotional desire for social order and harmony. Several officials, for example, wistfully recommended that large numbers of blacks serve in the Army. There they would receive the "steady labor under good regulations" which would make them responsible and orderly members of society. "The discipline of the camp and the training they receive as
soldiers, is the very best educator for them," commented Rufus Saxton. "[It] will make them better citizens and have a beneficial effect on the race." Many Bureau officials were concerned with the threats to order which they perceived in the North and felt that southern "poor whites" were as disorderly an element as the freedmen. However, they possessed broad statutory authority over freedmen which they did not possess over most whites and could deal arbitrarily with blacks without raising the storm of protest which ensued when they treated whites similarly. Consequently, they were able to impose upon blacks many of the restraints which they desired, but dared not, impose on other "disorderly" elements of society.59

*   *   *   *   *

Bureau officials realized that the "wicked leaven of slavery" had also affected southern whites and that they had an imperfect understanding of free labor. They believed that the practices and ethos of slavery, which were based on control and compulsion of the worker, differed radically from those of the free labor system and that southern whites needed instruction in the principles of free labor. Just as slavery had made blacks ignorant of the way they should behave as free men, it ill-prepared southern whites for dealing with free laborers. "The whites of the South perhaps understood the negro very well as a slave . . . [, but] they need to be taught what a free laborer is as much as a
negro needs to be taught his duties as a free man," argued General J.W. Sprague. In a letter written several months later, Sprague repeated the theme: "Some good men who have been educated in the slave states are not yet able to comprehend the fundamental Republican idea [i.e., equal rights]." Similarly, in December, 1865, Howard, responding to a South Carolina planter who had forwarded a set of his plantation regulations for the Commissioner's perusal, informed the planter that he had a great deal to learn about free labor. Howard was neither scornful nor contemptuous, but simply assumed that the planter was honestly ignorant of the principles of free labor. He noted that while some of the regulations were good, others were "decidedly opposed to freedom" and suggested that the planter discuss them with the nearest Bureau agent. "[He] . . . will aid [you] . . . ," Howard commented, "so that [you will] . . . not ignorantly violate any principles."

Howard and his subordinates realized that this ignorance was fused by southerners' contempt for blacks into a bitter prejudice against free black labor. They realized that slavery had a great influence on southerners' beliefs and assumptions and that, as a result, most southerners doubted that blacks were capable of becoming reliable free laborers. "[The planters] . . . claim to have little or no faith in any system not possessing the essential elements of slavery," reported a South Carolina agent, "and consequently
are not well disposed toward any experiment looking to the permanent improvement and independence of the colored population." Howard shared the agent's perception. "I do not expect to meet every difficulty arising under the new order of things," he admitted. "The belief on the part of old masters that freedom is impracticable, shows the existence of a prejudice which time & experience alone can cure." An Army officer stationed in Vicksburg thought that since whites' prejudice was so strong Bureau agents would have to be intelligent and articulate men capable of dispelling these prejudices. "They should be able," he contended, "to discuss the question of free labor as a matter of political economy, and by reason and good arguments induce the employers to give the system a fair and honest trial."61

Bureau officials feared that, if given free rein, this ignorance and prejudice would perpetuate disorder and threaten the success of the free labor experiment. They assumed that the interdependent, yet loosely cemented society of nineteenth century America demanded that different groups cooperate with rather than be antagonistic to one another. If groups of citizens, and particularly employers and employees, were at swords' points, they threatened the mutual faith and confidence which men like Howard thought essential to a harmonious, orderly and smoothly functioning social order. Consequently, the men of the Bureau feared that planters' prejudice and ignorance, if unchecked, would cause them to evade paying their black
employees and to attempt to maintain the discipline of slavery. This, they reasoned, would further alienate blacks, many of whom emerged from slavery with a deep distrust of whites, from their employers and remove the inducements for freedmen to become responsible, industrious and orderly laborers. Moreover, they felt that if blacks worked poorly, whites' prejudices would be confirmed, thus creating a spiral of distrust which would prevent the growth of inter-racial harmony, make the emergent free labor system unworkable and cause disorder and even violence.  

These perceptions led Bureau officials to believe that it was imperative that national authorities control labor relations, at least temporarily, in order to encourage growth of a viable free labor system in the South. General Joseph Reynolds, for example, felt that "this labor question is a civil matter, and should be regulated at as early a day as may be by civil [state] laws." Yet he realized that "the national government must secure the freed status of the negro before the subject is turned over to the states." "The main fact is," he concluded, "that unless the national government does this thing it will not be done at all."

Bureau officials felt that they should stand between planters and their employees, assuring blacks that they would have protection in their rights while instructing them in their obligations. "The Mississippians fear, hate, and distrust the negroes and the negroes have not a particle of faith in their former owners," wrote a Bureau official from
Natchez. "It is my conviction that the labor question of this country and the settlement of a large class of Freedmen into industrious, law abiding, and profitable citizens can only be effected by the interposition of United States authority." Similarly, in late July, General Quincy Gillmore informed Carl Schurz that if federal officials did not serve as the arbiters of labor relations, "new suspicions and new prejudices between the races" would develop and "the important question of free black labor would be embarrassed, deferred, and possibly defeated." 63

Time was central to Bureau and military officials' thought. As Reynolds' sensitivity to undue military interference in state affairs suggests, they realized that under American institutional arrangements (which would soon be restored in the South) labor relations was a matter properly regulated by state law. However, they felt that temporary military supervision of labor relations would allow old prejudices to die and confidence in and understanding of the new system to grow. Then Bureau and military officials could safely return matters concerning labor relations to state control. "The government may in time effect this [good order] through the state governments," Howard informed Horace Greeley in September, "but the disorganized state of things at Lee's and Johnson's surrender rendered it necessary for the general government to keep control for a time, of all matters affecting law and order through the military arm." Moreover, Howard believed that this relatively brief
period of federal control would provide the necessary transition from slavery to freedom. In July, he informed James Yeatman, President of the Western Sanitary Commission, that federal officials would prevent imposition of any system which would amount to de facto re-enslavement. "Without these systems," he predicted, "oppression will only be temporary."64

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Howard quickly laid down the general lines of Bureau labor policy. Less than two weeks after assuming his duties as commissioner, he decided that Bureau officials should encourage blacks to remain at their old homes, enter into written contracts with their former owners and work for wages. On May 19, he instructed subordinates to "introduce practicable systems of compensated labor." They were, he noted, to teach whites that they should pay their laborers and blacks that they could not live without labor. In the following week and a half, a board of assistant commissioners, which sat in Washington to discuss policy alternatives, brought Bureau labor policy into sharper focus. In a circular which he drew up at the meeting's conclusion, Howard directed assistant commissioners to encourage planters and their hands to enter into written contracts. Although the circular stipulated that blacks were free to work for whomever they chose, it was generally understood by board members that Bureau agents should admonish freedmen
to remain at their old homes and to enter into written con-
tracts with their former masters. 65

Howard feared that the contract system would fail
unless federal officials supervised contract negotiation and
enforcement. While he did not adopt detailed regulations or
a form of contract to be used in all cases, he did establish
the parameters of Bureau supervision of the contract system.
Agents, he instructed his assistant commissioners, should
examine contracts and make certain that planters neither
coerced nor tricked freedmen into unfair agreements. More-
over, once contracts were entered into, Howard demanded that
"their inviolability be enforced on both parties." He felt
that, in most cases, agents would settle labor disputes and
convince employers and employees to fulfill the terms of
their contracts by counsel and arbitration. However, he
informed assistant commissioners that laborers had a lien on
the crop they produced and that agents could enforce this
lien if necessary to prevent planters from cheating their
hands. Just as a lien for agricultural laborers was not
known to the common law, the measures which Howard adopted
to protect employers were also extraordinary. Under common
law the employer's only remedies for violation of contract
by employees lay in non-payment of back wages or a civil
suit for damages. Although he was vague about how agents
could deal with violation of contracts by freedmen, the
commissioner intimated that agents should enforce specific
performance of labor contracts, a method not sanctioned by
common law. "It was determined," he told a Kennebec, Maine audience in August, "that the contracts should be bona fide agreements, in which each [party] would have a duty to perform, and both be held to it."66

Howard and his subordinates viewed Bureau labor policy as a delicate blend of individual initiative and Bureau control. In order to protect planters and freedmen in their rights and instruct them in their obligations, Howard gave agents extraordinary authority to deal with contract violations. However, officials felt that Bureau policy should not be so rigid as to discourage planters and freedmen from adopting any legitimate arrangements which they could agree upon. "I am anxious . . . ," Howard wrote a planter, "to give as much latitude as possible to individual enterprise without assuming to interfere too much with local regulations." Howard and his subordinates feared that if Bureau regulations were too specific and rigid, they would prevent planters from discovering, by experimentation, the most efficient means of working their plantations with free labor. Similarly, while Bureau officials allowed agents to void contracts which set wages unconscionably low, they refused to establish a minimum wage for freedmen. They felt that a minimum wage would become the standard, thus discouraging freedmen from working up to their full capabilities and sapping their self-reliance by preventing them from bargaining with their employers. "[An established rate of wages] . . . crushes out all the spirit enterprising
colored men may have for independent labor and rapid accumulation of property," Samuel Thomas informed Howard. 

"[It] ... takes away from them the opportunity of taking their first lessons in business, by thinking for them instead of protecting them in their rights, and allowing them to do their own thinking."67

*    *    *    *    *

During early summer Bureau officials in the South began to implement the contract system. Because they believed that establishment of a progressive, smoothly functioning free labor system depended upon order and stability, Bureau officials' first concern was with getting freedmen settled and at work on the plantations. In dealing with this problem, agents did not absolutely deny freedmen the right to seek employment away from their old homes, but strongly urged them to remain where they were. A movement of blacks en masse from their old homes threatened to increase disorder, heighten inter-racial tension and violence and impede creation of a viable free labor system. If however, Bureau officials could induce blacks to go to work, they would teach blacks that freedom did not mean freedom from labor and convince whites that blacks would labor well as free men. Moreover, there were more mundane reasons for Bureau officials' attempt to discourage mobility. They feared that if blacks continued to move about, they would endanger the success of the growing crop and thus force a retrenchment-
conscious national government to provide them with subsis-
tence. 68

Advising freedmen to remain where they were, however, did not have the desired effect. Consequently, Bureau and military officials developed stringent measures designed to keep blacks on the plantations. Although there was little central direction, agents, given the general directive of restoring order, adopted essentially similar policies. Because the flow of black migration was toward the towns and because agents centered their operations in the towns, Bureau efforts at stabilization sought to remove from the towns all blacks except those who had permanent employment. Thus agents frequently required all town-dwelling freedmen to obtain a pass from the Bureau and threatened to arrest those whom they caught in town without a pass. When these agents arrested blacks who did not have a pass, they put them to work on the public works and subsequently hired them to planters who came to town looking for additional labor-
ers. Although many agents did not require blacks to carry passes, they too took stringent measures against blacks who attempted to live in the towns without regular employment. These agents merely arrested freedmen who did not have regular employment and made them work on the public works or hired them out to private individuals. 69

By using such arbitrary measures, agents were generally successful in restoring order. Consider the results of the policy adopted by Captain J.H. Weber, the agent at Jackson,
Mississippi. When he arrived at his post in early June, Weber found the town bloated with freedmen who had come from the countryside but who could not find employment in Jackson. However, he noted that after he established a pass system and began arresting and hiring out freedmen who did not have passes, the number of blacks declined precipitously. His activities also reduced the number of blacks who ventured into town from the countryside. As blacks who lived in the vicinity of Jackson learned the fate of those who went into town, they became less eager to leave the plantations. Although on July 1, Weber noted that disorder still prevailed in "the remoter districts," it undoubtedly declined in those areas, too, as the number of agents in the state increased. 70

Bureau officials believed that these highly arbitrary measures were tolerable only because they were essential to restoration of stability and creation of a successful free labor system. Although in a few places agents continued to use the pass system throughout the summer, in most states Bureau officials attempted to do away with it as rapidly as possible. "The pass system is for the purpose of relieving the city of the surplus of negroes," assistant commissioner Samuel Thomas informed Weber in late June. "It should be discontinued as soon as possible." Moreover, during the remainder of the summer, as black mobility declined, Thomas refused to allow agents to compel freedmen to carry passes when they moved about. When, for example, the agent in
Bolivar County complained that freedmen were running away from their employers via steamboat and suggested that Thomas permit him to establish regulations requiring ship captains not to give passage to freedmen who did not have passes, the assistant commissioner turned him down. Although Thomas did not wish to encourage freedmen to run away from their employers, he informed the agent that such a pass system would be unduly restrictive of blacks' freedom.

Moreover, Bureau officials were reluctant to allow southern civil officials to enforce repressive measures. They could justify their own use of arbitrary restrictions on freedmen because they were both temporary and designed to start the free labor system off on the right foot. However, they felt that in enforcing similar measures southern civil officials sought merely to perpetuate white control. Thus in Louisiana, Thomas Conway, the assistant commissioner, sought to stop enforcement of municipal regulations designed to hold freedmen in subordination to whites. In St. Landry Parish, the board of police stipulated that no freedman could live in a town without being in the regular employment of a white man and authorized parish officials to arrest and punish all freedmen whom they found away from the plantations without a pass. Moreover, the post commander at Washington sanctioned the board's ordinance. Enraged by the ordinance and the fact that a federal official had endorsed it, Conway asked General E.R.S. Canby, commander of the Department of the Gulf, to arrest the members of the board.
of police and to relieve the post commander. Although he did not completely accept Conway's suggestion, Canby sent an officer to St. Landry who reprimanded the post commander and annulled the ordinance. Some weeks later, when he learned that municipal officials in Franklin had enacted similar regulations, Conway ordered the agent at Franklin to stop the civil authorities from enforcing their regulations.\textsuperscript{72}

Not only did assistant commissioners begin to relax arbitrary policies and to stop enforcement of repressive local regulations, but Howard also attacked such measures. In mid-June, when a group of Richmond blacks complained that the Richmond police arrested freedmen who did not carry passes, Howard immediately demanded that Orlando Brown, the assistant commissioner for Virginia, investigate the charges. In the course of his investigation, Brown found that the charges were true and forced city officials to discontinue their pass system. Similarly, when Howard learned of the St. Landry Parish ordinance, he requested Conway to stay execution of the measure.\textsuperscript{73}

Howard was also concerned about pass systems which Bureau and military officials established. In mid-July, he lamented to Stanton that such regulations were unjust because they discriminated against blacks and regressive because they nurtured "the old idea that the black man cannot be governed by the same laws as others." Consequently, he enclosed in his letter the draft of an order which stipulated that War Department personnel should neither
require freedmen to carry passes nor "subject them to any restraints or punishments not imposed on other classes."
Within the week, Stanton accepted Howard's proposal without revision and issued it as a War Department general order. Although military officials in some places continued to force freedmen to carry passes, the order convinced most Bureau and military officials to dispense with passes.74

Bureau officials' main concern, however, was encouraging planters and freedmen to enter into written contracts with one another. In some instances, agents went from plantation to plantation and negotiated contracts between planters and those who were working for them. In others, agents merely visited several prominent places in their district and held mass meetings to encourage planters and freedmen to enter into written contracts with one another. Yet because most agents had neither a staff nor office help and were responsible for several counties, they seldom ventured into the countryside to encourage contracting. They generally published notices in local newspapers calling upon planters and laborers to negotiate written contracts and to bring them to the local Bureau office for approval. Moreover, as an inducement, agents often threatened to punish planters who failed to enter into Bureau-approved contracts and warned that they would not enforce contracts which an agent had not approved. Although this convinced large numbers of planters to bring their contracts to agents
for approval, many if not most probably declined to comply with agents' requests. 75

Although there was a great deal of variety in the contracts which Bureau agents approved, these differences should not obscure the similarities. Variety was most apparent in the contracts' provisions for payment of workers. Most contracts stipulated that planters provide food, clothing and shelter, but beyond this there were important differences. Often—and particularly when laborers had a large number of non-productive individuals dependent upon them—contracts bound laborers to work for a bare subsistence for themselves and their dependents. In other instances, planters agreed to subsist workers, pay them a small monthly wage or give them a portion of the crop at the harvest and deduct from the laborer's wage or share of the crop any goods advanced non-workers who were dependent on the laborer. Because of planters' commitment to maintaining control of blacks, however, there was a monotonous similarity concerning laborers' obligations to planters. Regardless of whether freedmen worked for their subsistence, a monthly wage or a share of the crop, they generally agreed to work under whatever rules the planter adopted. In practice, this meant that freedmen continued to work, as they had done prior to emancipation, in gang labor situations and under direction of the planter or his overseer. 76

Once planters and freedmen entered into contracts, Bureau officials sought to guarantee that both parties
fulfilled their contractual obligations. Because they adopted the contract system, in part, to impress upon freedmen the necessity of diligent labor and the sanctity of business agreements, agents came to the aid of planters when freedmen violated their contracts. In cases in which freedmen refused to comply with orders from their employer, agents often went to the plantation and informed laborers that their employer had the right to direct their labor. And if laborers refused to obey, agents generally called upon post commanders to send troops to arrest the recalcitrant. Similarly, when individual freedmen worked poorly or absented themselves from the plantation during working hours without permission, agents allowed planters either to fine laborers or dismiss them with loss of back wages. Moreover, when black workers ran away from their employers, Bureau officials arrested them and returned them to their employers.77

Agents, however, also compelled employers to fulfill their contractual obligations. Not only was it essential to do so in order to teach whites that they must respect the rights of laborers, but Bureau officials realized that freedmen could be induced to work energetically only if they benefitted from their labor. One of the major problems which agents faced protecting workers' rights was that of punishing planters who assaulted their hands. Although agents were unable to deal with all cases (especially after jurisdiction was returned to the civil authorities), they
often fined planters guilty of abusing their hands and permitted the freedmen to seek employment elsewhere. Moreover, agents in many places were active in forcing planters to pay their hands and in stopping planters from dismissing laborers without pay at the end of the year. Thus in Alabama agents attempted to stop planters from moving their crop until they had settled with their hands and in Virginia, Bureau courts issued and enforced judgments against planters who refused to pay their hands. 78

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During 1865, Bureau labor policy was, in a measure, successful. It brought order to the South and gave blacks minimal protection against mal-treatment by their erstwhile owners. However, by the end of 1865, the contract system had not yet begun to work the miraculous changes which Bureau officials believed it would engender. Freedmen continued to work in much the same fashion as they had as slaves and remained, in large measure, subject to planters' authority. Moreover, as the black codes which southern legislatures began to enact in the fall of 1865 proved, southern whites were not yet willing to treat blacks as free men.
Chapter III

The Bureau and the Black Code

In early 1866, Howard warned a New York City audience that freedom had not yet triumphed in the South. He acknowledged that the success of Union arms had broken "the chains of Slavery," but emphasized that blacks remained between slavery and freedom. Like many other northerners, he believed that freedom was more than the mere absence of slavery. If freedmen were to enjoy the rights and responsibilities of free men, it was imperative that they possess equal rights in state law and that state officials protect them in the exercise of those rights. Impartial laws, impartially enforced, he felt, would shield blacks from arbitrary control and provide some of the independence necessary to nourish freedom. However, Howard informed his audience, southerners refused to surrender the authority which they had exercised over blacks prior to emancipation, and southern laws and law enforcement officials failed to protect blacks from these impositions. "[T]he large proportion of southern men are sincere in their belief in Slavery and regard . . . emancipation as a curse . . . ," he explained. "They give up Slavery inch by inch only and will give it up only when compelled to do so. . . ."
Howard's evaluation was based on intimate knowledge of post-Appomattox race relations. Southerners feared the social and economic implications of emancipation and, despite opposition from blacks and federal officials, were determined to perpetuate blacks' dependence and subordination. Across the South, whites met real and imagined instances of black assertiveness with personal violence. Many planters, sensing that they would lose a crucial element of their authority if blacks were allowed to hire themselves to whomever they chose, combined to discourage freedmen from leaving their old homes and to force fugitives back to their former owners. State and local officials not only tolerated these restraints on blacks' freedom, but continued to enforce many of the laws and customs which had applied to free blacks prior to emancipation. Local governments, in some instances, went even further, enacting ordinances which imposed close-fitting systems of restrictions on freedmen.2

In the winter of 1865-1866, as legislatures began their first post-war sessions, southern whites demanded laws which would shield the South from the evils of emancipation. The insurrection scare which gripped the South in late 1865 and blacks' reluctance to enter into labor contracts for 1866 increased the intensity of southerners' demands for restrictive legislation. But the major impetus for such legislation lay in whites' determination to restrict blacks' freedom and independence as much as possible. The beliefs and assumptions which had grown up around slavery convinced
southerners that, unless blacks' freedom was sharply curtailed, they would be unreliable laborers and would threaten the stability of southern society. Moreover, many whites feared that emancipation, by threatening to undermine blacks' subordination to whites, might eventually result in destruction of the South's traditional racial order. Consequently, many responded emotionally to suggestions that freedmen be given even the same legal rights which whites possessed and demanded that law be used to reinforce blacks' inferior position in southern society. "We must keep the slave in a position of inferiority," demanded the Jackson (Mississippi) News. "We must pass such laws as will make him feel his inferiority." 3

Earlier in the year, southerners had resorted primarily to non-legal means to control blacks; now they demanded that law be mobilized as a means of race control. Many state officials had already shown willingness to apply to freedmen the law and custom which had governed free blacks prior to emancipation, but this, in itself, was insufficient. Antebellum southerners designed these laws to control a relatively small group of free blacks who lived in a slave society, while most blacks, as slaves, had been subject to discipline at the hands of their masters. Now that all were free, whites demanded a more extensive and rigorous system of laws to control freedmen.

Several historians have recently suggested that Bureau policy inspired the southern legislators who enacted the
repressive laws known as the black codes. However, rather than being influenced by Bureau officials, law-makers enacted the legislation over Bureau officials' protests. During the summer and fall of 1865, Howard and his subordinates exhorted state officials to grant freedmen equal rights in state law. And as state legislatures convened during late 1865 and early 1866, many assistant commissioners met with legislative leaders and urged them not to pass discriminatory laws. True, Bureau officials had sometimes compromised their position on equal rights by resorting to summary measures to remove blacks from overcrowded towns and to impress upon blacks the necessity of fulfilling their contracts. But they had viewed these as temporary measures--necessary to start the free labor system off on the right foot--and terminated or modified arbitrary restrictions as rapidly as possible. Moreover, Bureau officials had often prevented state functionaries from enforcing laws and ordinances which discriminated against freedmen. Before allowing state officials to act in matters of apprenticeship or vagrancy, for example, they demanded that officials apply to blacks the same laws which governed whites.  

Southerners, however, looked to Andrew Johnson rather than to the men of the Bureau for advice. And when Johnson failed to specify that they give freedmen equal rights, governors and legislators paid little attention to Bureau officials' suggestions. Only on the testimony question, where their demands had Johnson's sanction, did southern
politicians feel obliged to accept Bureau officials' recommendations. Consequently, while strong contingents in every southern legislature agreed that they should admit blacks to the witness stand, an overwhelming majority remained convinced that, in other areas, they should enact restrictive and discriminatory legislation to govern blacks. Only after the North denounced the codes and Congress began consideration of a new Freedmen's Bureau bill did legislators in other states give serious consideration to Bureau officials' advice.  

Mississippi, whose legislature met in mid-October, was the first state to act. Although the legislature's Joint Committee on Freedmen reported a number of bills, the committee's proposal concerning Negro testimony was the only source of serious division among legislators. The committee, convinced that the state would have to make concessions on the testimony issue to assuage President and Congress, reported a civil rights bill, one section of which permitted blacks to testify in cases in which one party was black. However, once the civil rights bill reached the floor of the House, a group of irreconcilables attacked the testimony section and mustered sufficient strength to defeat it. As had been the case in most state conventions, members who realized that the testimony provision was harmless but who feared the reaction of their constituents joined those who were opposed to any concession on the "nigger question" to defeat the moderate testimony provision. "The members[,]
uncertain of the desires of their constituents, wish to pass legislation in conformity with the desires of President Johnson, but each wants it passed by the votes of his neighbors, while he makes a good Mississippi record by voting against such legislation," commented Manning Force, a young Union general stationed in Jackson. "The day, when the clause allowing the colored people to testify . . . lost, the men who defeated it looked disappointed and dejected." 6

Shortly after the legislature rejected the testimony section of the civil rights bill, however, legislators succumbed to pressure from Washington to reconsider the matter. Andrew Johnson, fearing that the legislature's precipitate action might endanger the success of presidential restoration policy, sent sharply worded telegrams to Governor Benjamin Humphreys and Provisional Governor William Sharkey. Johnson warned that he would not withdraw federal troops and that Congress would not allow Mississippi to return to its normal relations with the Union until legislators enacted laws "giving protection to all freedmen . . . in person and property without regard to color." The president also dispatched General George Thomas, commander of the Military Division of the Tennessee, to Jackson to confer with state officials and, apparently, to convince them of the necessity of moderation. On November 20, after consultation with Thomas, Governor Humphreys went before the legislature and asked law-makers to reconsider their action on Negro
testimony. Johnson's well-applied pressure and Humphreys speech convinced law-makers that they had little choice but to bend in the face of federal pressure; on November 24, the civil rights bill, including the section allowing freedmen to testify in cases in which at least one party was black, passed both House and Senate. 7

Legislators' accommodation on the testimony issue, however, did not signify a radical shift in policy. Other sections of the Mississippi civil rights act and additional legislation enacted during the 1865 session sought to perpetuate and reinforce whites' control of freedmen. Several statutes, by regulating and restricting alternative forms of employment open to freedmen, aimed at compelling them to remain on the plantations, where they would provide planters with adequate manpower and come under close supervision by whites. The first section of the civil rights act, by making it unlawful for whites to rent land to blacks, ensured that freedmen would not be able to become semi-independent farmers. Subsequent sections of the act stipulated that blacks who wanted to live in towns or in rural areas as irregular job-workers had to obtain special permits. City and county officials, who were responsible for issuing the permits, could exercise discretion in granting permits and thus restrict the number of freedmen who might live off of plantations. 8

The black code legislation contained other measures designed to compel blacks to labor as plantation hands. A
vagrancy statute stipulated that by the second Monday in January, all freedmen should have written contracts which bound them to labor for the remainder of the year. The act declared that those who had not entered into contracts by the stipulated date or who did not have a special permit from city or county officials were vagrants. And if, upon conviction of vagrancy, they were unable to pay a fifty dollar fine, sheriffs would compel them to work, without compensation, for a period of up to twelve months for anyone who paid their fine. Moreover, the act authorized any white person to arrest and carry back to their employers freedmen who ran away from their employers.⁹

Historians have often argued that these laws were no harsher than contemporary northern vagrancy statutes and that they were understandable responses to post-war dislocation and blacks' unwillingness to contract for 1866.¹⁰ But, in fact, the black codes made significant changes in the traditional definition and punishment of vagrancy and were aimed at perpetuating planters' control over their former bondsmen. Traditionally, vagrancy was used to punish those who, because they were habitually and unnecessarily out of work, threatened to become an expense to local government. However, the Mississippi vagrancy act, when read in conjunction with those sections of the civil rights act dealing with black laborers, radically changed the definition of vagrancy. Under the new act, blacks who had "no lawful business or employment" (proof of which would, presumably be
a labor contract or special permit) by the second week in January were considered vagrants. Because this seriously weakened blacks' ability to negotiate terms of employment, the law of vagrancy became a tool of planters rather than a means of protecting the community from idlers. The act also dramatically altered the traditional mode of punishing vagrants. Instead of imprisoning them or forcing them to labor on the public works, the civil authorities could compel black vagrants to work, without compensation, for a relatively long period of time for their former owners or other private individuals.  

The black code also made a significant change in the law of master and servant. Mid-nineteenth century commentators agreed that, in most instances, courts could not compel specific performance of personal service contracts. When an employee left the service of his employer prior to expiration of the contract, the employer's remedy lay in refusal to pay back wages due the employee and/or a civil suit for damages against the employee. However, the Mississippi civil rights act, by permitting private citizens and state officials to arrest fugitives from labor and return them to their employers, put black laborers in the same category in law as apprentices and indentured servants.  

In other statutes, the legislature attempted to provide additional security for whites by making blacks feel the weight of white authority. One act authorized judges and magistrates to apply to blacks the same criminal law, both
in definition of offenses and mode of punishment, which had applied to slaves and free blacks prior to emancipation. In addition, the statute permitted justices of the peace to punish blacks whom they convicted of such misdemeanors as disturbing the peace, trespass, making seditious speeches, using insulting language or acting as a minister without a license from "some regularly organized church" by fines of from ten to one hundred dollars. If unable to pay the fine, they might bind those convicted to labor for any white person who would pay their fine. Another statute barred freedmen from owning firearms or other dangerous weapons without first obtaining a special permit from the county board of police. And since county officials could exercise broad discretion in granting permits, they could easily prevent blacks from owning firearms, thus soothing whites' fear of black violence and depriving freedmen of a symbol of manhood and authority.¹³

The legislature also enacted a statute to govern the apprenticing of black children. Although the law did provide numerous safeguards to protect apprentices from abuse, it opened the way for unjust and unnecessary apprenticing of black children. The statute authorized probate judges to bind out, giving first preference to former owners, black orphans and black children whose parents failed to provide them with adequate support. Since the measure stipulated that probate judges might bind black children out until twenty-one if male and eighteen if female, while the
indentures of white children terminated at eighteen and sixteen respectively, it gave masters two or three additional years to extract labor from black apprentices. Moreover, the law failed to give adequate protection to parents' right to possession of their children and relatives' right to act as guardians of orphans. It did not stipulate that, as was done when whites were involved, parents charged with neglect be brought before the probate judge and given an opportunity to show that they provided adequate support for their children. And in the case of black orphans, the law, by giving preference to the former owner, deprived the orphan's relatives of the opportunity to become the child's guardian.14

Blacks resented the distinctions which the new laws made between themselves and other free men, as well as the harsh disabilities under which the laws placed them. A black artisan who had been free prior to emancipation, complained to the Bureau agent at Pass Christian that officials in Shieldsboro refused to allow him to live in town without a special permit. "He is a mason by trade and a hard working man," commented the agent, "and thought it an outrage to submit to anything of this kind." An anonymous group of blacks protested to Governor Benjamin Humphreys that the laws smacked of slavery. "[I]f we should leave from any cruel treatment, we are to be caught and brought by force to our employer," they complained. "[W]e are too well acquainted with the yelping of bloodhounds and the tareing
of our fellow servants to peices when we were slaves and now that we are free, we donot want to be hunted by negro runners and their hounds unless we are guilty of a criminal crime." But their indictment of the black code went deeper than emotional dislike of anything connected with slavery. They realized that the new laws, by prohibiting them from renting land and making it difficult to find employment at fair wages, would keep them under the thumbs of white landowners.15

While Mississippi Bureau officials felt that the laws were unjust because they made sharp distinctions between blacks and whites, they responded to the black code cautiously. Samuel Thomas, whose boldness had been broken by the conservative nature of presidential policy and Howard's insistence on cooperation with state officials, was reluctant to enjoin enforcement of the new laws without full approval from his superiors. Ten days before passage of the civil rights act, he wrote to J.W. Alvord of Howard's staff, asking what course he should pursue if the legislature "passes a Freedmen bill containing some very infamous clauses . . . , and the civil authorities attempt to carry it out." Howard did not respond until late December, a full month after the laws had gone into effect, and, even then, his response was too equivocal to inspire bold action. "Should the state legislature pass a bill containing some very infamous clauses at variance with the policy of this Bureau . . . ," he advised, "you will use all the power of
the Bureau to see that freedmen are protected from the
enforcement of such clauses and to that end [you] will make
application to the Dept. Commander for such military force
to assist you as you may deem necessary." Since Howard was
undoubtedly aware of the provisions of the Mississippi black
code by late November, his tardy reply, use of the condi-
tional tense and failure to specify what sort of laws would
be considered "at variance with the policy of this Bureau"
were too vague to encourage Thomas to stop enforcement of
the black code. 16

Moreover, military officials discouraged Thomas from
interfering with enforcement of the new laws. Both General
Thomas J. Wood, commander of the Department of Mississippi,
and his immediate superior, General George Thomas, were con-
servative career officers from border states who sought
cooperation rather than confrontation with state officials.
True, Thomas and Wood had no official authority over Bureau
men and measures. But as commanders of the occupation
force, they possessed a great deal of authority in civil-
military relations and would have to provide Bureau offi-
cials with the military force necessary to stop the civil
authorities from enforcing the laws. The assistant commis-
sioner realized that, given the conservatism which prevailed
in the White House, it would be pointless (not to mention
politically dangerous) to challenge the conservative course
followed by Thomas and Wood.
The first black code-related problem with which Bureau officials dealt was the disarming of blacks. Even before the legislature passed the statute prohibiting blacks from owning weapons, county militia, acting under orders from Governor Humphreys, had begun to seize arms from freedmen. With passage of the black code, the effort intensified and spread, as militia units used their nightly visitations to rob and terrorize blacks. "They by no means limit their robberies to firearms, but take provisions, whisky and oftentimes money," a Bureau agent at Natchez reported. "In the interior they use their authority to compel freedmen to leave or remain on the plantation at the owner's option."\(^1^7\)

Although Wood disapproved of the militia's activities, he refused to resort to military intervention to stop the disarming. Late in November, he informed Humphreys of the depredations committed by the militia and asked the Governor to order militia commanders to stop disarming freedmen. When Humphreys ignored his suggestion, Wood informed General Thomas of the situation and asked for advice. After referring the matter of the White House, Thomas informed Wood that the militia should not continue to disarm blacks, but failed to specify what action, if any, the department commander should take to prevent further disarming. Wood, still preferring to cooperate with the civil authorities, then sent Humphreys a copy of Thomas' letter and again asked that the Governor stop the militia's outrageous conduct. Yet not until after the first of the year, when the militia
had completed its work and the insurrection scare had passed, did Humphreys order militia commanders to stop disarming freedmen.18

On the issue of the black code itself, Wood proved even more conservative than he had been in his attempt to stop the disarming. In his letters to Humphreys, Wood protested the militia's disarming of blacks, but did not suggest that he would prevent state officials from disarming freedmen through the procedures outlined in the black code or from enforcing any of the other new laws. In the two months following passage of the black code, Wood neither complained to state officials about enforcement of the laws nor directed post commanders to prevent the civil authorities from enforcing them. Moreover, Wood's non-interventionist stance convinced Samuel Thomas to take a similar position. Left without explicit instructions from Bureau headquarters, he decided that it would be pointless, as well as politically dangerous, to challenge military policy. Consequently, he issued no policy circular on the new laws, and, in the absence of new instructions, most agents already under orders not to interfere with the civil authorities, allowed state officials to enforce the new laws. When agents asked whether they should permit enforcement of specific portions of the black code, Thomas responded in the affirmative.19

During December and the first part of January, Thomas interfered with enforcement of only one part of the black code. Because a few Mississippi blacks had rented lands
for 1866, the section of the Mississippi civil rights act which made it unlawful for blacks to rent land disturbed the assistant commissioner. Three days after the legislature passed the act, he informed Howard of the act's anti-rent section and asked whether the Bureau would protect freedmen who rented land. Because the political ramifications of Thomas' question were so great and the political situation in Washington was so uncertain, Howard referred the matter to Secretary of War Edwin Stanton. Although the Secretary was cautious in his reply, stipulating that all cases arising under the act's first section be referred to Washington for final determination, he suggested that Bureau officials should not permit the civil authorities to enforce the first section. When Howard informed Thomas of Stanton's decision, the assistant commissioner not only ordered Bureau agents to protect blacks' right to rent land but convinced Wood to order military officials to do likewise. 20

In mid-January, under the impetus of orders from Army headquarters in Washington, Mississippi Bureau agents began to interfere with enforcement of discriminatory state laws. On January 12, 1866, General Ulysses S. Grant, concerned with the course of events in Dixie, ordered commanders in the South to guarantee blacks equal rights in state law. Army personnel, Grant stipulated, should protect freedmen from prosecutions in state courts for "offenses for which white persons are not punished in the same manner and degree." Two weeks after Grant issued his order Wood
republished the order and informed his subordinates that they should follow its provisions.²¹

Wood's publication of the Grant order, however, had a greater impact than the department commander anticipated. Across the state, Bureau agents, upon learning of the order, began to prohibit state officials from enforcing laws which discriminated against blacks. The acting assistant commissioner for the southern district, for example, sent copies of the order to his subordinates and directed them to interfere with state officials who applied discriminatory laws to freedmen. In Pass Christian the agent, upon learning of Grant's order, prohibited local officials from enforcing the vagrancy act and that section of the civil rights act requiring urban blacks to carry passes. The agent at Jackson informed the Madison County probate judge that "all indentures binding colored minors in any other manner than prescribed for white minors will be annulled." Moreover, while Thomas issued no official statement directing agents to follow Grant's order, he knew that agents were interfering with the civil authorities and refused to stop them from doing so.²²

Bureau agents' dramatic interference with state and local officials was short-lived, however. Wood, reinforced in his opposition to interference with the civil authorities by instructions from General Thomas, firmly opposed the agents' new activism.²³ Under pressure from Wood, Samuel Thomas informed his subordinates that they should not
intervene directly to stay enforcement of discriminatory laws. Instead, he stipulated, they were to bring instances in which freedmen were denied justice to the attention of the civil authorities and ask that they reconsider their action. If state officials refused to honor their requests, agents should report the cases to headquarters, and the assistant commissioner, after consultation with the department commander, would decide what action agents should take. "It is the policy of this Bureau to recognize the civil authority of the state to the fullest extent," Thomas explained. "It is not desired to nullify any statute, but to soften those parts that may be oppressive; and to interfere for the protection of freedmen only in individual cases."

The new policy made it difficult for agents to protect freedmen from enforcement of the black code. Not only was the procedure involved cumbersome, but announcement of the new policy, couched as it was in terms of reverence for state law and state officials, discouraged agents from challenging enforcement of discriminatory laws. Moreover, agents were probably uncertain whether they should even protest enforcement of discriminatory laws. While Thomas' instructions implied that discriminatory laws were violations of military policy, he did not promise that the Bureau would shield blacks from enforcement of such laws and warned that "[i]t is not desired to nullify any statute." Even if agents did report instances of enforcement of the
black code, Thomas' decision as to what action they should take had to be within the lines laid down by the department commander. And Wood uniformly refused to permit military personnel to interfere with enforcement of state law. As a result, agents were advised not to stop enforcement of discriminatory laws, but to work through local officials to see that they interpreted and applied the laws in the least oppressive manner possible. 26

Bureau officials' attempts to deal with matters of apprenticeship—the area in which they experienced the greatest success—illustrates the complications and uncertainties the new policy ushered in. After enactment of the black code, labor-starved planters eagerly availed themselves of the new apprenticeship law. Because most probate judges apprenticed black children without regard for whether they had parents willing and able to support them, agents soon faced a barrage of requests from parents asking that the Bureau help them regain possession of their children. 27 Under the new policy, Bureau agents attempted to work through the civil authorities to redress parents' grievances. In February, Judge J.A.P. Campbell of Mississippi's fifth judicial circuit released a child from an indenture on grounds that the parents, who were able to support the child, had not given their consent. 28 Several weeks later, C.E. Hooker, the state's attorney general, issued a similar opinion at the request of General Wood. 29 Thomas directed agents to help black parents regain possession of their
children by calling the attention of probate judges to the two opinions and asking that they release children whose parents were able to support them. However, the opinions were not binding on probate judges, and most refused to release children whom they had apprenticed. When a judge refused to comply with an agent's request, the only course open to the Bureau or to the parent was to hire a lawyer who could ask the judge to reconsider his decision under a bill of review. If the probate judge refused the lawyer's request, as many did, the lawyer would have to go before a circuit court and ask that the judge issue a writ of habeas corpus to release the child. Not only was the procedure cumbersome, but neither blacks nor the Bureau had sufficient funds to make extensive use of the remedy. 30

Despite warnings from Howard and General Daniel Sickles, South Carolina followed closely in Mississippi's footsteps. 31 Before the legislative session began, Provisional Governor Benjamin F. Perry had, at the behest of the state convention, appointed two prominent members of the South Carolina bar, Armistead Burt and David Wardmalaw, to draw up a code to govern freedmen. When the legislature met in late-October, Burt and Wardmalaw presented legislators with drafts of four bills concerning the legal rights and obligations of freedmen. A small group of legislators, sensitive to northern expectations and to the importance of placating the North, advocated that many of the distinctions which the proposed laws made between blacks and whites be
deleted. However, most legislators, under pressure from constituents to circumscribe blacks' freedom as much as possible, felt that the measures were too lenient and demanded more stringent legislation.\textsuperscript{32}

Although moderates did convince their colleagues to yield on some issues, the laws, when adopted, were as harsh as the Mississippi black code. They granted blacks such basic civil rights as the right to own and dispose of property, to make contracts, to sue and be sued and to testify in cases in which at least one party was black. But the concessions stopped here. The legislature established district courts, reminiscent of the ante-bellum slave courts, in each county and gave them original jurisdiction in cases, civil and criminal, involving blacks. Only in capital cases in which a white was the defendant were state superior courts, the regular courts of original jurisdiction, to try cases involving freedmen. Legislators also altered South Carolina criminal law in an attempt to deal with the freedmen. One section of the code stipulated that whites were to suffer "no punishment more degrading than imprisonment" for crimes not infamous, but that judges might sentence blacks guilty of felonies and misdemeanors to be whipped. As in Mississippi, the new laws made it unlawful for blacks to own firearms without first obtaining a license from a magistrate or district judge.

The new laws also established strict regulations for black workers and gave magistrates and district judges an
important role in disciplining laborers. Since they required blacks who worked as artisans, peddlers, shopkeepers and mechanics to obtain a license and gave magistrates discretionary authority in granting licenses, the statutes allowed state officials to limit the number of blacks who did not live on plantations and to prevent blacks who "abused" their freedom from obtaining non-agricultural employment. If blacks refused to obtain regular employment they could be tried as vagrants and, if convicted, hired out to a private individual for up to twelve months. Moreover, the laws gave planters firm control over black plantation workers. By stipulating that the traditional hours and conditions of labor, as well as the regulations which traditionally governed hands, were to be part of contracts between freedmen and planters, the code reinforced planters' attempt to maintain the plantation regime. It also allowed magistrates and district judges to fine or to have whipped any employee who violated plantation regulations. Similarly, magistrates and district judges could fine or sentence to be whipped and returned to his employer any freedman who violated a contract. The laws further tightened planters' control over black workers by requiring that freedmen obtain a certificate of discharge from their former employer before entering into a new contract. The code provided that district courts fine, imprison or, in the case of blacks, sentence to corporal punishment blacks who forged the
certificates or whites who knowingly hired a freedman already under contract. 33

Although South Carolina Bureau officials lacked authority to stop enforcement of the new laws, military officials responded to the code much more firmly than had Generals Thomas and Wood. In mid-December, four days before the legislature enacted the code, Sickles had warned Perry that if the legislature passed discriminatory laws, the military would not allow state officials to enforce them. On January 1, 1866, after examining the code, Sickles issued an order which, in effect, set the new laws aside. He informed military officials, who were still responsible for trying cases involving blacks, that they would apply to freedmen the same state laws which applied to whites. Only in enforcement of contracts and punishment of vagrants, he stipulated, would he allow military officials to resort to more stringent measures than state law (for whites) permitted.

Sickles refused to allow state officials to enforce the new laws, but he authorized his subordinates to use coercive measures to compel freedmen to make and abide by contracts with planters. Thus in the very order in which he set the black code aside he suggested that military officials might compel specific performance of labor contracts. Moreover, the orders, reflecting military concern for blacks' reluctance to contract for 1866, authorized post commanders to remove from plantations freedmen who refused to contract
for 1866 and to hire them out as vagrants. "I have endeavored to afford adequate guarantees for the rights of freedmen," Sickles informed Howard, "at the same time giving the employers sufficient security for the performance of contracts, the possession of land and tentements, & the investment of capital." 34

During the first two weeks of December, as the South Carolina code cleared the last legislative hurdles, northerners reacted to the Mississippi black code. Newspapers as varied as the conservative New York Times and the radical Chicago Tribune denounced the laws as attempts to perpetuate slavery. To congressional Republicans, the Mississippi code was symbolic of southerners' recalcitrance and refusal to protect blacks and was a portent of what they might expect from other legislatures. When Congress convened during the first week in December, the Republican majority refused to allow southern members-elect to take their seats and began to discuss legislation which would protect freedmen from discriminatory state laws. Although President Johnson did not specifically denounce the codes, his actions in early December warned southerners that they might lose even his support. Johnson not only refused to permit provisional governors to relinquish their authority, but, in letters to several provisional governors, voiced his displeasure with southern recalcitrance and advised that southern congressmen and senators-elect need not be in Washington when Congress met. 35
The Florida legislature, which convened in mid-December, was one of the first to reflect awareness of northern reaction to the Mississippi black code. In late November, provisional governor William Marvin, acting under direction of the state convention, had appointed a committee to draft legislation concerning freedmen. Although the laws it recommended were designed to operate harshly on blacks, the committee, recognizing that to follow Mississippi's example would endanger early readmission, proposed legislation which was, in most instances, non-discriminatory. In a report submitting its work to lawmakers, the committee defended the right of the legislature to enact laws which discriminated on account of color but recommended that such authority "be exercised only in exceptional cases." However, the committee noted that, even though most of the legislation it recommended was, on its face, non-discriminatory, the laws gave judges and jurors a great amount of discretion and would allow them, in practice, to make discrimination between blacks and whites. "The provision contained in the . . . bill is not designed to interfere with . . . discrimination," the committee explained in describing one of the proposed laws, "but only to give a wider range to the discretion of the jury. . . ."36

Although assistant commissioner Thomas Osborne urged the provisional governor to block passage of the proposed legislation, Marvin failed to exert his influence, and, in early January, the legislature enacted the bills which the
committee recommended. Except for provisions which stipulated a more severe punishment for rape of a white woman, prohibited freedmen from migrating into the state and made it unlawful for blacks to own firearms, the new statutes made Florida criminal law color blind. However, they provided more severe punishment for a wide range of crimes which legislators thought freedmen were particularly likely to commit and added variety to the punishment which juries could impose for other non-capital crimes. For crimes previously punishable by fine and/or imprisonment, the statutes permitted juries to impose standing in the pillory for one hour or thirty-nine lashes as punishment. If a defendant was unable to pay the fine and costs in a case, the court could sentence him to work on the public works or hire him out for up to twelve months to any citizen willing to pay his fine.

Moreover, the new vagrancy and apprenticeship laws followed a similar pattern. The vagrancy statute, while making no distinction between blacks and whites in the definition or punishment of vagrancy allowed jurors great discretion in determining how vagrants should be punished. If persons convicted of vagrancy could not give bond to guarantee future good behavior, judges and magistrates could imprison them, have them whipped, make them stand in the pillory, sentence them to labor on the public works or hire them out to private citizen for up to one year. Similarly, the new apprenticeship measure raised the age at which
indentures terminated and lowered the obligations of master to apprentice from the level that had existed for whites in the ante-bellum years and applied the new standards to both blacks and whites. However, since the law merely set an upper limit on the age at which apprenticeships had to terminate, judges had sufficient discretion to make the apprenticeship shorter if white children were involved.\textsuperscript{40}

While other laws contained certain discriminatory provisions, only the statute regulating blacks' labor contracts was discriminatory \underline{in toto}. Like the laws legislators in Mississippi and South Carolina enacted, it applied solely to blacks and sought to guarantee employers a reliable and obedient labor force. The Florida contract law provided that if black laborers ran away from their employers prior to termination of their contracts, the civil authorities could arrest them and, upon conviction, subject them to punishment as vagrants. At the option of the planter, however, the civil authorities could remit the punishment and return the laborer to his work. Moreover the law authorized judges and magistrates to fine or to sentence to be whipped any person who induced a black worker to abandon his contract.\textsuperscript{41}

In the three months following their enactment, Bureau and military officials intervened to prevent enforcement of several of the new statutes. Before the legislature took final action, Osborne had informed Howard of the new laws' provisions and asked what course he should pursue if the legislature passed the bills. He realized that jurors would
use the non-discriminatory provision permitting juries to impose whipping as a punishment primarily against blacks and informed the commissioner that he would refuse to allow the civil authorities to inflict such a barbarous punishment. On January 12, Howard, emboldened by Grant's General Order No. 3 and Congress' determination to shield Negroes from discriminatory state law, ordered Osborne to prevent state officials from resorting to the lash to punish crime. Moreover, he informed the assistant commissioner that Congress would soon act in the matter and that, in the meantime, "you will see that justice is done to black and white alike, [as] no distinction on account of race and color can be made any longer in this country. . . ."42

Shortly after receiving instructions from Howard, Osborne acted. In late January and early February, after he and General J.G. Foster had discussed the situation, Foster issued an order directing military officials to stop the civil authorities from whipping any person convicted of crime. Later in the month, Foster and Osborne advised Florida Governor David Walker that because the law prohibiting blacks from owning firearms was discriminatory, it violated article XVI of the state constitution. In response, Walker asked the state attorney general to examine the statute, and early in March the attorney general issued an opinion declaring the law unconstitutional. However, Bureau and military officials, sympathetic with planters' desire
for stability, failed to enjoin enforcement of the harsh and discriminatory contract law.43

Louisiana legislators were more sensitive to northern demands than their Florida counterparts. As law-makers began serious discussion of freedmen's affairs, they became aware of northern reaction to the Mississippi black code and realized that it would be impolitic to enact similar legislation. Several members, reluctant to act before learning what Congress would demand of the South, recommended that the legislature adjourn and "await developments at Washington." Moreover, law-makers feared that if they passed laws which discriminated against blacks, Bureau officials would continue to interfere with the state's management of freedmen. In its pre-election address, the Conservative party had warned voters to choose representatives "who favor such laws for the regulation of labor as will induce the general government to relieve the state of that terrible incubus, the Freedmen's Bureau." And as the session began, General Absalom Baird, the assistant commissioner for Louisiana, circulated among legislators and assured them that federal officials would not sanction or permit enforcement of laws which discriminated against blacks. 44

Baird's suggestions caused legislators to modify the form rather than the substance of their legislation. On December 4, a legislator from St. Martin Parish introduced a bill aimed at perpetuating planters' control of black workers. The bill assured planters an adequate labor
supply and prevented blacks from bargaining effectively with employers by requiring freedmen to enter into labor contracts within twenty days after the passage of the act. If they failed to do so, sheriffs could arrest them and hire them out to private individuals for the remainder of the year. The bill also required every freedman to carry a book which contained his name and age, as well as the name of his previous employer and a certificate of his "character and habits." If a worker wanted to change his place of employment, he had to obtain the written consent of his former employer and allow any prospective employer to examine his book. The civil authorities could arrest any laborer who ran away from his employer before his contract expired and force him to labor on the public works until his employer reclaimed him. 45

However, the house referred the proposal to the Joint Committee on Labor, which buried it. In its place, committee members substituted legislation which incorporated many of Baird's suggestions, while retaining many of the restraints on plantation labor contained in the earlier measure. Although the committee's proposals applied only to plantation workers, almost all of whom were black, they nominally satisfied Baird's demand that the legislature enact no law which made distinction on account of color. As a result of Baird's discussions with legislators, the committee's key bill, an agricultural laborers' bill, contained provisions similar to a circular on labor policy which Baird
drew up in early December. Like Baird's circular, the new law provided that the work-day should be ten hours in summer and nine hours in winter, allowed planters to retain one-half of employees' monthly wages until the end of the year, stipulated that laborers who left their employers forfeited all wages due, and gave the laborers a lien on their crop.46

The bill, however, gave planters a great deal of authority over black workers. In a manner reminiscent of the original bill, it restricted laborers' ability to bargain with employers by stipulating that agricultural laborers must enter into contracts during the first ten days in January. While the bill did not specifically provide a penalty for violation of this provision, a vagrancy bill introduced by the committee permitted justices of the peace to hire out for up to one year persons convicted of vagrancy. Read in conjunction with the agricultural laborers' bill, the vagrancy measure allowed justices to convict as vagrants and hire out for the remainder of the year workers who had not entered into contracts by January 10. The new legislation also gave planters extraordinary protection against violation of contract by workers. While it did not explicitly permit judges and magistrates to compel specific performance of labor contracts, the legislation, taken as a whole, allowed employers to regain the services of an absconding worker. Another committee proposal provided that workers had to obtain a certificate of dismissal from their previous employer before seeking new employment and made it
a misdemeanor punishable by fine or imprisonment, for any person to hire a worker who was under contract with another employer. Since a laborer who fled from his employer would be unable to find employment, the civil authorities could arrest him and punish him as a vagrant. Happily for planters, the vagrancy bill provided for just such a contingency. Judges and magistrates could hire out for one year absconding laborers guilty of vagrancy and they could give the vagrant's former employer first claim on his services.47

Other legislation which the committee introduced sought to maintain whites' control of freedmen. One bill gave planters additional assurance of a stable labor force by making it a misdemeanor, punishable by a fine of up to five hundred dollars or a jail sentence of up to one year, for any person to entice away from his employer a laborer who was under contract. A bill amending the state's apprenticeship laws, stipulated that parish police juries could apprentice any child under twenty-one if male or under eighteen if female whose parents were dead or unable or unwilling to support them. Although, in theory, the law applied to whites as well as to blacks, it raised the ages at which children could be apprenticed and extended the period in which they could be held as apprentices, thus increasing the service that planters could receive from the black children they expected to have apprenticed to them. Assured by committee members that speedy passage was essential to placate federal officials, the senate passed the
bills without debate on December 13, and the house followed suit a day later. 48

The bills encountered difficulty when they reached Governor Wells. When Baird learned that the legislature had passed significant labor legislation, he immediately sent Wells a letter, asking that he not sign the bills until he, Baird, had a chance to examine them. The Governor quickly informed Baird that he felt that the new legislation was "not only impolitic but unnecessary" and that he had no intention of signing the bills. But Baird was not content to rely on Wells' assurance. When he received texts of the bills from the chairman of the Joint Committee on Labor, he realized that legislators had enacted legislation which on its face applied to blacks and whites alike, but which, in practice, would apply to blacks alone. Consequently, he forwarded texts of the bills, along with his own labor circular, to Howard and requested authority to set the new measures aside if Wells signed them into law. Howard first presented the papers to Stanton, but the War Secretary was reluctant to bring them to Johnson's attention or to take action (such as authorizing Baird to prevent enforcement of the measures) which might lead to confrontation with Johnson. Consequently, he merely advised Howard that Baird should convince Wells to adhere to his original decision. 49

Howard, fearing that Wells might renege on his agreement, brought the matter to Johnson's attention. However, the President, unwilling to approve legislation which would
damage the restoration cause among congressmen or to censure the legislature's work, dodged the problem as he had done when questioned by George Thomas about Mississippi officials' attempts to disarm blacks. When Howard showed him the papers from Baird, Johnson apparently refused to comment on the bills, but gave partial approval to Baird's labor circular. Although he advised that Baird omit a provision which authorized agents to disregard contracts which did not conform to the rules outlined in the circular, Johnson told Howard that he "warmly" approved the circular. In the absence of a clear answer from the White House, however, Wells changed his position and signed into law all of the bills except the agricultural laborers' bill.  

Although General E.R.S. Canby, the department commander, refused to issue an order annulling the laws, Baird termed the measures "laws enacted by capital to control labor" and refused to allow their enforcement. When he received word that Shreveport officials were using the new vagrancy law to force blacks into unjust contracts, the assistant commissioner ordered his agent at Shreveport to prohibit the civil authorities from being unjustly prosecuted as vagrants. "There is no reason why any black man who does not choose to contract with planters on any terms which they (the planters) dictate shall be regarded as a vagrant," Baird wrote, ". . . and the negro will not be regarded as such unless there is sufficient reason to show that he will be an expense to the parish." Moreover, Baird prohibited justices
of the peace from using the law to compel specific performance of labor contracts. If a freedmen left an employer before expiration of their contract, he informed agents, the employer's only remedy was to retain wages due the laborer or to institute a civil suit for damages against the laborer. 51

While Alabama legislators did not act as rapidly as their Louisiana counterparts, they eventually removed discriminatory provisions from state law. When the legislature convened in mid-November, however, law-makers rapidly drew up and pushed through the legislative mill, laws which were as blatantly discriminatory and almost as harsh as the Mississippi black code. By the time legislators recessed for Christmas in mid-December, they had sent four major pieces of legislation concerning freedmen to the governor. One of the bills, passed over a great deal of opposition in the house of representatives, allowed blacks to testify in all cases in which another black was interested, but the remainder of the legislation restricted blacks' freedom. Legislators passed an apprenticeship measure which stipulated that former owners be given preference when Negro children were bound out, made no provision for education of black apprentices and allowed black children to be apprenticed any time before their twenty-first birthday. A contract bill provided that freedmen who ran away from their employers could be arrested and punished as vagrants. A
final bill subjected freedmen to the same criminal laws which had governed free Negroes prior to Appomattox. 52

Shortly after the legislature adjourned, Alabama political leaders, aware of the furor which the Mississippi black code had caused in the North, agreed to modify the legislation. On December 15, the day that the legislature passed the bills and began a month-long recess, Swayne met with Governor Robert M. Patton, the president of the Alabama Senate and several other legislative leaders. The politicos gave Swayne copies of the bills and asked whether they would meet the approval of the Bureau, the administration and Congress. The assistant commissioner pronounced all the measures unsatisfactory and suggested that law-makers enact legislation which made no distinction on account of color. Since Swayne had known Patton since the early 1850's and, as assistant commissioner, had worked closely and cordially with Alabama lawyers and politicians, his advice hit the mark. The Governor agreed to veto the bills when legislators returned in January, and the legislative leaders drew up new, non-discriminatory legislation. 53

On January 18, three days after the legislature reconvened, Patton returned the bills with strong veto messages informing law-makers that he objected to the measures because they made distinction on account of color. For the most part, new bills, which the legislature passed and the Governor signed in late February, made significant changes. The new apprenticeship law did not put blacks and whites on
the same level by lowering the standards for whites to what they had been for free blacks and giving officials sufficient discretion to allow them to treat whites more leniently. Rather, it provided explicit safeguards for all children who were to be apprenticed. It stated that probate judges could not apprentice children who were eighteen or above, that masters had to teach their apprentices how to read and write and that parents be given a chance to show why their children should not be apprenticed. Moreover, the commission which the legislature appointed to revise the state penal code removed discriminations against blacks from Alabama criminal law, and law-makers passed legislation putting the committee's work into effect.  

While the legislature did refrain from passing a new contract statute it retained the key elements of the vetoed contract bill by changing the definition and punishment of vagrancy. A new vagrancy law, on its face non-discriminatory, classified all "stubborn and refractory servant[s]" and all laborers who refused to comply with their contracts as vagrants. Magistrates, the law provided, might fine vagrants fifty dollars, and, if those convicted were unable to pay the fine, magistrates could sentence them to six months in jail. And if vagrants were sentenced to jail sheriffs could force them to work on a chaingang or hire them to a private individual for six months. Although the new law applied to both black and white vagrants, legislators saw the new laws as means to control black workers and,
at the same time, comply with Swayne's demand that no discriminatory legislation be enacted. 55

The Georgia legislature, too, slowly succumbed to pressure from the Bureau and from Congress to grant blacks equal rights in state law. When legislators met in special session during the first two weeks in December, they grudgingly enacted a law which granted blacks the right to testify in cases in which at least one black was interested. Although the senate passed the testimony bill on December 9, the house did not concur until the last day of the session, when Governor Charles Jenkins threw his support behind the measure. If legislators did not admit blacks to the witness stand, Jenkins warned, they would hurt the state's chances of restoration and perpetuate military interference in cases in which freedmen were parties. Concession on the testimony issue, however, did not mean that Georgia legislators were ready to strip state law of discrimination against blacks. In his address to the legislature on December 14, Jenkins advised that legislators protect freedmen from "the fatal delusion of social and political equality" and urged that "the necessity of subordination and dependence be riveted on their conviction." During the special session a number of law-makers introduced bills to govern black workers, but legislative leaders, awaiting the report of a special committee which the governor had appointed to draw up a freedmen's code, referred these measures to committee. 56
When the legislature reconvened on January 15, Jenkins submitted the committee's work to law-makers. In a report accompanying their draft code, committee members proposed repeal of all state laws pertaining to slaves and free Negroes and, upon the recommendation of assistant commissioner Davis Tillson, removed a number of "objectionable features" originally included in the draft code. However, the final product still contained harsh and discriminatory provisions. Like the South Carolina code, it provided for establishment of county courts to try cases involving matters of labor relations and non-felonious criminal cases in which blacks were defendants. A section dealing with criminal law provided that the definition of crimes be the same for whites as for blacks, but stipulated that blacks receive more severe punishment than whites for misdemeanors normally punished by fine. The code's apprenticeship provisions were more favorable to blacks than most states' apprenticeship laws, but still denied blacks the protection which white children received. Moreover, the master-servant section drawn up by the committee, while it made no distinction on account of color, obviously sought to control black workers. It established detailed regulations for plantation laborers, required agricultural workers to obtain a certificate of dismissal before leaving their employers and authorized county court judges to compel specific performance of labor contracts. 57
As legislators returned to Milledgeville in mid-January, the climate of political opinion had begun to change. Georgia politicians, aware that Congress had started to debate a civil rights bill and new Freedmen's Bureau bill, realized that it would be impolitic to enact discriminatory legislation. They remained, however, unwilling to dispense with laws which could be used to restrain blacks' freedom. Consequently, the legislature amended the committee's draft in such a way as to make many of its provisions harsher, while removing all distinctions between blacks and whites. This legislators did by giving judges and magistrates sufficient discretion to deal more harshly with blacks than whites. The revised apprenticeship law extended the committee's provisions to whites as well as blacks and allowed children to be apprenticed any time before their twenty-first rather than (as had previously been the case for whites) their eighteenth birthday. Similarly, the new criminal law provisions wiped out all distinction between black and white, but gave judges discretionary authority to impose the death penalty for burglary, horse-stealing, rape and arson and, if they chose, to impose whipping for misdemeanors. Although legislators did not pass the committee's master-servant bill, they did enact a contract labor law which allowed judges to compel specific performance of labor contracts. The legislature also enacted a vagrancy bill which provided that persons convicted of vagrancy might be, at the discretion of the court, fined,
imprisoned or hired out for up to a year. Moreover, law-
makers capped their work with an act which, just as
Congress' Civil Rights Act, guaranteed blacks equal rights in state law. 58

Virginia Bureau officials were active in advising legislative leaders, but in the end, law-makers ignored their suggestions. When the legislature convened in early December, members chose a joint committee to ask assistant commissioner Orlando Brown what action law-makers would have to take before the Bureau would allow state courts to try cases involving freedmen. When Brown wrote to Bureau headquarters for instructions, Howard, emboldened by his discussions with congressional Republicans, advised the assistant commissioner to be firm with the committee.

"[T]he question of the continuance or withdrawal of the Bureau from the Southern States rests entirely with Con-
gress," Howard's adjutant informed Brown, "but you may be assured that nothing will be done until . . . [equal] laws are passed and the people of Virginia manifest most clearly their intention of living up to them." After numerous con-
ferences with Brown in January, the committee agreed to recommend legislation "abolishing the whole negro code" and applying to blacks the same laws which governed whites. However, after the Virginia press warned legislators "against being influenced from Washington or by the Freed-
men's Bureau," law-makers attempted to enact legislation
which would be acceptable to the folks back home as well as
to federal officials. 59

As a result, the laws removed most discriminations
against blacks from Virginia law but enacted new laws, on
their face equal, which could be applied more severely
against blacks than whites. A testimony law permitted
blacks to give evidence only in cases in which a black was
a party and prohibited blacks from giving testimony by
deposition. Although the legislature repealed most of the
criminal law that had applied to slaves and free Negroes,
it allowed persons convicted of arson, burglary, armed
robbery or rape to be sentenced, if the jury recommended,
to death. The legislature's vagrancy law was non-discrimi-
natory and milder than most of the vagrancy measures
enacted in 1865-1866, but it still allowed justices of the
peace to hire vagrants to private individuals. Similarly,
the new contract labor law, while it did apply only to
blacks, was more lenient than contract laws passed by other
states. It made persons who knowingly hired a laborer
already under contract liable to a fine of from ten to
twenty dollars, but did not require workers to carry passes
or permit judges or magistrates to compel specific perform-
ance of labor contracts. 60

While the Virginia statutes were much milder than those
enacted by other states, they were part of the trend which
developed in early 1866 away from overtly discriminatory
legislation. The legislatures of Mississippi and South
Carolina, which had met during the previous fall, had enacted true black codes—harsh systems of law which applied only to blacks. However, because of northern reaction to the first two codes, the remaining legislatures adopted laws which were, for the most part, non-discriminatory. Although at first glance this appeared to be a victory for the Bureau, Bureau officials quickly learned that their "victory" lacked substance. To be sure, legislators had placed on the statute books laws which, theoretically applied to whites and blacks alike. But they had enacted stringent legislation dealing with plantation laborers (most of whom were black) and had given judges and jurors wide discretion in matters of criminal law and apprenticeship. Thus southern politicians had found a way to discriminate against blacks in practice without resorting to legislation which was discriminatory on its face. Indeed, it was because of this ingenious discovery that southerners were able to render the Civil Rights Act of 1866 (which attacked prima facie discrimination) ineffective. Moreover, Bureau officials were rapidly coming to understand that discriminatory enforcement (or non-enforcement) of non-discriminatory laws could easily render equal rights in law meaningless. Consequently, during the remainder of 1866, the main problem which Bureau officials faced was civil authorities' unwillingness to enforce criminal laws against whites who committed acts of violence against blacks.
Chapter IV

"Bricks Without Straw"

During late 1865 and early 1866, as Bureau officials attempted to cope with the challenge of the black codes, there was a subtle shift in the emphasis of Bureau policy. Since May 1865, when Howard had assumed his duties as Commissioner and particularly since the Swayne-Parsons agreement of September equal rights had been the pole star of Bureau policy. Although a number of Bureau officials had warned Howard that equal rights could easily be subverted by prejudice and violence, Howard had decided that assistant commissioners should allow state judges and magistrates to try cases involving blacks if they agreed to apply to blacks the same law which they applied to whites. He had been aware that, at least initially, freedmen might suffer under such an arrangement. But, given the political situation in late summer and early fall and the nature of American governmental-legal institutions, he had felt that the Bureau could best use its authority to reform southern state law. As white southerners learned that violence and prejudice threatened the stability and prosperity of their society, they would, he believed, begin to treat blacks fairly, and, armed with equal rights, the former bondsmen
would be able to protect themselves after the Bureau ceased to exist.

Howard's views began to change as he toured the South in late October and early November—the first time that he had been South since the war's end. As he talked with Bureau and military officials and gained first-hand knowledge of post-emancipation race relations, he came to appreciate how pervasive and deeply-rooted violence and prejudice were. Although he continued to believe that violence and prejudice would eventually subside and that equal rights in state law would ultimately provide blacks security, he underwent a shift in attitude during the course of the trip. He became convinced that equal rights by itself, would be inadequate protection for blacks for some time to come. As a result, he felt that Congress should not deprive blacks of federal protection until state officials were willing to grant them substantive justice as well as the form of equal rights.

By the time Howard reached Columbia, South Carolina, only a week after leaving Washington, he was already more sensitive to the problem of violence. "The state of feeling is such in this state that garrisons cannot be withdrawn with safety . . . [or] violence to the freed people now to some degree prevalent would have no restraint," he informed Secretary of War Edwin M. Stanton. "My own observation, with that of others in whom I have confidence, convinces me that . . . [this] is . . . [the] only . . . course to be
thought of until the majesty of law has become re-established." The remainder of Howard's trip, which took him through all the Gulf states except Texas, only reinforced his first impressions. After returning to Washington in mid-November, he warned Henry Wilson, chairman of the Senate Military Affairs Committee, that "the time has not come for the Government to surrender its authority in any state I visited." Moreover, in the aftermath of his southern tour, Howard was more alert to the problem of securing blacks substantive justice. "[Y]ou should use your influence in securing passage by the Mississippi legislature of such laws as will insure the freedmen in the possession of their rights," he advised Samuel Thomas. "But the laws thus enacted should be tested in their operation before final credit is given them of securing the end in view."¹

Howard's analysis of affairs in the South was reinforced by several assistant commissioners who, at Howard's request, suggested measures which Congress might take to shield blacks from injustice. Davis Tillson, the assistant commissioner for Georgia, drew up a proposal which balanced the need to secure blacks justice with his desire to educate Georgians so that they would eventually treat freedmen justly. Tillson's proposal extended the life of the Bureau and provided that assistant commissioners assign one regular army officer to each congressional district in their state and appoint one or more citizen agents for each county. The civilian agents, under scrutiny of the officer assigned to
their congressional district, would supervise relations
between blacks and whites and try, according to the laws of
Georgia which governed whites, petty cases involving
Negroes. Moreover, agents would forward all cases which
involved property rights of more than $100, fines in excess
of $150 or imprisonment of longer than sixty days to the
military authorities for trial by military commission. "I
am aware that in making it rest on military rather than
civil authority I departed from the theory of our govern-
ment," Tillson explained, "but theories must go down before
adverse and unavoidable facts." However, he believed that
by using civilians and state law, he would conciliate
Georgians, make them willing to do justice to blacks and
thus, eventually, permit federal officials to return such
matters to state jurisdiction. 2

Thomas Osborne, the assistant commissioner for Florida,
concurred with Tillson. He informed Howard, as he had done
when the Commissioner visited Tallahassee, in late October,
that equal rights or not, blacks would continue to suffer
injustice as long as state judges tried cases in which
blacks were interested. "We may talk of the Constitution
and the Law as much as we please or we may theorize as much
as we may choose about equality before the law," Osborne
advised. "[S]till unless there is some plan adopted by
which freedmen can have the ordinary rights of citizens
secured them outside of any action the State or State offi-
cers may take, they will never get them." Consequently, his
proposal stipulated that all cases involving blacks be tried in United States district courts. In order to adapt the courts to their new duties, Osborne's bill increased the number of courts, authorized district judges to appoint one United States commissioner for each county in their district and gave the commissioners original jurisdiction in all civil cases involving freedmen.\(^3\)

Absalom Baird, the assistant commissioner for Louisiana, took a different approach than either Tillson or Osborne, recommending that freedmen be given the right to vote. In a letter to Howard submitting his proposal, Osborne conceded that the black man might receive justice from state officials if "law makers and office seekers" were "in a measure dependent on his patronage." But Osborne felt that Congress would not grant blacks the right to vote and abandoned any notion he may have had of recommending a suffrage bill. Baird, however, saw suffrage as the only way that the nation could maintain its commitment to the freedmen and, at the same time, permit the rebel states to resume their constitutionally "proper and legitimate functions." "I have looked at this subject carefully and from every point of view," Baird concluded, "and I am compelled to accept Negro suffrage as the only solution of the many difficulties attending it."\(^4\)

Although assistant commissioners' recommendations cleared up any doubts that might have remained in Howard's mind, it was the changing political situation which
encouraged the commissioner to suggest that federal officials develop more forceful measures to secure blacks justice. In September, when he had endorsed Swayne's agreement with Parsons, Congress had not been in session and Republicans' position on reconstruction policy had not crystallized. However, on November 18, the day that Howard returned to Washington from the South, House Speaker Schuyler Colfax sounded what was to be the keynote of congressional policy in a speech to a group of Washingtonians who serenaded him. He warmly endorsed presidential reconstruction policy, but added that Congress would not act precipitately on matters of reconstruction and restoration. Legislators would not restore the rebel states, he emphasized, until southern state officials granted blacks equal rights and submitted recently drafted constitutions to the people for ratification. Since moderate and conservative Republican newspapers applauded Colfax's speech and newspapers of all stripes reported that Congress would not seat members-elect from the rebel states when it convened in December, Howard was certain that law-makers would come to the aid of freedmen. Four days after Colfax's speech, he noted optimistically that "[t]here is quite a change of sentiment here [Washington] since the greater influx of northern men and since the elections."  

Howard, still wary of arousing Johnson's ire by interfering with state officials, did not read the change in political climate as a signal to authorize assistant
commissioners to take an activist position in protecting freedmen from injustice. However, he was encouraged by the climate on Capitol Hill and began to look to Congress for greater authority to secure blacks justice. As congressmen drifted into Washington in late November and early December, he met with such congressional leaders as Lyman Trumbull, Thomas Eliot and Henry Wilson and discussed conditions in the South and policy alternatives with them. Moreover, in his first annual report, submitted in early December, Howard suggested that Congress extend the life of the Bureau and keep the rebel states under federal control until confidence and harmonious feeling developed between blacks and whites.6

In his report, Howard emphasized that reformation of southern attitudes and feelings was necessary before blacks could obtain justice in southern courts, even if they possessed equal rights in law. "Where legislation is constrained, as it now is in the southern States . . . , there is danger of statute law being too far in advance of public sentiment," he explained, "so that where there is the most liberality[,] ill consequences would be likely to result if government protection were immediately withdrawn." Consequently, he recommended that Congress establish "Freedmen's United States courts" in the rebel states to try cases involving blacks.7

* * * * *
Republican congressmen realized that firm measures were necessary to protect southern blacks, but political concerns limited the alternatives open to them in dealing with reconstruction policy. They knew that state governments would not provide blacks with adequate protection and were therefore determined not to restore the rebel states immediately. However, the moderates who dominated party councils sought to avoid action which would alienate Johnson. They feared that a rift between the White House and Capitol Hill would divide the party, make it impossible for Congress to enact any reconstruction legislation and possibly open the way for the Democrats to return to power. Anxious to avoid such dire consequences, congressional moderates developed a program which accepted, but supplemented, what Johnson had already done in the South. 8

Politics limited the alternatives open to Republicans, but so, too, did their failure to come to grips with conditions in the South. Bureau officials warned congressmen that equal rights in law could be subverted so easily that, of itself, it provided little protection for blacks. In debates on reconstruction, Republicans cited material which demonstrated that violence and prejudice, combined with civil authorities' unwillingness to enforce laws impartially, were more responsible for oppression than unequal laws. Lyman Trumbull, author of the two major pieces of reconstruction legislation advanced in 1866, made several visits to Bureau headquarters to consult with Howard while
drafting the bills. Yet in the debates on reconstruction legislation, Republicans failed to distinguish adequately between unequal laws and more covert forms of discrimination. The discriminatory laws which had been passed or were pending in southern legislatures seem to have become a symbol of all of the injustices suffered by blacks, and as such, they became the principal target of Republican reconstructors.9

Consider Henry Wilson's solution to the problem of shielding blacks from injustice. Wilson, who was chairman of the Senate Military Affairs Committee, had discussed conditions in the South with Howard and had examined material in the Bureau's records which indicated that injustice went deeper than unequal laws. However, when, in December, 1865, Wilson introduced a bill to protect freedmen from injustice, he aimed it solely at discriminatory state laws. The measure declared all laws in the seceded states which discriminated against blacks null and void and authorized military officials to impose fines of up to $10,000 and prison sentences of up to five years on any person guilty of enacting or enforcing such laws. In speeches in support of his bill, Wilson left no doubt that the discriminatory laws being enacted by southern legislatures were his target. "I have prepared this bill to declare these laws . . . null and void," he explained, "and if they should pass, the Army and the Freedmen's Bureau can arrest execution of these arbitrary laws."10
Although the Senate quickly shelved Wilson's bill, his identification of injustice with discriminatory laws was typical of other Republican legislators. Trumbull, for example, noted that a "prevailing public sentiment," as well as "local legislation" played a part in limiting blacks' freedom. But in debates on the Freedmen's Bureau extension and the Civil Rights bill, he was preoccupied with shielding blacks from discriminatory laws. In defending both measures, he repeatedly noted that they were designed to force states to remove unequal laws from their statute books, and that, when this was done, further federal intervention would be unnecessary. "If the people in the rebellious States can be made to understand that it is the fixed and determined policy of the Government to protect the colored people in their civil rights, they themselves will adopt measures to protect them," Trumbull argued, "and that will dispense with the Freedmen's Bureau and all other Federal legislation for their protection."11

The Freedmen's Bureau extension, Trumbull's first measure, sought to protect southern blacks until Congress restored the rebel states. The bill stipulated that the states unrepresented in Congress permit blacks to make and enforce contracts, to commence lawsuits, to testify in courts of law and to own and convey real and personal property. In addition, it demanded that these states grant freedmen "full and equal benefit of all laws and proceedings for the security of person and estate," and that they punish
black criminals in the same manner that they punished whites. When states denied blacks these rights through any "state or local law, ordinance, police or other regulation, custom or prejudice," the measure authorized the President to extend, through the Bureau, "military protection and jurisdiction" to freedmen. Once the President gave his assent, Bureau officials might try individuals who, under color of state law, discriminated against blacks. Moreover, they might also try cases to which blacks were parties in which any discriminatory law, ordinance, regulation or custom or any prejudice prevented freedmen from obtaining justice in state and local courts. 12

Although congressional Republicans failed to pass the Bureau extension over Johnson's veto, they had more success with Trumbull's second measure, the Civil Rights bill. This bill, which Republicans originally intended to operate when the rebel states gained readmission, was even more rigid on the question of equal rights than the Bureau extension. The primary concern of the Bureau bill had been with discriminatory state law, but because it contained a clause authorizing Bureau officials to try cases to which blacks were parties when "prejudice" prevented them from obtaining a fair trial in state courts, it would have had broader application than merely to cases of overt discrimination. The Civil Rights bill, however, had no such clause. It declared that all persons born in the United States (except Indians) were United States citizens, and stipulated that states
grant citizens equal rights in state law. Under the terms of the bill, any person who, under cover of state law, denied any citizen equal rights was liable to be tried in a United States district court and, if convicted, to be imprisoned for as long as one year and/or fined as much as $1000. When enforcement of a discriminatory "law, statute, custom, ordinance or regulation" prevented blacks from obtaining justice, they might remove their cases from the state courts to a United States district or circuit court. As in the case of the Bureau extension, Johnson vetoed the measure, but, this time, Republican leaders mustered enough votes to override the veto.13

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Although Howard hoped that the Civil Rights Act would aid the Bureau in protecting blacks from injustice, the President's vetoes put him in a difficult position. The Commissioner had been intimately involved with the legislation which Johnson vetoed and remained committed to securing blacks justice. Yet he was an executive department official and realized that, particularly in the aftermath of the Freedmen's Bureau veto, he would be powerless to protect blacks without Johnson's cooperation. Shortly after the first veto, he went to the White House to ascertain what impact the veto would have on Bureau operations. During the meeting, Johnson assured him that, since there had been no formal proclamation of peace, the Bureau would, under terms
of the original Bureau law, remain in existence for at least one year. Thus, while Howard was critical of the vetoes and became increasingly suspicious of Johnson, he remained outwardly optimistic. In a letter to Davis Tillson, written ten days after Johnson sent the Bureau veto to Congress, he blamed Secretary of State William H. Seward and Johnson's "Southern friends" for the veto and predicted that Johnson would soon eschew such pernicious influences. "Cases of crime and misdemeanor continually multiply," he explained, "so that . . . the President will be obliged to use us as an arm of strength to him, to keep the peace."14

Howard attempted to remain optimistic in the face of the vetoes, but he was not cheered by reports of the vetoes' impact on the South. During March and early April, Bureau officials reported that presidential policy had increased southern recalcitrance. "The enemies of the Government," the agent at Paducah, Kentucky complained, "acting under a misapprehension of the action of President Johnson, have recently been more violent in denouncing the Bureau, and I am convinced that outrages on freedmen have greatly increased, from the same cause." Assistant Commissioner J.W. Sprague noted a similar response to the vetoes from Arkansans. "[F]rom some cause the temper and spirit of the . . . people has of late been growing worse instead of better," he judged. "We are rapidly approaching a state of things that will be but little better than actual war."

Eliphalet Whittlesey, the assistant commissioner for North
Carolina, informed Howard that whites were "exultant" over the proclamation, but insisted that Bureau officials could continue to cope as long as Congress kept troops in the South. "The chief immediate danger is a Proclamation of Peace . . . ," he contended. "Without martial law we can do nothing. It will be impossible to try a citizen by military commission." 15

On April 2, as the Senate considered whether to override the Civil Rights veto, Johnson issued the proclamation which Whittlesey feared. Technically, the proclamation merely announced that, in all of the rebel states except Texas, resistance to the government had ceased, that civil authorities could enforce the law and that the insurrection was at an end. However, in the preamble, Johnson seemed to undermine Bureau and military authority in the South. In a manner reminiscent of his Freedmen's Bureau and Civil Rights vetoes, he reminded Americans, that loyal governments existed in Dixie and that, under the Constitution, these governments were entitled to representation in Congress. Moreover, he argued that "standing armies, military occupation, martial law, military tribunals and the suspension of the privilege of the writ of habeas corpus" were incompatible with American constitutionalism. Although the preamble had no legal effect, the proclamation, when read in its entirety, suggested that Johnson had removed martial law from the South and that Bureau and military officials no longer had authority to try civilians. 16
When combined with announcement of the Supreme Court's preliminary decision in the Milligan case (April 3), the proclamation threw Bureau and military officials into confusion. If the high court refused to sustain the jurisdiction of a military commission in the wartime North, many asked, what would it say of the jurisdiction of such a tribunal in the peace-time South? In Virginia, General Alfred Terry, the department commander, became uncertain of his authority and suspended military arrest and trial of civilians. General George Thomas, commander of the Military Division of the Tennessee, wired the commanding general requesting an explanation of the proclamation's effect on martial law. In Georgia, Tillson unconditionally abolished Bureau courts and, at the suggestion of General John M. Brannan, the department commander, wired Howard, asking if the proclamation abolished martial law.\textsuperscript{17}

On April 5, War Secretary Edwin Stanton gave the first official interpretation of the proclamation. Upon learning of the proclamation, General Charles Woods, commander of the Department of Alabama, had wired Joseph Holt, the Judge Advocate General, for an explanation. Holt, unwilling to rule on such an important matter of policy without instructions from his superior, passed Woods' telegram on to Stanton, who apparently brought the matter to Johnson's attention.\textsuperscript{18} After consultation with the President, Stanton advised Holt that the proclamation did not "invalidate proceedings before military tribunals having jurisdiction of
the alleged offenses nor divest or limit the jurisdiction or the authority of such tribunals." However, he noted that Johnson wished to dispense completely with martial law as soon as possible. In the meantime, commanders could complete all trials pending, but they should allow civil courts to try all other cases involving civilians. Only in cases of special importance—and then only after gaining permission from the President—were commanders to try civilians by military commission. Similarly, Stanton noted, military officials were to honor writs of habeas corpus, unless they received special permission from the White House to disregard them. 19

Although Stanton's response to Woods' inquiry was neither publicized nor sent to other commanders, the flood of questions concerning the proclamation soon brought a general policy statement from the War Department. Upon receiving Tillson's telegram, Howard forwarded it to the White House and requested an interview with Johnson to discuss the proclamation's implications for the Bureau. The next day, April 9, the president met with Howard and informed him that the proclamation "did not abolish military courts, did not remove martial law, and was not designed to modify the operations of the Bureau." The proclamation, he emphasized, merely declared his intention to remove martial law from the South—probably by proclamations restoring the privilege to the writ of habeas corpus in those states where it remained suspended—as soon as possible. As "states or
parts of states" evidenced willingness to do "impartial justice," they would be "individually and locally relieved from military government."\(^{20}\)

Later that day, the Army's Assistant Adjutant General, E.D. Townsend, on orders from Stanton ("with the approval of the President"), issued general instructions explaining the proclamation. It did not, he assured division and department commanders, "remove martial law or operate in any way upon the Freedmen's Bureau in the exercise of its legitimate jurisdiction." However, Townsend advised against the expediency of trying civilians by military commission "in any case where justice can be attained through the medium of civil authority." A day later, General U.S. Grant, in response to Thomas' query, simply stated that he did not believe the proclamation abrogated martial law or restored the privilege of the writ of habeas corpus. On April 15, Howard informed Tillson that "martial law is not suspended and in cases of outrage you will have all of the authority you ask for to see the criminals brought to trial and punished."\(^{21}\)

In several states, the instructions convinced military officials that they could convene military commissions in important cases. In Georgia, Brannan informed his subordinates that, in the future, all civilians arrested by the military were to be turned over to the civil authorities for trial. However, Governor Charles Jenkins, after consultation with Brannan, issued a proclamation warning Georgians
that the proclamation did not remove martial law and that if the civil authorities failed to mete out justice, military officials would resort to military commissions. General J.G. Foster, the commander of the Department of Florida, took a similar tack. On April 27, he informed his subordinates that the President's proclamation did not remove martial law, but that military officials would allow the civil authorities to try all cases involving civilians. If the civil authorities neglected or refused to perform their duties, Foster intimated, military officials would intervene and see that justice was done. In Virginia, assistant commissioner Orlando Brown directed his agent at Staunton to apply to the nearest military commander for troops to arrest a white civilian who had murdered a freedman. General E.R.S. Canby, commander of the Department of Louisiana, informed his subordinates that, henceforth, military commissions were not to try civilians except when "for evident and satisfactory reasons justice cannot be attained through the medium of civil courts."22

In other states, however, military officials were not even willing to maintain the pretense of authority to call military commissions. In Alabama, Bureau officials had arrested and held in custody since February two whites charged with murdering a freedman. Wager Swayne had informed Woods that the two men could never be convicted in a state court and that, if they were tried and convicted by military commission it would deter other whites from
committing acts of violence against freedmen. In the aftermath of the proclamation and instructions from Washington, however, Woods informed Swayne that it would be "impracticable" to try the two by military commission. Even after receiving assurance from Grant that the proclamation did not remove martial law, George Thomas felt that the proclamation tied the Army's hands. "[I]t is not expected that you will in the future exercise any supervision over the civil authorities . . . or influence them in any way," he informed General Thomas Wood, "except by the moral effect of your presence and opinions."23

Johnson, however, soon removed any doubts that commanders may have entertained about the possibility of trying civilians by military commission. In General Order No. 26, drawn up at the White House on April 27, and promulgated by the Adjutant General's office on May 1, he categorically denied commanders' right to convene military commissions. "[W]henever offenses committed by civilians are to be tried where civil tribunals are in existence which can try them," Johnson stipulated, "their cases are not authorized to be, and will not be, brought before military courts-martial or military commissions, but will be committed to the proper civil officials."24

Although General Order No. 26 seemed to conflict with the assurances which Johnson gave Howard on April 9, the president's position remained consistent. He felt that neither the April 2 proclamation nor General Order No. 26
removed martial law from the South or made trial of civil-
ians by military commissions illegal. Not until he issued
proclamations restoring the privilege of the writ of habeas
corpus; he believed, would martial law cease. However, he
firmly believed that loyal state governments existed in the
South and that they were constitutionally entitled to return
to their normal relations with the Union. This had been the
burden of his argument, implicitly at least, in his first
annual message and, more openly, in his Freedmen's Bureau
and Civil Rights vetoes. The proclamation and general order
stood as a capstone of his policy. By issuing them, he
emphasized that responsible civil governments existed in the
erstwhile rebel states and used his authority as commander-
in-chief to stop military interference with those govern-
ments. 25

This explains the difference between General Order No.
26 and the instructions issued by the War Department in the
aftermath of the proclamation. At the time Johnson issued
the proclamation, Bureau and military officials were coming
to believe that the military commission was an essential
tool to stem the rising tide of violence in the South. Thus,
when Johnson told Howard, Stanton and Grant that the pro-
clamation did not remove martial law from the South, they
interpreted his remarks in the most favorable light possi-
ble. They took his assurance to mean that he might, in
particular cases, permit commanders to convene military
commissions. However, they failed to understand (or perhaps
did not want to understand) that Johnson, as commander-in-chief, had the authority to halt the use of military commissions even if the privilege of the writ of habeas corpus remained suspended. Johnson made it clear that the chance that military commissions would be used was narrow and the soldiers attempted to gain as much sustenance as possible from this.26

In the aftermath of General Order No. 26, military officials became even less certain of their authority than they had been after Johnson had issued the proclamation. On May 4, Grant informed Thomas Wood that, under General Order No. 3, commanders could still stop prosecutions against former Union soldiers for acts done under orders and could still shield blacks from unequal laws. However, he warned that military officials could no longer arrest judges nor remove cases in which blacks were treated unjustly to military courts. In North Carolina, the department commander, General Thomas Ruger informed a subordinate that "[b]y General Order No. 26 . . . the principle of non interference with the civil courts except in urgent cases of necessity is to be inferred." On June 9, Holt wrote an opinion which symbolized the retreat from use of military commissions. An officer in the Adjutant General's office had inquired whether the military could provide any relief for a black who was unable to secure justice through the civil authorities. "[T]he fact . . . that the civil authorities . . . either refuse or are powerless, to arrest
or bring to punishment . . . the offenders in this . . . case," Holt replied, "is a political evil, in regard to which [I] . . . [do] not feel called upon to offer any com-
ment." 27

Moreover, when Daniel Sickles, the strong-willed, unpredictable commander of the Department of South Carolina, flouted the order, Johnson intervened to compel obedience. In November, 1865, a military commission convicted James Egan, an eighty-year-old resident of Lexington, South Carolina of murdering a freedman, and sentenced him to life imprisonment in the federal prison at Albany, New York. In June, Egan's lawyer swore out a writ of habeas corpus and had Egan brought before Samuel Nelson, an associate justice of the United States Supreme Court, who was sitting as chief judge of the United States circuit court at Albany. Nelson argued that, since martial law "is regulated by no known or established system or code of laws," it could be exercised "only in case of necessity." However, after examining the conditions in South Carolina during the previous fall, he concluded that civil government had been functioning and that no necessity for martial law had existed. Consequently, he ordered Egan released from custody. 28

When Egan returned to South Carolina, however, Sickles ordered him arrested and held in military custody. Upon learning of Sickles' action, South Carolina Governor James Orr wired the White House and demanded that military authorities release Egan. Johnson, indignant at Sickles'
disobedience, ordered Stanton to demand an explanation from the general. Although he responded with a lengthy brief defending his position, Sickles released Egan from military custody and quickly completed negotiations with state officials to transfer cases of misdemeanor and felony in which blacks were parties to state courts. Chief Justice Benjamin Dunkin of the South Carolina Court of Appeals, assured Sickles that, under South Carolina law, blacks were allowed to institute proceedings against whites and that they could testify against whites in cases in which a black was interested. Prior to the Egan affair, the general had dragged his feet in the negotiations, but ten days after he received Stanton's telegram he directed subordinates to turn over to the civil authorities all civilians in military confinement. 29

* * * * *

Johnson might proclaim that peace existed in the South, but violence against blacks remained the greatest problem facing Bureau and military officials. Although by early 1866, a good deal of the post-war dislocation had dissipated, bands of guerrillas and outlaws, bred by the upheaval of civil war, continued to terrorize blacks in several states. Across the South, whites organized bands of regulators to keep blacks in line, and in every community blacks were victims of random violence at the hands of whites. As different as these forms of violence were, they were integrated
into a regime of terror by whites' inability to view blacks as anything but subordinates and their determination to maintain control of the freedmen. For given these attitudes, whites were willing to use violence, if necessary, to maintain their dominance, unable to tolerate an "affront" from a black and reluctant to admit that blacks had the right to prosecute white men for acts of violence. While in some places well-to-do citizens attempted to see that justice was done only to be over-ruled by public opinion, in most places the "best men" either encouraged or tacitly approved of violence.

While guerrilla and outlaw bands were most common in Texas and Arkansas, such groups also operated in South Carolina, Mississippi and Louisiana. In some places, roving bands of outlaws terrorized whites and blacks alike, and local officials and citizens were too intimidated to bring them to justice. In early summer, a group of outlaws murdered the Bureau agent at Grenada, Mississippi, assaulted a prominent citizen and remained in town without fear of arrest. Local citizens, too frightened to resist the gang, could only request that the new Bureau agent bring troops into the area to restore order. Most of the rapacity of these gangs, however, appears to have been directed at freedmen whom they could plunder with even less fear of retaliation by the civil authorities.

Yet most of the gangs that terrorized blacks and white Unionists were composed, not of roving, homeless outlaws,
but of men who resided and even owned property in the counties in which they operated. Like other outlaws, these men engaged in robbing blacks, but they often had much more intimate relations with the white community, aiming a good deal of their activity at white Unionists and aiding planters in controlling their workers. In early October, 1866, for example, a group of desperadoes invaded a plantation near Augusta, Arkansas and, at the direction of the owner, whipped several of the freedmen employed on the place. When the blacks attempted to report the incident to the agent at Augusta, the men captured them, returned them to their employer and beat them again.\(^{32}\)

In Anderson County, South Carolina, planters employed the notorious outlaw "Jolly" to intimidate blacks. During the summer of 1865, three black men and one black woman who lived near Anderson Court House refused to enter into an unjust contract with their former owner. When they left the plantation to go to Columbia, their former owner sent Jolly after them. The outlaw caught up with the freedmen about twenty-five miles from the plantation, murdered two of the men and severely whipped the woman and forced her back to the plantation. An officer sent to Anderson County in early 1866 to investigate this and other acts of violence against blacks reported citizens and local officials gave Jolly so much support that he visited his farm every day without fear of arrest.\(^{33}\)
Group violence against blacks, however, was not confined to bands of outlaws. In many parts of the South, whites formed regulator groups to reinforce planters' control of black workers. "New gangs are organizing, generally planters, their sons, etc.," reported a Bureau official from southwestern Arkansas. "They are in the habit of going amongst the freed people at night, disguised, whipping men and women. They think that they can punish their freedmen in this manner without being detected and fined by the Bureau agents." Other regulator bands were formed as whites became concerned about their dominance over freedmen. On Virginia's Eastern Shore, where there were a large number of blacks who had served in the Union Army, tension between blacks and whites was high. In late June, after a black assaulted a white, large bands of whites began a systematic visitation of blacks' homes, robbing them of firearms. Moreover, regulators sometimes aimed their wrath at individual blacks whom they viewed as threats to white control. In Aberdeen, Alabama, a group of whites, led by several prominent citizens, beat a black who had come to town under the auspices of the African Methodist Episcopal Church to start an A.M.E. congregation and a black school and threatened him with death if he did not leave town. After leaving Aberdeen, the minister informed Bureau officials of the incident, noting that the men had told him "that the land belonged to them and that no damned nigger would preach or teach school there."
In other places, regulator bands were formed to serve the general function of preserving order. Even after a year of occupation, southerners remained deeply concerned about the impact of emancipation and were ready to resort to force to keep the potentially disorderly blacks in line. In mid-June, the Bureau agent in Liberty County, Georgia reported that whites in a neighboring county had formed a band of regulators and had committed acts of violence against blacks without interference. As a result, the agent noted, Liberty County whites had begun to speak of "regulating the negroes & some of the whites who they think need their discipline." On the eastern portion of the Louisiana-Arkansas border, a large group of whites known as Captain Slick's Company punished blacks who were disorderly or in some other way offended whites. In mid-December, 1866, a portion of the group arrested and hung a freedman accused of stealing twenty-five dollars from a store; in order that the consequences of such behavior, as well as the dominance of whites might be impressed on other blacks, they refused to allow the body to be cut down for two weeks.35

Random acts of individual violence, however, posed the greatest threat to blacks' security and the greatest problem for Bureau officials. Given slavery's legacy of compulsion and the fact that whites continued to direct black workers, it is not surprising that there was a high incidence of assaults on and murders of black workers by planters. But there was a good deal more to the problem than normal
friction between employers and employees. In the aftermath of emancipation, whites, anxious to maintain the obedience and deference (real or imagined) which they had commanded under slavery, were unduly sensitive to black assertions of independence. Nor were whites boxing at shadows. In the aftermath of emancipation blacks attempted to gain independence of whites in such day to day matters as control of their families, supervision of work and establishment of their own religious congregations. Moreover, in many instances, blacks were less willing to suffer abuse, verbal or physical, at the hands of whites. "I can trace the cause of this [hostile] feeling," noted the Bureau agent in Colleton County, South Carolina, "to the fact that in some cases the freedmen make too great a display of their independence, and on the other hand, the whites are quite indignant if they are not treated with the same deference which they were accustomed to receive from these people before their emancipation." 36

Agents' complaint books and their reports on violence to assistant commissioners reveal that tensions between black employees and white employers frequently sparked violence. An Albemarle County, Virginia planter, for example, admitted to the Bureau agent at Charlottesville that he had assaulted an "impudent" employee. "He gave me several flat contradictions, which I will not take from a white much less a negro," the planter explained. "I saw when he came what he wanted to provoke me to do, and I stood it as
long as I could, so I gave it to him well over the head with a stick. . . ." On a plantation near Little Rock, Arkansas, violence erupted when a black employee struck a mischievous young white, the brother of the plantation manager. Upon learning of the affair, the manager reprimanded the freedman, and when the Negro assured him that the matter was not serious and turned to walk away, the manager shot and critically wounded him. In many instances, altercations erupted when black men attempted to assert the right to control their wives and children. When a freedman who lived on a plantation near Augusta, Georgia attempted to protect his wife from punishment at the hands of their employer, the employer stabbed him in the back. Similarly, the "complaint book" kept by the agent at Jackson, Mississippi indicates that a good many assaults ensued when blacks attempted to stop planters from disciplining their children. 37

Off the plantation, interaction between whites and blacks also frequently resulted in violence. The tension which had traditionally existed between whites and blacks—and particularly non-slaveowning whites and blacks—was compounded by defeat and emancipation. Like planters, other whites were determined that emancipation not end blacks' subordination. And, since the civil authorities were less likely to punish them for assault on a freedman than for assault on a slave, lower class whites frequently resorted to violence to curb blacks' "impudence." Moreover, many
whites, embittered by defeat and encouraged to defiance by the rift between President and Congress, saw the Negro as the personification of Confederate defeat and the symbol of the hated congressional reconstruction measures. In this context, encounters between blacks and whites which, before the war, might have passed without incident, resulted in violence against blacks.\textsuperscript{38}

Not only was violence against blacks pervasive, but communities and local leaders made little effort to punish those guilty of violence. In some instances, judicial officials and prominent citizens attempted to see that blacks received justice, but in most cases their efforts were fruitless. Julius Foster, a lawyer and justice of the peace in Sumter, South Carolina, represented blacks in the local provost court and, after that court closed, took cognizance of blacks' complaints against whites as a magistrate. However, Foster's activities made him unpopular among his neighbors and, when his appointment as justice of the peace came up for renewal in December, 1866, his neighbors brought sufficient pressure on the governor to cause him to deny reappointment. W.G. Delony, an Elmore County, Alabama lawyer and long-time justice of the peace, fared even worse than Foster. When Delony prosecuted a case for several blacks who had been beaten and robbed by regulators, he lost his case and several members of the group brutally assaulted him.\textsuperscript{39}
Incidents like the Delony affair convinced many Bureau agents that public opinion prevented the "best men" from ending violence and restoring order. To some extent this was true. In many places, public opinion was so Negro-phobic that community leaders were forced, against their will, to acquiesce in injustice. However, this evaluation, colored as it was by agents' notions of how responsible, rational men behave, did not take into consideration the emotional, non-rational basis of much human behavior. In fact, community leadership and public opinion were, in most cases, synergistic. Like other southerners, community leaders found the idea of punishing a white for violence against a black repugnant--especially when, as was true in many instances, the white was a respectable citizen. Moreover, their desire to maintain black subordination--an essential element of order--made it difficult for them to admit that the civil authorities should hold whites accountable for acts of violence against blacks. If they denied whites the right to resort to force to curb black assertiveness and conceded that blacks could bring whites to account for acts of violence, whites might lose the ability to control blacks. 40

The murder of a black in Lunenburg County, Virginia in May, 1866, illustrates the way in which Bureau agents could misinterpret the response of respectable citizens to violence. Shortly after the murder took place, the agent at Lunenburg Court House reported that the civil authorities
had fairly and thoroughly investigated the case, but could find no clues as to who the murderer was. After the agent made his report, Bureau officials in Richmond sent a plain-clothes detective to the vicinity to investigate. The detective, posing as a southern man who was just passing through, was able to gain the confidence of community members and talked freely with them about the murder. As a result he reported that the agent's original appraisal of the community's response to the murder was misguided. The freedman, the detective reported, had insulted and threatened a white woman and, as a result, the woman's son had murdered him. The community as a whole, he noted, was aware of who committed the murder and whenever citizens spoke of the act, they condoned it.\textsuperscript{41}

In other places, the responsibility of community leaders for violence was even more pronounced. In June, 1866, Lieutenant Benjamin Cook, the agent in Richmond reported that whites were irritated by congressional legislation granting blacks equal rights and that this irritation was manifested in injustice to blacks in the mayor's court. "The white community are generally opposed to this measure," Cook reported, "and are fully borne out by the mayor, who by his arbitrary proceedings, unjust decisions and open expressions fully concurs with those who seek to deprive the freedmen of their just due." Major George Reynolds, in charge of Bureau affairs in the southern district of Mississippi, also noted the role of respectable citizens in
sustaining violence: "They say that they will do what they can and are friendly in expression, but such outrages . . . [as I have reported] could not occur and remain unpunished, if the perpetrators did not find aid and encouragement in the communities in which they live."42

Community leaders played a similar role in the anti-Negro riots that erupted in Memphis and New Orleans during the summer of 1866. Two Bureau officials who investigated the Memphis riot reported that the deep antipathy of lower class whites for blacks only partially explained the riot. "The feeling of hatred for the negro race," they concluded, "has been fostered . . . during the past year by the more intelligent portion of the community." Moreover, in the aftermath of the riot, city officials, even though they knew the identity of many of the rioters, refused to take any action against them. In New Orleans, several prominent citizens actually led the white mob, and, as in Memphis, the civil authorities neither attempted to stop the violence nor prosecuted those who participated in the riot.43

The ease with which whites were able to set the wheels of justice in motion when they deemed it necessary, demonstrates that prominent citizens remained in control. In Point Coupée Parish, Louisiana blacks became incensed when a group of whites murdered three freedmen, and they threatened violence if the civil authorities refused to bring the murderers to justice. Although one of the murderers fled the state, local officials, at the insistence of planters,
arrested and tried the others. In Greenville, South Carolina, threats of violence by blacks also convinced community leaders that they had better make at least a pretense of protecting blacks from violence. After a white had stabbed a black and the civil authorities refused to arrest the assailant, blacks became agitated and threatened to burn the town. As a result, local officials arrested the guilty party. Although blacks were apparently not responsible, a building caught on fire and burned to the ground the night after the freedmen had made their threat. "The property holders are frightened," wrote the Bureau agent, "but have very judiciously come to the conclusion that impartial justice to all . . . is the greatest security they can have." 44

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Since the climate of opinion sustained violence against blacks, it is not surprising that magistrates, judges and jurors were not zealous in bringing the perpetrators of violence to justice. In many instances, when blacks brought assault cases before justices of the peace, those officials flatly refused to hear the cases or advised freedmen not to bring charges against whites. Often this was sufficient to discourage blacks from further action. If, however, Bureau agents forced magistrates to hear a case, they often merely required whites to post a bond guaranteeing that they would keep the peace and then considered the case closed.
Moreover, in some instances magistrates attempted to discourage blacks from prosecuting assault cases by binding both parties to keep the peace. When this was done, whites, who were able to post the bond, went free, while blacks, usually unable to post bond, went to jail.\footnote{45}

Instead of binding defendants to keep the peace, many magistrates took action which, though on its face was more severe, in practice often provided blacks with less protection. Since magistrates in most states did not have jurisdiction to try and punish assaults, many required the accused to post bond to guarantee that they would appear before the next term of the state district or circuit court. Although this appeared to guarantee that assailants would stand trial, in most cases they never came to trial. Justices did not require the person posting bond to present himself to the grand jury, but merely that he would go before the grand jury if summoned by that body. In many instances neither the magistrate nor the state district attorney brought these cases before the grand jury. Thus unless the Bureau agent or the plaintiff brought the case to the grand jury's attention it was usually never heard of again.\footnote{46}

South Carolina blacks found it even more difficult to have whites brought to justice for assault. State law required that a person seeking to prosecute another for assault had to have two freeholders stand as security for him or post a bond of $300. Although one Bureau agent convinced a magistrate to act even though the plaintiff could
not provide adequate security, in most places the requirement allowed magistrates to refuse to hear assault cases brought by blacks. "[T]he civil law in this district . . . ," commented the agent at Charleston, "is merely a source of power and oppression in the hands of the wealthy few it being in this State an expensive luxury--there is no justice for poor whites or freedmen."\(^{47}\)

In Arkansas, an 1865 statute allowed magistrates to try cases of assault, as well as to bind parties accused of assault to keep the peace. Bureau officials, anxious to secure prompt justice for blacks welcomed the new law and persistently requested justices of the peace to hear minor cases of assault. However, many justices shied away from assuming jurisdiction under the new law and continued to bind parties accused of assault over to the state circuit court. Since circuit courts lacked original jurisdiction in assault cases, they returned the cases to the magistrate, thus delaying justice even further.\(^{48}\)

Once a case was before them, magistrates often dismissed charges against whites on grounds that the assault was justified on account of blacks' "insolence." The agent in Richmond County, Virginia, reported that he had convinced a justice of the peace to hold a preliminary hearing in a case in which a planter had beaten a Negro woman over the head with a stick. However, the agent noted that the magistrate dismissed the case, saying that the woman should not have been so "saucy" to her employer. And in dismissing
the case, the magistrate ruled that the woman must pay the court costs. Moreover, when a black attempted to defend himself against violence, he often fared worse than his assailant. When a white man in City Point, Virginia struck his black employee over the head with a mallet, the freedman responded in kind. The white man had local authorities arrest the black and bring him before a magistrate who bound him to keep the peace for a period of twelve months. Since the freedman was unable to post bond, the magistrate sent him to jail.\(^{49}\)

Even if a black was able to get his case before a grand jury, he was not certain of receiving justice. Grand jurors, like other citizens, were often reluctant to call whites to account for violence against blacks and frequently refused to return true bills against whites responsible for violence. In September, 1866, there were four cases of assault by whites against blacks before a Martinsville, Virginia grand jury. Although the jurors returned an indictment against one of the accused—a poor white who had no friends on the jury—they refused to sustain charges against the other three, all of whom were prominent citizens. W.S. McCulloch, the agent at DuVall's Bluff, Arkansas, reported that in murder cases, magistrates generally bound whites to appear at the circuit court. However, the grand jury rarely handed down an indictment in these cases, usually justifying the murder by finding some evidence that the victim
"provoked the assault either by being impertinent or by resisting the assault of the white man."\textsuperscript{50}

When state courts actually tried whites, they were often acquitted. Like grand jurors, petit jurors were often extremely prejudiced against blacks and refused to find whites guilty of committing acts of violence against blacks. And if whites were convicted, their sentences were often ridiculously light. In September, a Mississippi state court tried a white man for the murder of a black. However, the judge reduced the charge against the accused to manslaughter and, upon conviction, sentenced him to imprisonment for only one year. Although General Thomas Wood thought the penalty light, he was pleased with the verdict since it was the first time that a white had been convicted of violence against blacks on the basis of black testimony.\textsuperscript{51}

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Although Howard had come to understand the limitations of equal rights, the events of early 1866 prevented him from adopting bold new measures to secure blacks justice. In his February and April interviews with the president, Johnson had assured him that the Bureau would remain in existence for another year and that the April 2 proclamation would not reduce the Bureau's authority. However, he realized that if the Bureau's authority remained the same, it would be unable to shield blacks from injustice. In the absence of a new statute extending and clarifying Bureau jurisdiction, the
only authority which Bureau agents had to try cases involving freedmen came from Bureau Circular No. 5 (May 30, 1865). But the circular, which Howard had drawn up under Johnson's scrutiny, merely authorized Bureau personnel to exercise jurisdiction when judges and magistrates refused to permit blacks to testify against whites. Thus Johnson's assurances did not provide Bureau officials with authority to exercise jurisdiction when judges and magistrates denied blacks justice in more subtle ways than refusing to admit them to the witness stand.

Because discriminatory administration (or non-administration) of the laws rather than unequal laws was the main problem confronting Bureau officials, Johnson's assurances were meaningless. By April, 1866, most southern states had granted blacks the right to testify against whites, and nearly every assistant commissioner had surrendered jurisdiction (except in matters of labor relations) to the civil authorities. Most assistant commissioners were aware that, while state officials applied to blacks the same laws which were applicable to whites, they discriminated against blacks in a hundred covert ways. However, since Circular No. 5 strictly limited their authority, most assistant commissioners refused to reconvene Bureau courts. As a result, when judges and magistrates treated blacks unjustly, agents could do little more than scrutinize trials and remonstrate against instances of injustice or make threats of military intervention which they were unable to carry into effect.
Consider the plight of Lt. W.F. De Knight, the Bureau's agent in Lynchburg, Virginia. In early June, Daniel Huckstep, a freedman, complained to De Knight that he had been assaulted by the son of his employer, P.G. Turner. The agent sent Huckstep, with a note explaining the problem, to James Shrader, a justice of the peace, but Shrader advised the freedman against prosecuting the case and declined to issue a warrant for the assailant's arrest. "It is the true policy of the freedman," he later informed De Knight, "to avoid collisions with his employer & to show by his conduct that he deserves kindness and good treatment." When he learned of the justice's action, De Knight wrote Shrader a second letter, lecturing him on his duties and intimating that if he did not act, "some . . . more arbitrary power [may] intervene." A week later, Shrader informed De Knight that he would, upon Huckstep's request, issue a warrant for the assailant's arrest. He also noted that Huckstep had recently threatened Turner's son with violence and that, upon Turner's request, he had issued a warrant for Huckstep's arrest. De Knight reported the case to his superiors and asked that he be allowed to make good his threat of military interference. However, Orlando Brown refused to authorize De Knight to intervene and Huckstep's fate was left in the hands of the civil authorities.  

In several states, Bureau agents did, on occasion, try minor cases involving blacks. In Virginia, Brown authorized agents in York and Nansemond counties, where judges
and magistrates refused to have anything to do with cases involving freedmen, to reopen Bureau courts. In Texas, state law did not permit blacks to testify against whites until July, but agents allowed judges and magistrates who received blacks' testimony to try cases involving freedmen. Yet in some parts of the state, where the civil authorities refused to allow blacks to testify, or where they treated blacks unjustly, agents removed cases from state courts. Although Bureau officials in Kentucky possessed doubtful constitutional authority to interfere with the civil authorities, they sometimes did so. Because Kentucky law did not allow freedmen to testify against whites, the agent at Louisville referred to the state courts only those cases in which there were white witnesses. In most other cases, he attempted to bring about a settlement out of court or to bring cases before the United States district court in Louisville under the Civil Rights Act. On occasion, however, the agent did try white civilians himself.

Where they existed, Bureau courts allowed agents to mete out speedy justice in a variety of petty cases ranging from minor assaults to settlement of labor disputes. Yet without authority to try civilians by military commission, Bureau officials were unable to redress serious cases of violence against blacks. In the absence of military commissions, Bureau and military officials sometimes (idly) threatened to place counties in which violence was particularly common under military government. They might
send troops to these areas and, on occasion, authorize officers to arrest the perpetrators of violence. But in the aftermath of General Order No. 26, they were unable to try and punish offenders.\textsuperscript{56}

The jurisdictional constraints which prevented military officials from interfering with the civil authorities to protect freedmen also operated when the civil authorities denied whites justice. In early September, Captain Robert Gardner, the agent at Pass Christian, Mississippi, reported that Perry County officials were using the courts to persecute white Unionists. Although Gardner requested that military officials send troops to protect the Unionists, Thomas Wood, the department commander, refused to send troops or to authorize the agent to interfere with the civil authorities. Rather, he informed the agent that the Union men could remove their cases to the United States district court under the Habeas Corpus Act of 1866. "By this act," the assistant commissioner noted, "these parties have a remedy in the civil law, which in time of peace must first be resorted to." Only if the state court refused to allow the case to be removed, Wood emphasized, could troops intervene, and even then they could only act at the request of the United States district judge.\textsuperscript{57}

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Unable to resort to military courts, Bureau officials looked to the Civil Rights Act as a means of protecting
blacks from injustice. Unlike the February Freedmen's Bureau extension, which provided blacks summary remedies in military courts, the Civil Rights Act relied on the slow process of litigation in the civil courts. This probably limited the act's effectiveness in dealing with violence, but it was not a fatal defect. Although Trumbull had predicted that federal officials would have to prosecute only a few persons in order to bring the South into line, he included in the act a formidable enforcement apparatus. Circuit courts might increase (up to one per county) the number of United States commissioners—the officers responsible for arrest and preliminary examination of persons who violated the act. Since the act also empowered Bureau officials to make arrests, it further increased the number of persons engaged in enforcing the act at the grass roots. Moreover, at the direction of the president, the military could aid Bureau and court officials in enforcing the act. 58

Although, on paper, the means of enforcing the act appeared adequate, no one coordinated and directed the activities of the federal officials responsible for enforcement. Johnson, hostile to the measure, neither encouraged the Attorney General's office to see that it was systematically enforced nor attempted to coordinate the activities of the War Department and the Attorney General's office under the act. In the absence of direction from the White House, Johnson's attorneys general declined to formulate an enforcement program for subordinates to follow. When J.L.
Williamson, the United States attorney for the western district of Tennessee, asked for clarification of several parts of the statute, Attorney General James Speed refused to comply with the request. "The Attorney General declined to give any opinion . . .," Speed's chief clerk replied, "believing that to be entirely a judicial question." In January, 1867, when Congress requested a report of violations of the act, Henry Stanbery, Speed's successor, could find only one violation. As a result of neglect from Washington, federal district attorneys, marshals and commissioners were left to their own devices to interpret and to enforce the act. Some of these men were conservative and took a highly restrictive view of the act; others were reluctant to spend time prosecuting cases which they were uncertain of winning. 59

The greatest obstacle in the way of Bureau officials, however, was that the act was imperfectly designed for the task at hand. Since its framers had not fully understood the problems involved in protecting blacks from injustice, they aimed the act primarily at securing blacks equal rights in state law. As a result, it spoke indirectly, if at all, to the problem of how federal officials could shield blacks from injustice perpetrated under the guise of equal rights. The act permitted removal to United States district and circuit courts of all cases in which persons were denied or unable to enforce in state courts the (equal) rights which they possessed in state law. Yet it was unlikely that the
federal courts would go behind the actions of state judges and magistrates to inquire whether they had meted out equal treatment in fact, as well as in form. To have done so would have established the federal courts as monitors of state judges and magistrates and flown in the face of contemporary notions of federalism and judicial self-restraint. Thus it was doubtful whether federal officials could remove to federal courts cases in which state officials applied laws, on their face non-discriminatory, in a discriminatory fashion. It was also doubtful whether United States courts could hear cases if a magistrate declined to hear or took inadequate action in a case, or if a grand jury refused to hand down an indictment in the face of overwhelming evidence. These ambiguities not only allowed officials hostile to the act to interpret it in a restrictive fashion, but constrained many who were sympathetic from using it to combat injustice.

As Bureau officials attempted to implement the act, they realized that it was too narrow to shield blacks from injustice. In August, William Fincher, a black minister and a vice-president of the Georgia Equal Rights Association, was tried for vagrancy in the county court of Pike County, Georgia. Although Fincher demonstrated that he had an income of thirty-five dollars per month, the jury found him guilty and sentenced him to work on the chain gang for twelve months. The Bureau agent for Pike County appealed the case to the superior court, but that court declined to
overturn the conviction. When the agent informed Davis Tillson of the affair, Tillson forwarded the agent's letter to Howard and asked for instructions. Howard referred the matter, via Stanton, to Joseph Holt, who advised that the case be referred to the Attorney General for prosecution under the Civil Rights Act. 60

Stanton referred the case to Stanbery, but it was soon apparent that Fincher had no remedy under the Civil Rights Act. Originally, Stanbery did not even consider using the act to overturn Fincher's conviction. He informed William Fitch, the United States attorney in Savannah, of Fincher's case and directed him to do the groundwork necessary to bring it before the United States Supreme Court under the Thirteenth Amendment. However, since the case had not been (and could no longer be) taken before the Georgia Supreme Court, Fitch concluded that he could not follow Stanbery's original plan. Moreover, he informed the Attorney General that it would also be impossible to bring the case before a lower federal court under the Civil Rights Act. The state court had tried, convicted and sentenced Fincher under law and procedure which applied to whites as well as blacks. As a result, they had satisfied the requirements of the Civil Rights Act, and the United States district court therefore did not have jurisdiction of the case. "I am at a loss to discover any remedy," Fitch wrote. "Theoretically . . . no distinction is made under the laws of Georgia between white
and black; practically . . . the distinction is very broad, principally owing to the prejudice of jurors."  

The act also failed to permit Bureau officials to have whites who committed acts of violence against blacks tried in the federal courts. In Louisiana, a mob of whites assaulted a black Bureau agent who went to East Feliciana Parish to start a black school. In response, the agent at Clinton sent troops to the town in which the violence had occurred, arrested those who had been involved and shipped them, under guard, to New Orleans. There, R.H. Shannon, a United States commissioner arraigned and then released them on bonds of from one to four thousand dollars each. Since the men were neither indicted nor tried, however, it appears that the district court refused to sustain Shannon's latitudinarian interpretation of the act.  

Bureau attempts to use the act to control violence met a similar fate in Arkansas. In mid-December, shortly after replacing J.W. Sprague as assistant commissioner, General E.O.C. Ord instructed Arkansas agents to arrest whites who committed crimes against blacks if state officials refused or failed to mete out justice. He ordered agents to take sworn affidavits of witnesses in such cases and to forward them, with the prisoners, to Little Rock, where Bureau officials would turn them over to the United States district court for trial. Shortly after Ord issued the circular, Major William Dawes, the agent at Pine Bluff, informed headquarters that violence against blacks had recently increased
in his district. Since the civil authorities invariably dragged their feet in these cases, he proposed to arrest a white who had recently murdered a black but had not been proceeded against by the civil authorities. After receiving permission from Ord, Dawes arrested the murderer and sent him to Little Rock, where a United States commissioner imprisoned him pending the meeting of the district court.\textsuperscript{63}

In April, 1867, however, when the court convened, it declined jurisdiction of the case. John Whytock, the United States attorney in Little Rock, informed Bureau officials that he had presented the case to the grand jury, but that Henry Caldwell, the district judge, had instructed jurors not to return an indictment against the accused. In a letter to Colonel Charles Smith, the new assistant commissioner, Caldwell emphasized that the trial and punishment of murder was a job for state courts. "This man ought to be tried and punished for his crime," he wrote. "[But] it belongs to the State Courts to do this and if they neglect to try and punish him (as I fear they will) he will go scott free." The Civil Rights Act, he intimated, did not permit federal courts to go behind the action (or inaction) of state judges and magistrates and assume jurisdiction whenever a federal grand jury felt that they had acted unjustly. Caldwell probably believed that a case could be tried in a federal court only when an overtly discriminatory law impeded justice and the case was removed from a state court in the manner outlined in the Civil Rights Act. In
concluding, he urged that the murderer would be brought to justice only if military officials arrested and tried him. 64

Moreover, in several similar cases, Caldwell's court declined jurisdiction. Later in the month, the foreman of the grand jury reported two cases of murder to Smith, one of a freedman by a white and the other of a prominent Unionist by unknown parties. Although there was sufficient evidence to warrant indictment in the first case, the grand jury apparently did not feel that the district court could assume jurisdiction. As a result, the foreman forwarded the evidence in both cases to Smith, requesting that military officials arrest and punish the murderers. 65

In Georgia, Bureau officials also tried, without success, to use the Civil Rights Act to protect blacks from violence. During late 1866 and early 1867, as the meeting of the district court approached, Bureau officials made arrests in several cases of unredressed violence and turned their prisoners over to United States commissioners. As in Louisiana and Arkansas, the commissioners bound the parties to appear before the grand jury. However, when the court convened, the district attorney, fearing that he could not get convictions, refused to present the cases to the grand jury. The Civil Rights Act, he told Bureau officials, was not sufficiently broad to permit such cases to be tried in the federal courts. 66

Although he was never called upon to rule on the scope of the Civil Rights Act, Robert Hill, the United States
district judge for Mississippi took as restrictive a view of the act as Henry Caldwell. In November, 1866, Hill informed Salmon Chase, the Chief Justice of the United States, that "in many sections of the state the civil rights law has been religiously observed." Two months later, he told Howard that Mississippians were coming to accept the Civil Rights Act and that, as a result, only a few violations of the act had been brought before the federal grand jury. However, Hill's optimism was, in part, a product of his conservative interpretation of the act. In correspondence with Chase and Bureau officials, he spoke solely of patently discriminatory laws as coming within the act's preview. Because he considered it the legitimate concern of State, not federal courts, he made no mention of the numerous cases in which white violence against blacks had gone unredressed.67

In several states, assistant commissioners did not even attempt to use the act to redress covert discriminations against blacks. In February, 1867, Major William P. Carlin, Fisk's replacement as assistant commissioner in Tennessee, informed Howard that violence and injustice against blacks was pervasive. However, he explained that since Tennessee law did not discriminate against blacks, the Bureau had not attempted to use the Civil Rights Act. General Charles Griffin, the Assistant Commissioner for Texas, told a similar story. Since cases of unredressed violence against blacks were violations of state law and, theoretically, state law afforded blacks the same remedies as it afforded
white men, blacks could not obtain redress under the Civil Rights Act. "... [T]he laws of this State that peculiarly affect the freedmen are oppressive and tyrannical," he noted, "... yet, as they make no distinction on account of color or race, I have not felt at liberty to disregard them." 68

Only in Kentucky were Bureau officials at all successful in using the Civil Rights Act to punish acts of violence. There an active Freedmen's Bureau, a sympathetic and energetic district attorney and a concerned district judge combined to enforce the act against anti-Negro violence. Since Kentucky law did not allow blacks to testify against whites, District Judge Bland Ballard charged a Louisville federal grand jury to indict persons who had committed outrages against blacks. After Ballard's charge, Bureau officials arrested several whites guilty of violence and turned them over to the district court for trial. At the October, 1866, term of the court, Benjamin Bristow, the federal district attorney in Louisville, secured convictions of three of the men whom Bureau officials had arrested. Moreover, when the men appealed to the circuit court, Ballard and Supreme Court Associate Justice Noah Swayne upheld the convictions. As a result, Bureau officials continued to use the act to combat violence and injustice. 69

In Maryland, where state law also prohibited blacks from testifying against whites, Bureau officials found the Civil Rights Act less effective. Although Bureau officials
used it to break up a pervasive system of apprenticeship, they were less successful in resorting to the act to quell violence. Federal officials prosecuted a number of judges and magistrates who refused to admit black testimony in cases of assault by whites on blacks. However, Bureau officials were not successful in having cases of violence against blacks tried in federal courts. "... [T]he Civil Rights Act does not afford such protection to the colored man as will prevent him from being assaulted, beaten and outraged," one Maryland agent complained, "... [since it does not provide] for the punishment of the white man who commits the outrages."70

While he had probably entertained doubts about it much earlier, in January 1867, Howard wrote a brilliant critique of the act. In a letter to Stanton, he argued that the Civil Rights Act had failed because it established equal rights as the criterion of justice. Southerners had gotten around the act, he noted, "not so much by absolute denial of . . . rights . . . , as by the temper of the juries and magistrates before whom [blacks'] cases are tried." Since it required denial of equal rights by a state judge to bring cases into a federal court, he explained, it was extremely difficult to have these cases removed to an unbiased forum. "Practically when the Judge of the United States Court is desirous to do everything in his power to secure justice to the poor freedmen," Howard concluded, "he affirms that he
can do nothing under the Civil Rights Bill until the local courts have been tested." 71

* * * * *

Unable to convene military commissions and aware of the limitations of the Civil Rights Act, Howard turned to the Army. On July 3, 1866, he informed Grant of the increasing number of outrages against Bureau agents and freedmen and asked that the commanding general issue an order to remedy the situation. On July 6, Army headquarters responded to Howard's request by issuing General Order No. 44. The new order authorized military personnel in the rebel states to arrest civilians charged with violence against national officers and "inhabitants of the United States, regardless of color, in cases where the civil authorities have failed, neglected or are unable to bring such parties to trial." Once persons were arrested, military officials would confine them "until such time as the proper judicial tribunal may be ready and willing to try them." 72

Bureau officials welcomed Grant's order and immediately began to make use of it. Assistant commissioners occasionally dispatched troops to localities in which regulator violence was particularly sharp and authorized them to arrest members of the gangs. In Virginia, Brown sent a squad of soldiers to the Eastern Shore to break up the band of whites that had been taking firearms from blacks. The soldiers arrested several of the most prominent members of
the gang and remained on the Shore to make sure that there were no such outbursts in the future. Most often, however, agents used the order to prod local officials into action against citizens guilty of violence against blacks. The agent at Du Vall's Bluff, Arkansas, for example, noted that after he had arrested two or three whites, the civil authorities began to prosecute persons guilty of assaults against blacks. In many instances, agents were able to get state officials to act simply by threatening to enforce the order. 73

Although General Order No. 44 was helpful, it did not enable Bureau officials to mount a sustained campaign against anti-Negro violence. In many instances—and particularly in serious cases of violence—agents needed troops to enforce the order. However, the number of troops—and, in particular, mounted troops—stationed in the South continued to decline throughout 1866. As a result, most agents had to get along without military support and thus often lacked power to make arrests under the order. At best, assistant commissioners could send troops to particular localities to make arrests as the need arose, but since there was so much violence and so few troops, they could deal with only a small portion of the violence. "We have so many serious outrages to correct that we cannot waste our strength on such cases as these where a man simply gives another a blow with a stick," wrote Absalom Baird when an agent asked that troops be dispatched to deal with a case of assault.
"There are murders and maimings everywhere to be attended to first." Moreover, in some places troops were so Negrophobic that they were worthless in protecting blacks from violence. "Many of the officers in command of troops manifest an aversion to the Bureau and do not seem disposed to carry out its provisions," noted R.K. Scott, the assistant commissioner for South Carolina. "... [I]n many localities the freedmen fear the troops as much as their former owners." 74

A more fatal flaw, however, lay in the nature of the remedy which the order afforded. Because Johnson had forbidden the use of military commissions, Grant's order merely provided that officers could arrest and hold parties when the civil authorities declined to act. When state officials decided that they were ready to try persons arrested under the order, military officials had to turn their prisoners over for trial. And since the order did not authorize military officials to re-arrest persons if the civil authorities failed to act justly, judges and magistrates often gave those whom the military forced them to try the mere form of a trial. When, for example, Bureau officials turned the men arrested by troops on the Eastern Shore of Virginia over to the civil authorities, a magistrate merely tried them for misdemeanor. Although the crime they had committed was clearly a felony, Bureau officials could do nothing to force the judge to enforce the full rigor of the law. 75

Howard realized that General Order No. 44 was a stop-gap and moved to implement regulations which would provide
Bureau officials authority to try, as well as to arrest, persons who committed acts of violence against blacks. In late July, after Congress passed the second Bureau act, he convened a meeting of assistant commissioners in Washington to discuss changes that should be made in Bureau administration. Although the men who attended were primarily concerned with more mundane matters, they also discussed problems involved in securing blacks justice. After the meeting adjourned, Howard drew up a circular which delineated the Bureau’s judicial authority under the July 16 act and established regulations for Bureau officials to follow in re-convening Bureau courts. Courts, the circular stipulated, should be composed of the local Bureau agent and two civilians, one chosen by whites, the other chosen by freedmen. They were to have jurisdiction in civil cases to which blacks were parties if the sum in dispute was less than $300, and in criminal matters, agents might impose fines of up to $100 or sentences of as much as thirty days' imprisonment. Moreover, the circular authorized agents to enforce their decisions by military power and denied state courts the right to revise decisions made by Bureau courts. On the question of what action agents were to take in more serious cases, the circular was equivocal, authorizing them to turn persons guilty of capital crimes and felonies over to state or federal courts for trial, or to call upon military officials to convene military commissions to try such cases.76
As Howard anticipated, the circular encountered opposition from the White House. The Freedmen's Bureau extension of July 16, 1866, required Johnson to issue regulations to govern Bureau officials in trying cases in which the civil courts denied blacks justice. Either because he feared that Johnson would act too slowly or that he would kill the measure, Howard released it without obtaining presidential approval. On September 19, he sent the circular to assistant commissioners, authorizing them to comply with its provisions if it became necessary to re-establish Bureau courts. Not until mid-October did he submit the measure to Stanton for examination and approval. It is impossible to tell whether the War Secretary submitted the circular to Johnson (who then dragged his feet) or whether, fearing that the president would not approve, he chose to take no action at all. At any rate, Stanton returned the circular to Howard on October 29, noting that it needed "further consideration." 77

Although Howard refused to withdraw the circular, the circumstances under which he promulgated it kept it from being widely used. In his letter forwarding the circular to assistant commissioners, he ordered his subordinates not to make the regulations public. Because he was uncertain of his authority and anxious to keep the instructions from being publicized, the Commissioner neither demanded nor urged assistant commissioners to re-establish Bureau courts. As a result, assistant commissioners, apprehensive of acting
under the new regulations, failed to implement them, and the Bureau's ability to protect blacks from injustice remained essentially unchanged. 78

Not until mid-December, however, in the aftermath of publication of the Supreme Court's opinion in the Milligan case (December 17), did Howard rescind the circular. Because War Department officials had eagerly awaited the opinion, it is likely that Howard became aware of it immediately and discussed its implications with other War Department officials. Although the Court's opinion did not speak to the question of the validity of congressionally-authorized military trials of civilians in the unrestored states, Howard probably felt that Johnson would use the case to buttress his opposition to military interference with southern civil authorities. On December 19, he informed assistant commissioners that they could no longer use the circular as authority to try civilians. 79

Howard's prediction of Johnson's reaction to the Court's opinion was soon borne out. In late November, Dr. James Watson, a prominent citizen of Rockbridge County, Virginia, murdered a freedman. Although there were numerous witnesses, an "examining court" composed of six justices of the peace decided that Watson should not be tried for the murder. When he learned of the incident, General John M. Schofield, Brown's successor, decided that unless such cases were tried by the military, justice would not be done. On December 8, Schofield informed Howard that he had arrested
Watson and would try him by military commission under the authority conferred by the July 16 act. Howard "rejoiced" at Schofield's decision and encouraged him to proceed with the trial. "It is better to test the law now," he enthused, "and if it is not sound, Congress can make it so." However, when Watson's attorney brought the case to his attention, Johnson, after consulting with Stanbery, ordered Schofield to dissolve the military commission. According to the President, the military courts authorized by the second Bureau act did not, in light of the Milligan precedent, have authority to try civilians when, as was true in Virginia, the civil courts were open. 80

Although Johnson's interpretation of the Milligan decision seemed to foreclose the possibility of military trials of civilians, Howard refused to acquiesce. In late January, 1867, he learned that several of the Supreme Court justices who had been involved in the decision did not feel that the case applied to "the States not yet represented in Congress." On January 30, in a letter sent to five assistant commissioners, he asked that they arrange with a federal judge to have a civilian who was to be tried by military commission taken before a federal court on a writ of habeas corpus. After the case had been removed to the federal court, Howard wanted the assistant commissioner to get the case before the Supreme Court. There, the question of the Bureau's authority to try civilians under the second Bureau act could be tested. If, as Howard suspected, the high
court sustained the act of Congress, Bureau officials would be free to try civilians by military courts in spite of Johnson's objections.\textsuperscript{81}

Colonel C.C. Sibley, the new Assistant Commissioner for Georgia, had a case pending which could be used as the test Howard desired. Sibley decided to have A.A. Bradley, a black from Massachusetts who had harassed South Carolina and Georgia Bureau officials and who was already under military arrest, tried by military commission. In preparing to have Bradley brought before the federal district court, Sibley went to Henry Fitch, the federal attorney, to ask how he should proceed. Although Howard had marked his letter of instructions "strictly confidential," the assistant commissioner, in the course of his discussion with Fitch, showed the federal attorney Howard's letter. Fitch, a good Johnson man, informed Orville Browning, Johnson's Secretary of the Interior of the affair. "What Genl Howard's course may be I cannot . . . tell, though I strongly suspect," he noted. "... I have no intention of assisting politicians in complicating issues already confused." Browning forwarded Fitch's letter to Johnson, who immediately quashed Howard's attempt to have a test case taken before the high court.\textsuperscript{82}

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Bureau officials' desperate attempts to extend military jurisdiction reflected their growing doubts about blacks' ability to protect themselves through the state courts.
Originally, they had believed that violence and injustice were the result of momentary passions and that whites, recognizing that it was in their best interest to do so, would ultimately treat blacks justly. Thus, if blacks possessed equal rights in state law, they would eventually be able to protect themselves through the normal legal channels. By early 1866, Bureau officials realized that the cooling of passions would take longer than they had originally hoped, and, consequently, that the national government should provide blacks protection for several years to come. Yet during the course of 1866, Bureau officials' ability to protect blacks from injustice declined. Andrew Johnson, in an effort to vindicate his own reconstruction policy, put an end to trial of civilians by the military and, subsequently, checked attempts by Bureau and military officials to use military power to shield blacks from violence. Moreover, Bureau officials found Congress' Civil Rights Act, with its emphasis on equal rights in state law, too narrow to be of use in dealing with more subtle means of discrimination and with violence. Nor was the future bright. Neither Howard nor the moderate Republicans who shaped congressional policy were thinking of a permanent restructuring of the federal system in a way that would increase the ability of federal officials to protect blacks from injustice at the hands of state officials.
RICE UNIVERSITY

TO SET THE LAW IN MOTION: THE FREEDMEN'S BUREAU AND THE LEGAL RIGHTS OF BLACKS, 1865-1868

VOLUME II

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Chapter V

"The Irrepressible Conflict"

In his first report to Congress (December, 1865), Howard discussed Bureau contract labor policy in some detail. He explained that, because of disorder in the South and the Bureau's inability to provide blacks with land of their own, Bureau officials had encouraged blacks to work for white landowners. Had this not been done, he suggested, hundreds of thousands of blacks would have been left homeless and without means of subsistence. As such, they would have threatened social stability and the ultimate success of free labor in the South. Moreover, he noted that agents had encouraged planters and laborers to enter into written contracts in order to make the obligations of such agreements more readily enforceable. Thus both blacks and whites could be introduced, under close supervision, to rights and obligations incumbent on laborers and employers in a free labor economy. ¹

Yet the Commissioner readily admitted that Bureau labor policy was far from perfect. Most freedmen who entered into contracts, he acknowledged, had been subject to close supervision by their employers. As a result, blacks had not developed the self-reliance necessary to nourish their
newly-won freedom in a society as intensely individualistic as that of mid-nineteenth century America. "My objection to the system I have been obliged to adopt," he wrote, "has been its tendency to check individuality, not sufficiently encouraging self-dependence..."2

While contract labor may have been a necessary evil in 1865, as the 1866 planting season approached there were several alternatives to the contract system. Bureau officials might, for example, dispense with written contracts and allow freedmen to work for landowners without first entering into a written contract. In theory at least, this would deprive freedmen of security against being dismissed before the end of the year and might make it more difficult for them to obtain redress in case of contract violations by their employers. With the return of jurisdiction over blacks to state courts, however, guarantees provided by yearly contracts became less meaningful. Most freedmen were impecunious and therefore could not afford to bring suit against their employer for violation of contract. And even if they were able to bring suit, their chances of success before a white judge and jury were small. Doing away with the contract system, on the other hand, afforded blacks a distinct advantage. If not bound by contract, workers could leave employers who treated them badly or who paid them less than they could obtain elsewhere. And if they decided to leave an employer, the employer could not enforce specific
performance of a contract or withhold back wages in an attempt to induce them to remain.

Among Bureau officials, Wager Swayne, taking a hint from Alabama Governor Lewis Parsons, gave the clearest statement of support for abandoning the contract system. Parsons, in vetoing a contract labor bill enacted by the Alabama legislature in December, 1865, reminded legislators that, in common law, an employer's only remedy against violation of contract by a laborer lay in a civil suit for damages. In a report to Howard, Swayne explained that because most blacks did not possess sufficient wealth to make a damage suit worthwhile, Parsons' message pointed to "an abandonment of the contract system." If, he reasoned, contracts did not give planters a more summary remedy against violation of contract by laborers, there would be little incentive for them to make written contracts with their hands. After giving the matter careful consideration, Swayne concurred with Parsons and recommended that Bureau officials no longer encourage freedmen to enter into contracts for stipulated periods of time. Swayne admitted that planters might take advantage of their hands if there were no written contracts, but contended that this would put blacks at no more of a disadvantage than the litigation-oriented contract system. Moreover, if contracts were dispensed with, freedmen would be able to take advantage of the labor shortage to force landowners to offer them employment on more favorable terms. "The true security of labor . . .
is that when the laborer finds himself ill-treated, or his wages insufficient or unsafe, he can quit without having to account to anybody," Swayne enthused. "This is more and better than all laws." He believed that experience in dealing with landowners, bolstered by freedom to abandon an employer at will, would equip blacks with the self-dependence they needed to improve their lot.³

As a second alternative to the contract system, Bureau officials might have sustained blacks' attempts to force landowners to rent them land. In 1865 and to an even greater extent in 1866, freedmen, reluctant to work in gangs under the supervision of white overseers or planters, sought to gain a modicum of independence by renting land. Although the tenacity with which freedmen resisted wage contracts and sought to rent land varied from place to place, throughout the South blacks evidenced a strong desire to rent. However, most planters, convinced that black renters would ruin their land and reluctant to surrender the control over blacks which the gang system afforded, refused to rent to freedmen. Although Bureau officials had rejected the idea of encouraging freedmen to demand rental agreements in 1865, increased stability in the South rendered rental agreements more feasible as the 1866 planting season approached. During the winter of 1865-6, Howard and his subordinates might have encouraged freedmen to demand rental agreements from planters, supported those who refused to work for planters
except under rental agreements and exerted pressure on landowners to acquiesce in blacks' demands.\textsuperscript{4}

The contract system offered stability and order at the expense of blacks' independence and self-reliance; abandonment of the contract system offered blacks greater independence at the expense of stability and order. Given these alternatives, it is not surprising that the conservative Howard chose to retain the contract system in 1866. He believed that many of the conditions that had made the contract system necessary in 1865 persisted in 1866 and that abandonment of the contract system might prevent emergence in the South of a progressive, well-ordered society based on free labor. The commissioner felt that during 1865, landowners and black laborers had made strides toward understanding their respective rights and obligations. However, he was convinced that both groups imperfectly understood these rights and obligations, and that they might ignore them if not constrained by written contracts. Similarly, Howard believed that confidence between landowners and workers—essential if the free labor system was to function smoothly—had increased during 1865. But he felt that employers and workers remained suspicious of one another and that the confidence which had grown up in 1865 would evaporate if both parties' rights were not secured them by written contracts. Moreover, in his own mind at least, he did not resolve the dilemma between order and independence completely in favor of order; the two, he felt, were not mutually
exclusive. Howard believed that after the contract system had taught employers and employees their respective rights and obligations and had created a smoothly functioning free labor system, they could dispense with it.

The Commissioner probably did not consider blacks' financial inability to prosecute employers for violation of contract or their difficulties in obtaining justice in such cases telling arguments against the contract system. Since Bureau agents in most states continued to settle contract disputes, blacks would have access to an inexpensive and impartial forum in which to prosecute contract violations. In addition, Howard, with his faith in reason and progress, continued to believe that southern hatred of blacks would "not bear the light of reason or experience." Once southern whites realized that freedmen would work better when treated fairly, he felt, southern courts would mete out even-handed justice to blacks.

Howard was more favorably impressed with rental agreements as an alternative to the contract system. During his first months of service with the Bureau, he had come to understand that land ownership would give blacks the independence necessary to sustain freedom and the encouragement to labor industriously. Although his hope of providing large numbers of blacks with homesteads had been dashed on the rocks of presidential opposition, the Commissioner continued to encourage black land ownership. When Congress convened in December, 1865, he pressed congressmen to enact
legislation confirming possessory titles to lands along the South Carolina and Georgia coast given blacks by General William Sherman. At the same time, he suggested that Congress enact a southern Homestead Act and lobbied in favor of the measure when Congress considered it. Moreover, when it became apparent that most blacks would not be able to obtain land of their own, he came to see renting as a substitute for land ownership. Not only would renting give blacks greater independence than wage or share contracts, but the prospect of renting land would encourage blacks to be industrious. "The prospect of renting and owning land is . . . one of the strongest inducements to the more enterprising of the negroes," he informed South Carolina's William Trescott, "and by no means should that prospect be impaired." 6

Yet Howard failed to suggest to assistant commissioners that they encourage rental agreements. Occasionally, he spoke to subordinates of the merits of such agreements, but he neither issued a policy circular encouraging rental of land by blacks nor authorized subordinates to support blacks' attempts to force whites to rent them land. Politics, as well as temperament, made him reluctant to use the power of the Bureau to coerce landowners into rental agreements. Such dictation would have been, for Howard, an intolerable interference with the right of individuals to use their property as they saw fit. And given Andrew Johnson's hostility toward military infringement on the
liberties of southern whites, Howard undoubtedly realized that the White House would not have tolerated such interference. 7

However, this does not completely explain why the Commissioner failed to encourage freedmen to seek rental agreements or to lend moral support to blacks who resisted wage contracts. Reluctance to take even these steps reflected Howard's essential conservatism: he was unwilling to risk the disorder that such measures might engender. Agitation for rental agreements, he believed, would meet planter resistance and, if blacks refused to go to work until planters agreed to rent them land, would create a great deal of unemployment. Moreover, he found that conflict over rental agreements would increase hostility between freedmen and landowners and thus undermine social order and the ultimate emergence of a well-ordered free labor system in the South.

Since Howard was unwilling to alter the contract system, assistant commissioners soon began the difficult task of inducing freedmen to enter into contracts with landowners. During late fall and early winter, they issued circulars ordering agents to exhort freedmen to enter into contracts for the entire 1866 growing season as rapidly as possible. Predictably, assistant commissioners' chief concern was preservation of order; without contracts, blacks would be without homes and means of support and, as such, would be a threat to social stability. If, on the other
hand, blacks entered into year-long contracts as soon as the 1865 harvest was completed, they would have homes during the winter months and be settled on plantations for the coming year. In addition, fear that blacks would resist entering into contracts because they anticipated receiving homesteads from the government in January, gave added impetus to Bureau efforts. If Bureau officials could not dissuade freedmen from believing that they would receive land and could not induce them to go to work for landowners, at best, it might be too late for planters to prepare their fields for the coming crop. At worst, tensions between planters and freedmen, compounded by blacks' disappointment at not receiving land, might spark violence. "I apprehend a good deal of excitement about the first of January," remarked General Charles Howard, "and everything that we can do beforehand to secure quiet will be a great gain."

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As many Bureau officials feared, freedmen were reluctant to enter into new contracts at the end of the 1865 season. Despite a concerted effort by Bureau personnel to eradicate the idea, many freedmen persisted in their hope of obtaining homesteads and refused to commit themselves to work for planters in 1866. Nor were blacks' hopes without foundation. During the latter years of the war, white southerners had used the specter of confiscation to bolster support for the Confederate war effort, and many blacks had
inadvertently learned of the prospect of land redistribution from their masters. In the aftermath of the war, there were further indications that the government might give freedmen homesteads. Not only did Union soldiers tell blacks that they were to have land of their own, but Howard drew up plans to divide abandoned and confiscated lands among blacks and, in several states, assistant commissioners announced plans for such a division. These straws in the wind, combined with blacks' strong distaste for working under the direction of their former owners, led many freedmen to believe that the promise of land would become reality—even in the face of assertions to the contrary by Bureau officials.9

Hope of obtaining land, however, was not the only reason blacks hesitated to contract. In some places, freedmen showed little illusion about receiving land from the government, but were reluctant to work unless planters agreed to rent them land. The demand for rental agreements was sharpest on the South Carolina-Georgia coast. There federal officials had allowed blacks to stake out claims to homesteads during the war, freedmen were unwilling to submit to wage contracts when, after the war, land they claimed was returned to its former owners. Even many low-country blacks who had not actually laid claim to land during the war were vehement in their demand for rental agreements. Less closely tied to white planters by paternalism than blacks in other parts of the South and disappointed in their
hope for land redistribution, they firmly resisted wage or share contracts. On one large plantation near Savannah, for example, freedmen refused to work for wages, but remained on the place and threatened other blacks who agreed to work for the owner with violence. Although freedmen in other parts of the South were not as aggressive in their demands, many attempted to extract rental agreements from landowners and only reluctantly acquiesced in wage or share contracts.¹⁰

Even where freedmen were willing to work for wages, there were problems which prevented smooth negotiation of contracts. In many instances, blacks felt that wages offered by planters were too low and refused to contract until employers offered more reasonable terms. Often, too, freedmen refused to work under the conditions proposed by landowners. Many freedmen, for example, refused to enter into contracts unless employers agreed that they would not appoint overseers to direct blacks' labor. Similarly, many blacks, chastened by long-term agreements which left them with nothing at the end of 1865, moved to towns and cities where they could obtain odd jobs which assured them regular pay, allowed them more independence of whites and gave them greater security from white violence. Other freedmen, dissatisfied with working for their former owners or those who had employed them in 1865, sought new employers in 1866. In numerous instances, however, planters refused to hire blacks who had been owned by their neighbors and, as a result, contract negotiations came to a standstill. In Lowndes County,
Alabama, blacks were determined to have new employers in 1866, while planters refused to admit that blacks could work for whomever they chose. Although landowners agreed that they "would hire no negro away from home" and resorted to violence to break laborers' resistance, many blacks refused to enter into contracts with their former owners. In the end, faced with a shortage of workers and fearful that unsettled conditions would prevent them from planting their crops on time, planters began to hire freedmen at random.11

*   *   *   *   *

Because planters and laborers had difficulty in coming to terms with one another, Bureau agents developed measures to encourage contracting. Howard, preferring to allow assistant commissioners to draw up such measures, did not prescribe detailed measures for assistant commissioners to follow in dealing with labor relations. He sometimes reversed policies which were at odds with overall Bureau policy, but because of imperfect knowledge of affairs at the grass roots, he was limited in monitoring the activities of assistant commissioners. As a result, even though assistant commissioners knew the general aims of Bureau policy and, for the most part, adopted measures compatible with those aims, there were variations in labor policy from state to state. Within states, the story was the same. Assistant commissioners were fairly successful in neutralizing centrifugal tendencies by corresponding with agents, by
appointing officers to make tours of inspection and by reversing unacceptable actions taken by agents. However, even the most dedicated assistant commissioners found it difficult to supervise agents' activities thoroughly, and, in consequence, agents varied in the way in which they dealt with matters of labor relations.

One-half of the problem of encouraging planters and laborers to enter into contracts was to induce planters to make fair, written contracts with their employees. Most assistant commissioners used the carrot-and-stick approach in dealing with the problem. They stipulated that the Bureau would recognize as legitimate only written contracts which were fair to employees. While they did not demand it, assistant commissioners strongly recommended that parties have their contracts approved by agents. In this way, agents could examine contracts, explain their provisions to laborers and advise planters whether the Bureau would recognize the agreement. In theory, verbal contracts and agreements which agents deemed unfair would still be recognized by state courts. But since planters were uncertain whether the Bureau would allow state courts jurisdiction in contract disputes and since they wanted agents to aid them in holding blacks to their agreements, Bureau policy induced many to bring contracts to agents for approval.12

In several instances, Bureau officials sought to implement firmer measures. In Virginia, Captain C.B. Wilder, in
charge of freedmen's affairs on the Peninsula and the Eastern Shore, directed subordinates to disregard all contracts which an agent had not approved. However, assistant commissioner Orlando Brown, after consultation with Howard, ordered Wilder to withdraw his order. The Bureau, Brown explained, would not deny individuals freedom of contract and therefore would recognize any agreement which was not patently "injurious or unjust," regardless of whether it had been approved by an agent.\textsuperscript{13}

Georgia's assistant commissioner, Davis Tillson, finding that many planters had finagled blacks into unfair contracts, took more dramatic action than had Wilder. In mid-December, he ordered his agents not to approve contracts which gave first-class male field hands less than $12 per month. Moreover, he sent officers into areas in which blacks were bound by unfair contracts and ordered them to encourage laborers to leave employers who refused to bring their contracts into line with Bureau specifications. A month later, the Georgia legislature passed a joint resolution affirming the validity of all contracts made in the state between blacks and whites. In response, Tillson drafted an order declaring null and void all contracts which an agent had not approved and prohibiting blacks from working for employers who refused to bring their contracts before agents for approval. Although he did not interfere with Tillson's earlier measures, Howard refused to approve the proposed order. "I prefer [that] you should correspond
with your agents privately," he informed Tillson, "and instruct them to withhold approval from unjust papers rather than [that] you should authorize a general disapproval of all agreements except where they are made by agents."  

Even though Bureau policy was not firm enough for some, it often prevented planters from forcing freedmen into patently unfair contracts. In James City County, Virginia, a mass meeting of planters resolved that they would not employ blacks unless the Bureau guaranteed that agents would compel laborers to work well and would permit planters to enforce specific performance of contracts. The military commander at Williamsburg considered planters' demands just and assured them that he would "manage the whole thing to suit them." However, Captain C.B. Wilder, the Bureau agent at Fort Monroe, upheld blacks who refused to accept employment on planters' terms and warned planters that the Bureau would not tolerate forced labor. Brown agreed that "the plan of enforcing labor is decidedly opposed to the policy of the Bureau" and conferred with the department commander to end military opposition to Bureau labor policy. Subsequently, planters in the Williamsburg area acquiesced and employed freedmen on terms suggested by the Bureau.  

Although Bureau policy gave blacks protection from being forced into unfair contracts, it often gave them little choice but to work for planters under wage or share agreements. In several states, Bureau officials responded to blacks' unwillingness to contract with arbitrary measures.
Florida assistant commissioner Thomas Osborne did not pursue a consistent policy of coercion, but, on occasion, forced blacks into "fair" year-long contracts with planters. In January, 1866, Osborne learned that there were large numbers of under-employed freedmen in Jacksonville who refused to work for planters. In response, he sent a special agent to the town and ordered him to take a census of its black residents. The agent was to send all those who did not have "sufficient employment to support themselves" to Tallahassee by rail, where they would labor under contracts made for them by Osborne. Apparently the agent actually shipped few freedmen to the Tallahassee region, but most Jacksonville blacks were convinced by his activities to go to the country and find work for themselves.16

In Arkansas, J.W. Sprague was highly inconsistent in allowing agents to coerce blacks into wage or share contracts. Although he thought blacks best-served by year-long contracts with planters, he instructed agents to allow freedmen to work under any type of agreement they chose. In August, the agent at DuVall's Bluff reported that there was a surfeit of blacks in the small town and that most were barely able to earn a subsistence. "The work [is] mostly . . . job work at which they are not employed more than half the time . . .," he complained, "but they prefer to lay around town and live in that style to going out to the country. . . ." Sprague asked the black minister at DuVall's Bluff to advise freedmen to go to work on
plantations ("where they will be subject to less temptation"), but refused to allow the agent to force blacks to make contracts. Yet in other instances, the assistant commissioner gave vent to his desire that blacks enter year-long contracts with planters. The agent at Camden, for example, informed Sprague that he permitted only those who could produce "evidence of character" to remain free of contracts which bound them for the entire year. "We are intending to put every negro in this Dist . . . under contract . . . except such as may have a special permit to conduct his own business," he informed Sprague. "I am fully determined to rule the labor of this District next year or 'quit the business.'" Sprague, however, did nothing to stop the agent from implementing this program.17

Although Bureau labor policy in Mississippi was benign, Bureau officials failed to prevent state authorities from enforcing arbitrary measures. Samuel Thomas, who had already decided that approval of contracts was the province of state magistrates, directed his subordinates to interfere with labor relations as little as possible. As a result, agents merely urged freedmen to enter into year-long wage contracts, but did not coerce them into such agreements. However, Thomas was under close supervision by a conservative department commander and was unable to enjoin enforcement of the legislature's repressive vagrancy law. As a result, in many parts of the state, sheriffs and magistrates threatened blacks who refused to contract with prosecution
as vagrants and thus used the law to force laborers into contracts on terms favorable to planters.18

It was Davis Tillson, however, who adopted the most arbitrary policy. In mid-December, he became concerned about blacks' reluctance to contract and ordered agents to make contracts for freedmen who refused to make them for themselves by January 10, 1866. Tillson's policy protected blacks from unfair agreements by stipulating that when agents made contracts for freedmen, they demand that employers pay first-class male hands at least $12 per month. But the policy prevented blacks from bargaining with planters concerning working conditions and precluded them from working without written contracts. Although it appears that agents infrequently made contracts for freedmen, they did use Tillson's order to bully reluctant freedmen into year-long contracts. The agent in Jefferson County, for example, forced an elderly freedman into a year-long contract to labor on a plantation, even though the man had accumulated savings from a previous job, was in ill-health and had a sick wife to care for. Upon learning of Tillson's order, however, Howard reversed it. "I cannot approve of compulsory labor in any form . . . ," he wrote. "You have sufficient ability and moral force to settle the question without it."19

Although Orlando Brown adopted a potentially repressive policy, Virginia agents implemented it in a manner which, for the most part, respected freedmen's rights.
Brown repeatedly stated that agents were not to coerce blacks, but in a circular of November, 1865, he deprived laborers of important leverage in bargaining with planters. If freedmen refused to accept employment offered by planters on terms that agents deemed fair, he stipulated, agents should arrest them and force them to labor on the public works without compensation. Brown's circular protected freedmen from being forced to work for unreasonable wages, but, like Tillson's order, gave them little alternative to wage or share contracts. Because laborers who refused to accept "fair" wage or share contracts were liable to punishment as vagrants, they could not hold out for rental agreements. Moreover, by stipulating that blacks work for "planters or others who have steady employment for them," Brown encouraged agents to prevent blacks from engaging in irregular job work. 20

In some places, agents, acting under Brown's circular, used a combination of suasion and threats to induce blacks to contract with planters. In late November, a Louisa County planter complained to Brown that freedmen in his county were renting worn-out land and subsisting on what they grew in their gardens and the small sums they earned by working occasionally for planters. He informed Brown that planters could not operate profitably "without constant and reliable labor" and asked that the Bureau provide planters with a dependable labor force by forcing blacks to enter into contracts. Brown, sympathizing with planters' demand
for predictability, referred the letter to the superintendent at Gordonsville and directed him to "aid the citizens in correcting the condition of things complained of." Moreover, planters attested agents' success in convincing blacks to contract. An Isle of Wight County resident reported that agents in neighboring Surry and Sussex counties had been successful in inducing blacks to contract and asked that an agent be sent to Isle of Wight. "There is no P. Marsal [here]," he lamented, "& everything is in a disorganized condition." 21

Although agents exhorted and cajoled, most did not use the authority conferred by Brown's circular to coerce blacks. In New Kent County, where planters were short of hands, many freedmen refused to contract, choosing, instead, to rent small, worn-out parcels of land and to supplement the small crop they raised with income from odd-jobs. The agent in New Kent attempted to convince freedmen that they should enter year-long contracts with planters, but when they refused, he did not force them to contract. In Dinwiddie County, where a similar situation prevailed, the agent felt that blacks who rented would not have sufficient income to subsist themselves and their families. However, when he attempted to force renters to enter into wage contracts, his immediate superior, the superintendent at Petersburg, overruled him. Similarly, many blacks who resided in Virginia's towns eked out a meager subsistence by performing irregular job-work. Agents sought to convince
these freedmen to leave the towns and to contract with
planters, but, in most instances, they did not force blacks
to go to the plantations. "The freedmen are all employed
and get fair wages, that is those who are willing to leave
the town and go to the country," noted the agent in
Albermarle County. "I have used all my persuasive powers
to try & effect this, but it is impossible to conceive the
great dislike some have to be away from Charlottesville."22

In Alabama, where there was a minimum of direction from
the assistant commissioner, agents dealt with labor relations
in various ways. Some agents believed that blacks should
enter into wage contracts as soon as possible and used
their authority to bully freedmen into such agreements.
Colonel George Robinson, anxious to remove the freedmen who
had crowded into Mobile during the previous year, forced
freedmen to accept contracts with southwestern Alabama
planters who came to the city looking for hands. Although
Robinson was not the only Alabama agent who took such
measures, most agents seem to have been less arbitrary.
For the most part, agents encouraged blacks to enter into
year-long contracts and warned that they would treat
freedmen who refused to work as vagrants, but they neither
used the threat of vagrancy to force blacks into contracts
on planters' terms nor prevented blacks from working without
year-long contracts.23

Absalom Baird, the assistant commissioner for Louisi-
ana, felt that blacks should enter into wage or share
contracts, but eschewed forcing them into such agreements. "There are those . . . who advise you not to make contracts for your labor," he advised freedmen, "and the advice they give you may be worthy of consideration next year . . . , but it is not so now. . . ." He thus instructed subordinates to encourage freedmen to contract with planters, but demanded that they allow laborers to bargain freely with planters. In early January, 1866, for example, he ordered his agent at Shreveport to stop the civil authorities from using the state's vagrancy law to force blacks to contract. "There is no reason why a black man who does not contract with planters on any terms which they (the planters) may dictate shall be regarded as a vagrant," Baird noted, "any more than a white man who may be out of employment, and the negro will not be regarded as such until there is sufficient reason to show that he will be an expense to the parish." Moreover, Baird refused to permit agents to remove from towns and cities blacks who were not regularly employed. In response to a complaint from the mayor of Carrollton that large numbers of underemployed freedmen had congregated in the town, Baird sent Colonel M.A. Reno to Carrollton to investigate. "There are several houses in which a number of negroes are congregated, but they are not so badly off as hundreds in . . . [New Orleans]," Reno reported at the conclusion of his inspection. "I do not see anything that can be done so far as this Bureau is concerned."
In South Carolina, Bureau officials also attempted to prevent agents from coercing blacks into contracts. As did other assistant commissioners, Rufus Saxton and his successor, Robert K. Scott, encouraged freedmen to enter into year-long contracts with planters. In order to stimulate contracting, Saxton directed each agent to select two citizens to serve, with himself, on a "contract board" which would go from plantation to plantation and facilitate negotiation of contracts for 1866. Although in many parts of the state planters were reluctant to cooperate and the boards played a minimal role, in other areas they seem to have been successful. In addition to creating contract boards, Saxton and Scott pressed agents to travel throughout their districts and to hold mass meetings of freedmen and planters at which they could proselytize the contract system. 25

However, both men disliked compulsion and fought an up-hill battle to prevent agents from coercing laborers. Agents in the Palmetto state were, for the most part, Army officers who commanded troop detachments stationed at various points in the state and who agreed to act as Bureau agents in addition to their military duties. Many of these men had little sympathy for blacks and sought to secure order in their districts by forcing freedmen to contract with landowners as early as possible. Thus the military commander at Darlington urged laborers to come to terms with planters and warned that, if they did not, the contract board would
impose contracts on them. In other places, agents attempted to force blacks to contract with planters by requiring that they enter into contracts by a certain date (usually in early January) or face punishment as vagrants. Although Saxton and Scott possessed limited authority over these part-time agents, they seem to have been relatively successful in talking them out of policies which infringed on blacks' liberty to contract with whomever they chose. General James Beecher, for example, felt it best to compel freedmen to contract and issued several circulars to that effect, but opposition from Saxton and Scott deterred him from enforcing these circulars. 26

Even if they did not actually coerce blacks into wage contracts, Bureau officials adopted other measures which undermined blacks' bargaining position. During the winter of 1865-66, many laborers remained on plantations on which they had worked in 1865, but refused to enter into contracts for 1866 unless planters rented them land. Bureau officials might have remained aloof and left planters to their own devices in dealing with interlopers. However, even those who were most sympathetic to blacks' desire to rent respected property rights and believed that landowners had every right to evict squatters. This conviction, combined with fear that planter-laborer hostility would increase tremendously if planters and local officials attempted to remove recalcitrant blacks, convinced Bureau officials that they should aid planters in removing squatters. As a
result, assistant commissioners instructed agents to evict freedmen from plantations ten days after they declined to enter new contracts.27

Eviction, combined with planters' determination not to rent, effectively undermined blacks' attempts to secure rental agreements. Although, theoretically, laborers might leave plantations on which they resided and refuse to contract until local planters gave in, this seldom happened. Because planters adamantly opposed rental agreements, those evicted either entered wage contracts with other planters or found themselves without homes during the middle of the winter. "I have cleaned out eight plantations," noted the agent in Colleton County, South Carolina. "The result of that is the people have to look for something better and the result of this is . . . they find the best offer was at home and are beginning to return." As a result, laborers threatened with eviction, realizing that there was no place for them to go if evicted, generally acquiesced in wage or share contracts. "We are at the mercy of those who combine to prevent us from getting enough land to lay our fathers bones upon," Edisto Island, South Carolina blacks lamented. "From the houses we have lived in in the past we can do only one of three things[.] Step into the public road or the sea or remain on them working as in former times and subject to their wills as then."28

Bureau officials further undermined blacks' bargaining position by discouraging collective action. Because many
freedmen moved from the countryside into towns and large numbers of black women refused to work as field hands, there was a labor shortage in most parts of the South during the early years of Reconstruction. Although this shortage caused competition for laborers among planters and somewhat eroded planters' control of blacks, it did not completely destroy planter unity. Employers possessed superior economic power which allowed them to starve laborers into submission and good means of communication which allowed them to coordinate their responses to laborers' demands. In most places, planters were therefore able to prevent wages from becoming too high or to resist renting land to freedmen, even though they competed for laborers. Consequently, unless laborers in a given locality could coordinate their demands, they were no match for their employers and would constantly find themselves forced to accept employment on planters' terms. 29

Despite employers' advantages, Bureau officials believed that laborers could bargain effectively with planters on an individual basis. They felt that establishment of a viable free market society in the South demanded that individuals be free to bargain with one another; if freedmen obtained unnatural advantage through combination, they would badly upset the market mechanism. And this, combined with the erosion of mutual confidence between employers and laborers which such action would bring, threatened the success of the free labor experiment in the South. 30
Moreover, officials' paternalistic attitude toward freedmen contributed to their opposition to united action by black laborers. Although they constantly claimed that blacks possessed the same non-political rights as white men, on an emotional level, Bureau officials were unable to conceive of blacks as their equals. As a result, they believed that they were responsible for protecting blacks and for instructing them in the ways of freedom and that freedmen should seek protection from the Bureau rather than combine to protect themselves. Thus when laborers eschewed agents' advice and acted collectively to extract terms from employers, Bureau officials tended to view them as ungrateful, misguided, contumacious and dangerous. 31

When united action took the form of an understanding among freedmen to withhold their services until planters made concessions, agents usually did nothing but grumble. However, when blacks became more active in their resistance or when there was an obvious group of ringleaders, officials often broke the resistance. On the Georgia coast near Savannah, for example, a black lawyer from Massachusetts, Amos Bradley, denounced Andrew Johnson's decision to return land covered by Sherman's order to its owners. He urged blacks to protest the government's action by refusing to contract with white landowners unless compelled to do so. Because Bradley was articulate and carried his message from neighborhood to neighborhood, many blacks in the Savannah region united to resist wage or share contracts. In
response, however, Davis Tillson, convinced that Bradley was exercising a pernicious influence over the freedmen, ordered his subordinates to arrest the black radical and turn him over to the department commander for trial by military commission. Although Howard usually refused to countenance such repressive policies, in this instance even he acquiesced in Tillson's action.\(^{32}\)

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Thus aided by the Bureau, planters in most parts of the South were able to maintain the plantation regime. Although it is impossible to say with precision, perhaps one-half of all black agricultural laborers who entered into contracts worked for money wages. Under most wage contracts, laborers agreed to work for their employer for the entire year, while employers agreed to pay laborers a yearly or monthly wage. As might be expected, wages varied, ranging from a low of from six to eight dollars per month for first class hands in the Virginia tidewater to a high of from twenty to thirty dollars per month for first class hands in some parts of Arkansas. In addition, planters often agreed to provide rations, quarters and clothing free of charge for those who were included in the contract. When laborers had wives, children or dependent parents who were idle, planters generally provided them with rations and clothing, but deducted the price of such items from wages due the laborer. While these elements of wage contracts varied
considerably, there was one constant. In order to protect themselves, planters included provisions which stipulated that they were to pay laborers a small portion of their wage (from one-eighth to one-half) each month. Only when the contract had expired and laborers had faithfully complied with its terms was the planter to pay the balance. 33

Wage contracts were particularly popular among planters because they conferred great authority over laborers. Such contracts generally allowed planters to fine or to dismiss with loss of wages any worker who worked poorly, was insubordinate or left the plantation during working hours without permission. Moreover, by stipulating that employees were to work under the direction of their employer, wage contracts gave planters authority to work laborers in gangs, under supervision of overseers and drivers. Indeed, many wage contracts incorporated lengthy sets of regulations which stipulated at what time laborers were to rise and be in the fields, whether workers were to take their meals in the fields, how much garden space the planter was to allot to each family and whether the planter would allow hands to raise livestock and poultry of their own. Many contracts did not incorporate written regulations, but even these left no doubt as to the authority of the planter. They often stated that freedmen were to work under direction of their employer and to obey "customary" plantation regulations, or that hands were to follow such rules as were "usual and common for servants and slaves heretofore." 34
Most freedmen who did not work under year-long wage contracts agreed to work for a share of the crop which they helped produce. The fact that large numbers of freedmen entered into "sharecropping" contracts in 1866 should not lead to the conclusion that planters actually divided their plantations into small tracts of land and rented them to freedmen for a portion of the crop or for a monetary rent. Most share contracts in 1866 (and, indeed, for the remainder of the 1860's) differed little from wage contracts. The overwhelming majority of freedmen who entered share contracts agreed to work under direction of their employer and, in many instances, consented to include in their contracts regulations similar to those included in wage contracts. Thus most blacks who worked for a share of the crop worked in gangs and under close supervision. Even when planters divided their land into tracts, the tracts were, in most instances, worked by squads of laborers under close planter supervision. Moreover, share contracts gave planters much of the authority over laborers offered by wage contracts. Planters operating under share agreements could generally fine or dismiss without compensation any laborer who missed work without permission, worked poorly or was "insolent" to his employer. 35

Of course, there were differences between wage and share contracts. The most obvious difference was the way in which planters paid their hands. The portion of the crop which planters gave laborers generally varied from one-fourth
to one-half, depending on whether the planter provided subsistence for the laborer. Although many contracts stipulated that laborers would receive their share, in kind, as the crop was harvested, others were silent or specified that the planter could sell the crop and divide the proceeds among his employees. Once laborers had harvested the crop (or the proceeds of the crop were in the hands of the planter), the laborers' share would be divided among all the laborers according to their rank (i.e., first class hand, second class hand, etc.). A share contract in Lowndes County, Mississippi, for example, stipulated that first class hands would receive a full share of the crop while "2nd class hands [would] receive one-sixth less than first class hands . . . [and] 3rd class hands . . . one-fifth less than 2nd class hands . . . ." Some share contracts also differed from wage agreements because they gave planters a bit less control over employees. Thus in many instances, share contracts stipulated that laborers were not required to do general plantation labor, but that they were only to work on the crop in which they had an interest.36

Although an overwhelming majority of freedmen worked under year-long contracts and in gang labor situations, some were able to gain greater independence of whites. In most parts of the South, a few planters divided their plantations and farms into small tracts and rented them to black tenants. In these contracts, landowners generally retained authority to direct the work of his tenants, but, even so,
black tenants were freer of supervision than those who worked in labor gangs. Moreover, in places where large landholdings were not the norm, freedmen often performed odd jobs and did not enter into written contracts. Because blacks who worked irregularly changed employers more frequently and received pay more often than other freedmen, they achieved greater independence of whites than those who were bound by long-term agreements. 37

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Regardless of the nature of the contract, Bureau officials attempted to ensure that planters and laborers fulfilled their contractual obligations. Because they saw contracts as the key to progress and stability, the men of the Bureau believed that it was essential that they encourage (and, if necessary, compel) both parties to fulfill their contracts. Consequently, they refused to leave the work of supervising labor relations to those normally responsible--state judges and magistrates. Not only did they fear that state officials were too closely associated with white landowners to be impartial, but they felt that the normal channels of dealing with matters of contract--law and litigation--were not adequate to the task at hand. Although in some instances Bureau officials allowed judges and magistrates to act in cases of contract violation, Bureau agents did the lion's share of regulating labor relations. They attempted to prevent differences between planters and
laborers from getting out of hand, provided speedy, extra-
legal redress in some cases of contract violation, saw that
other such cases were taken before the civil authorities
and protected blacks from injustice at the hands of state
judges and magistrates.

One of the most difficult problems facing agents was
that of laborers who left employers before their contracts
expired. Planters feared that freedmen would bring them
into financial ruin by contracting to work for the entire
year and then absconding when the crop was at a critical
stage. Although the common law allowed employers to
institute a civil suit for damages in such cases and most
contracts permitted employers to retain any wages due an
absconding laborer, this was not sufficient security for
most planters. Since freedmen possessed little wealth, it
would be fruitless for planters to sue them for damages.
Moreover, planters feared that the irresponsible freedmen
would not hesitate to leave their employers simply because
they would lose compensation for past services. And when
several laborers left their employer, retention of back
wages would be small compensation to the planter who lost
his crop and his investment. Consequently, in order to
deter others from following suit, planters demanded that
examples be made of those who deserted their employers. To
this end, they sought and obtained from state legislatures,
statutes which made violations of contract a crime and which,
in some instances, allowed state officials or private
citizens to return absconding laborers to their employers. In addition, planters asked Bureau officials to compel specific performance of labor contracts. 38

This situation placed Bureau officials on the horns of a dilemma. What they perceived as blacks' irresponsibility irritated them, and they believed that it was essential for blacks to comply with their contracts if the free labor system was to be successful. They realized that employers could not succeed (and, conversely, that laborers could not prosper) unless planters had reliable labor. Consequently, officials sympathized with planters' demand for specific performance. However, Bureau officials were loathe to compel specific performance of freedmen's contracts (or to allow state officials to compel specific performance) because to do so would compromise the Bureau's commitment to equal rights. Specific performance of labor contracts was not permitted in common law and to authorize it in the case of freedmen would be to subject blacks to penalties which were not applicable to other free men.

Howard failed to resolve the dilemma. During the winter of 1865-1866, as state legislatures enacted statutes which compelled specific performance of blacks' labor contracts and made violation of contracts by blacks a crime, he dodged the issue. Although he probably wanted to enjoin the harshest of these measures, he failed to do so because he feared that his action would be overruled by the White House. As a result, he left his subordinates on their own
in dealing with these laws. Moreover, throughout 1866, he failed to give assistant commissioners instructions concerning what action agents should take when freedmen violated their contracts. In June, 1866, General Thomas Wood informed Howard that the national Civil Rights Act had made inoperable the Mississippi law authorizing specific performance of blacks' labor contracts. Wood complained that this created an unfortunate situation because it left employers with no effective remedy against laborers who broke their contracts. In his reply to Wood, Howard advised that agents "should use all of the authority in . . . [their] possession to see that . . . [contracts] were carried out" and suggested that the legislature enact a measure compelling specific performance for whites and blacks alike. In this instance Howard came down firmly in favor of compelling freedmen to fulfill their contracts and suggested that Wood resort to the vehicle which many of the black codes used to institute covert discrimination against freedmen. Yet he failed to issue a general order on the subject and the dilemma continued to plague assistant commissioners.³⁹

Left to their own devices, assistant commissioners handled the problem in a variety of ways. In several states, they resolved the dilemma in favor of order and stability and ordered agents to return freedmen who violated their contracts to employers. Thomas Osborne felt that the contract system sought primarily to keep freedmen from abandoning their employers "at a critical time."
Consequently, he directed agents to permit state officials to punish as vagrants freedmen who violated their contracts, and even permitted agents to compel freedmen who ran away from their employers to return and fulfill their contracts. Similarly, in South Carolina, Robert K. Scott followed a fairly consistent policy of advising agents to compel specific performance of labor contracts. Thus when he received complaints of violations of contract by freedmen in St. James County, he ordered the agent there to "... [give] the freed people to understand ... that after they have made contracts they will ... live up to them, or they will be forced to do so." 40

In Louisiana, Absalom Baird resolved the dilemma in favor of equal rights. Baird was disturbed by violation of contracts by freedmen, but refused to permit agents or the civil authorities to take action against freedmen that they would not take against whites. He prohibited Bureau agents and state officials from compelling specific performance and enjoined enforcement of the state law which allowed state officials to prosecute plantation laborers who violated contracts for vagrancy. Baird ruled that planters might retain wages due such freedmen or prosecute them in the civil courts for damages, but that they could not, either through Bureau agents or state officials, compel freedmen to serve out their contracts. He also advised agents that state officials could convict blacks of vagrancy only if they were
continually out of work and threatened to become an expense to local government. 41

Circumstances forced Mississippi Bureau officials to adopt a similar policy. In early 1866, after passage of the state labor and vagrancy laws, Samuel Thomas, who was under close supervision by Thomas Wood, the conservative department commander, allowed state officials to enforce the repressive laws. After Wood succeeded Thomas as assistant commissioner, however, Congress passed the Civil Rights Act which declared void any state law which discriminated against blacks. Shortly after the War Department promulgated the act, Wood reluctantly decided that, since the Mississippi labor and vagrancy statutes were discriminatory Bureau agents should not permit state officials to enforce them. Although Wood ordered agents to exhort and cajole freedmen to fulfill contracts, he refused to permit agents or state officials to return runaway freedmen to employers. Consequently, planters' only remedy when laborers violated their contracts was to retain wages due or to bring a suit for damages against absconding laborers. 42

In other states, however, assistant commissioners developed a policy which straddled the dilemma. Wager Swayne, for example, was neither willing to order agents to compel specific performance of contracts nor to allow state officials to sell freedmen who violated contracts to the highest bidder for six months. At the same time, however, he wanted to discourage freedmen from taking lightly their
contractual obligations. As a result, he ordered agents to punish freedmen who violated contracts by making them work without compensation for a week or two on the public works. At the end of their punishment, laborers were free to go back to their employers or to seek employment with whomever they chose. As an inducement for laborers to fulfill their contracts, however, Swayne stipulated that freedmen who refused to return to their employers forfeited all wages due them.43

In Arkansas, J.W. Sprague followed a similar course. Originally, he decided that employers' only remedies against freedmen for violation of contract were the same that they had against white men under state law—retention of wages due or prosecution of the culprit for damages. In February, the Bureau agent at Pine Bluff and a number of planters complained to Sprague that a group of freedmen whom a local planter had brought from Texas under contract to work on his plantation had abandoned their employer when they reached Arkansas. Not only had these freedmen abandoned their contract and entered into new contracts for higher wages, but numerous freedmen in the neighborhood had followed their lead. Although Sprague replied that employers' only remedy lay in retention of wages due or in civil suits for damages, the situation at Pine Bluff and in other parts of the state led him to take more stringent action. In early March, he issued a circular authorizing employers to follow any laborer who absconded and have the laborer's new employer
pay his wages to the original employer. Thus, the Bureau would not compel specific performance, but would make it highly unprofitable for freedmen to abandon their employers. 44

Although Bureau officials disagreed among themselves on the question of specific performance, most agreed as to what should be done with whites who enticed laborers away from their employers. Because of the shortage of plantation laborers, planters often resorted to luring freedmen away from planters who had already employed them. In response, state legislatures had included in the black codes statutes which provided stiff fines or even jail terms for individuals who induced a laborer to break his contract or who knowingly hired a laborer who was already under contract. Most Bureau officials, anxious to achieve stability, permitted and even encouraged the civil authorities to enforce these laws. And in Arkansas, where there was no such law on the books, agents themselves often fined planters who induced freedmen to break their contracts. Only in Mississippi, where Thomas Wood felt that the measure was at odds with the Civil Rights Act, did the Bureau enjoin enforcement of a state enticement law and refuse to permit agents to punish those guilty of inducing freedmen to leave employers. 45

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Bureau officials aided planters and encouraged stability in a number of other ways, as well. In the post-war
years, planters desperately attempted to retain firm control of their former slaves. They demanded from their legislators statutes which drastically restrained blacks' freedom, sought to force blacks to work under the same regime they had known as slaves and frequently resorted to violence to curb blacks' "insolence" or to force blacks to remain on the plantations of their former owners. In spite of planters' efforts, however, freedom greatly eroded their control. Not only were blacks, aided by the labor shortage, often able to choose their own employer and to force planters to pay them relatively high wages, but once employed, freedmen sometimes became discontented with the plantation regime and vented their discontent by refusing to work under the direction of their employers. When laborers became unruly and insubordinate planters often found themselves powerless to restore order. The agent at Greenville, Mississippi, for example, reported that planters in his district had been troubled by black insubordination and that they requested that a small squad of troops be sent to Greenville to aid them in maintaining order. "Lately there has been a large influx of freedmen from other states," the agent noted. "There are many discontented spirits among them, and the planters are fearful of trouble unless they be kept under proper restraint." Similarly, a planter living near Huntsville, Alabama, complained to the agent at Huntsville that his hands were unruly and begged the agent to come to his aid. "Will you be so kind as to come to my place today or tomorrow
afternoon," he inquired. "My hands are beyond my control. Yesterday all men but four refused to take care of the mules . . . & [on] Saturday would not get back to work on time by a long ways. . . . They are all the time swearing this is [no] better than Reb times & . . . won't do for free niggers." 46

If disagreement over interpretation of a contract was the root of the problem, Bureau officials sought to resolve the disagreement. But, regardless of what caused the disruption, they sought to break blacks' insubordination. They believed that harmony between planters and laborers was essential if free labor was to bring economic progress to the South and viewed work slow-downs and general insubordination as subversive of this harmony. If freedmen wanted to assert their rights, officials felt, they should do so in a way which would neither interfere with planting operations nor exacerbate hostility between planters and laborers. A Mississippi agent echoed the sentiments of others when he complained that one group of insubordinate hands vented their grievances "not in the business-like manner that a better-informed people would have done but among themselves in the grumbling, discontented manner of the ignorant and foolish." 47

Bureau officials dealt with insubordination in two ways. Upon learning of plantations on which laborers were unruly, agents visited the plantations, attempted to resolve differences between planters and laborers and exhorted
freedmen to go back to work. On a plantation near Vicksburg, freedmen engaged in a work slow-down to protest having to work under the direction of an overseer. Upon learning of the disturbance, the agent at Vicksburg went to the plantation, informed the laborers that their contract did not exempt them from working under an overseer and got them to return to their work. However, if laborers actually used force against their employers or refused to accept agents' "friendly" advice, agents employed more stringent measures. The owner of a Georgetown County, South Carolina plantation employed his son and a black overseer to direct farming operations, divided his employees into two squads, and appointed a black foreman for each squad. The laborers, however, disliked the black overseer and, led by one of the squad foremen drove the overseer and the manager from the plantation. The local Bureau agent, upon learning of the affair, ordered a squad of troops to go to the plantation and arrest the rebellious foreman. Although the laborers resisted and dispersed the small band of troops originally sent, the agent soon dispatched a more formidable contingent to the plantation. This time, the soldiers succeeded in arresting the "ringleaders" of the rebellion and the agent punished them by confinement at hard labor.48

Agents also helped planters maintain the plantation regime in less dramatic ways. When, for example, freedmen worked so carelessly that they endangered the crop, agents sometimes visited the plantation and exhorted them to labor
faithfully. Moreover, agents often resorted to harsher measures in dealing with freedmen who worked poorly. The agent in Prince Edward County, Virginia, for example, often ruled that consistently poor work by freedmen constituted a violation of contract and allowed planters to fire and retain the back wages of laborers consistently guilty of careless work. In South Carolina, agents frequently had freedmen who did not work well tried before provost courts. Thus in July, 1866, the provost court on St. Helena Island tried, on the charge of violation of contract, several freedmen who had failed to keep their employer's crop "out of the weeds." The Judge released several of the freedmen after lecturing them on their duty to their employer, fined several others five dollars and ordered the remaining laborers discharged from employment with loss of pay.49

Agents also protected planters in their right to control the coming and going of their employees. Because planters needed a dependable labor force, they demanded that agents punish laborers who absented themselves from the plantations during working hours. Unless a contract specifically stated that blacks were to obtain permission from their employer before leaving the plantation, agents generally refused to allow planters to fire blacks who left without permission. However, they did allow planters to fine laborers who missed work because they had left the plantation without permission. And in the case of workers who were frequently absent, agents imposed more severe
penalties. The agent at Pine Bluff, Arkansas, for example, arrested freedmen who were chronic absentees and turned them over to justices of the peace who convicted them of vagrancy and sentenced them to a short stint of labor on the public works. 50

In addition, agents generally reinforced planters' authority to direct the work of employees. Often freedmen who worked for a share of the crop, claimed that they were only obliged to work on crops in which they had an interest. In some instances, when contracts did not stipulate that laborers were to do other work, agents demanded that they do no more than plant, cultivate, harvest and prepare for market the crop in which they had a share. Thus despite heated complaints from planters, the agent at Kingstree, South Carolina upheld black croppers who, after harvesting their rice crop, refused to repair sluices and ditching in preparation for the next year's crop. However, in most instances both wage and share contracts gave planters authority to direct their employees' work and agents protected this prerogative. Moreover, even if contracts did not stipulate that laborers were to do other work, agents often interpreted silence in the planters' favor. The agent at Monticello, Arkansas, for example, ruled that freedmen working for a share of the crop should only perform labor which was necessary to the crop. But his definition of necessary labor included such things as tending livestock, repairing gins and presses and keeping plantation
fences in good repair. In Mecklenburg County, Virginia, the agent ruled that, because they had benefitted from grain sown the previous fall, laborers working on shares had to sow winter wheat and oats after they had harvested their own crop. 51

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Bureau officials not only attempted to protect rights secured planters by contract, but sought to protect laborers' contractual rights, as well. Because their paternalism caused them to be overly concerned with impressing on the former slaves the obligations incumbent on free laborers and because Johnson's restoration policy limited the extent to which agents could coerce white southerners, officials were undoubtedly more effective in aiding planters than laborers. But they were, nonetheless, genuinely concerned with shielding freedmen from violations of contract by employers; the success of free labor and the emergence of a progressive, well-ordered society in the South demanded as much. Just as they felt that blacks had to be taught to be dependable, energetic workers, they realized that if freedmen did not benefit from their labor, there would be no inducement for them to become model workers. A member of General John Schofield's staff, who toured southern Virginia during the 1866 harvest worried, for example, that planters' refusal to pay laborers would cause laborers to become irresponsible. "This . . . [arouses] in the minds of the
freedmen a fear that they will be . . . defrauded of their wages . . . , and . . . will be without redress," he noted. "In consequence, violation of contracts on . . . [their] part is becoming more frequent . . . and they begin to seek the vicinity of the towns where they can earn barely enough from day to day to support them[elves]."  

One of the greatest problems with which agents had to deal was that of employers who asserted the right to determine when freedmen violated their contracts. Often when a planter had a disagreement with an employee or wished to rid himself of an employee or two when the bulk of the work on his plantation was completed, he asserted that the laborer or laborers had violated their contract and turned them off the plantation without pay. However, Bureau officials refused to allow planters to terminate contracts unilaterally. They demanded that before an employer dismissed an employee, an agent examine the case and determine whether the laborer had actually violated his contract. And if the planter had discharged the laborer without justification, the agent demanded that planter retain the discharged laborer or pay him any wages due at the time he left.  

Agents also had a great deal of trouble in protecting freedmen from violence at the hands of their employers. Although on numerous occasions, planters assaulted their hands, agents found it almost impossible to obtain adequate redress for those assaulted. Generally, agents ruled that assault constituted a violation of contract on the part of
the employer, declared the contract no longer binding on the employee and demanded that the employer pay the employee any wages due. In cases in which the planter was guilty of violation of contract, the laborer should have been able to collect damages in addition to wages due. However, since agents in most states lacked authority to compel planters to pay and realized that blacks could not afford to sue for damages in the courts, they were generally satisfied if planters paid freedmen back wages. Consequently, they generally steered clear of the question of damages. Moreover, because they lacked authority to try cases of assault, they were unable to punish planters guilty of assault by fine or imprisonment. 54

Bureau officials' greatest activity in behalf of black workers, however, came during and after the 1866 harvest. Because the overwhelming majority of contracts stipulated that workers were to receive all or the bulk of their year's pay after the crop was harvested, officials found themselves swamped by complaints from freedmen who felt that planters had cheated them. "My office is so crowded . . . with Freedmen coming to complain of not being settled with," an agent stationed in the Arkansas delta wrote, "that . . . it takes four of us from 9 o'clock in the morning until 5 o'clock in the evening doing scarcely anything else but trying to adjust cases of cheating and stealing." Although many planters, anxious to retain their hands for the coming year, made fair settlements with laborers, numerous others
were less scrupulous. As the harvest progressed, large numbers of planters sought to escape paying or dividing the crop with employees by turning them away from their plantations. Others, particularly those who leased land, shipped their crop to market and then simply refused to pay freedmen. Still others defrauded their hands in a more subtle way. In calculating what they owed freedmen, these planters deducted inflated amounts for lost time and for goods advanced from the plantation storehouse, often leaving freedmen in debt or with very little to show for their year's labor. Moreover, many freedmen found themselves without pay at the end of the year through no design on the part of their employer. In many parts of the South crops were poor and planters, unable to pay their debts, had crops seized by men who had leased them land or advanced them supplies. And if merchants and lessors took the crop, planters found it impossible to pay their workers. 55

Since blacks had the right to institute lawsuits, they might have sought redress for non-payment through state courts. If an employer turned his employees away without pay or if his employees felt that he had not paid them as much as they deserved, they could institute proceedings against him for debt. In such cases, laborers could present their contract and evidence of fulfillment of the contract and ask for a judgment against their employer for the amount of wages due plus the cost of bringing suit. Moreover, state law provided more effective means of collecting debts.
Laborers whose contracts stipulated that they were to receive their share of the crop as they harvested the crop could apply to a state court to attach the crop if their employer attempted to ship it without making settlement with them. Similarly, if employers shipped the crop before settling with their hands and then refused to pay them, laborers could request that the courts attach their employer's real or personal property. In both instances, the court would take possession of the property attached and call upon the employer to show cause why the property should not be sold and the proceeds used to pay employees. 56

Although, theoretically, state law provided adequate remedies, freedmen were, for the most part, unable to avail themselves of these remedies. In suits brought by freedmen for wages, employers—because of their familiarity with the adversary process and the fact that they were more likely than freedmen to keep records—were often able to convince justices of the peace and juries to deny freedmen's claims. Most contracts provided that laborers would obey instructions given them by their employer or his agent, be conscientious in their work and show respect for their employer. With these terms in the contract planters could often show that laborers had neglected their work by, on occasion, being absent or that they had not faithfully obeyed instructions. Thus, by dredging up some relatively minor contract violation, they could justify dismissing hands without remuneration. Similarly, planters could
usually defend deductions they made from their hands' wages or share of the crop. Since employers usually kept written records of time lost by or goods advanced to their hands, it was difficult for freedmen, who did not maintain such records, to dispute their employers' deductions. "Extravagant accounts are brought against the freedmen which often exceed . . . [their] dues," noted the agent at Madison, Florida, "... and belief must be given to the planter's account because of his ability to write or have somebody keep a written account for him."57

Poverty also contributed to blacks' inability to obtain redress through litigation. Although many lawyers were willing to prosecute cases once they saw the color of laborers' money, most laborers were impecunious. And since the Bureau retained few lawyers to prosecute cases for freedmen, most freedmen had to bring their cases without the services of a lawyer. In some instances, sympathetic justices of the peace or state district judges aided blacks who were without counsel. More frequently, Bureau agents helped blacks institute proceedings against their employers and, on occasion, even appeared with them in court to help them present their case. However, neither sympathetic judges nor Bureau agents compensated for the absence of a lawyer's services. Sympathetic judges were few and far between and most agents were either too busy or too short on legal expertise to be of much service. There was simply no substitute for the technical expertise rendered the
freedman by a lawyer and the air of respectability given a laborer's case when he was represented by a native white lawyer. 58

Not only were laborers unable to hire lawyers, but they were often unable to pay the numerous court fees connected with litigation. In simple suits for debt, courts in most states required that the plaintiff pay, in advance, court costs involved in the suit. This protected judges and magistrates from going without costs if the plaintiff lost his case, but made it impossible for many poverty-stricken freedmen to institute suits. Moreover, if a laborer wanted to have his employer's property attached by a court, he had to come up with additional security. Most state codes stipulated that before a judge could issue a writ of attachment, the plaintiff had to post a bond sufficient to cover damages incurred by the party whose property was attached in case the suit went against the plaintiff. Although in some instances blacks were able to obtain sufficient security, in many cases they were unable to proceed because they could not post bond. 59

The delays involved in litigation also discouraged blacks from bringing suits against their employers. Although they could often obtain a speedy hearing before a justice of the peace, in many instances justices delayed hearings in order to aid their white neighbors. One Virginia agent, for example, reported that when two black women brought suit against their employer for wages, the
justice set the initial hearing for November 3. But on November 3 and again one month later, the defendant succeeded in having the case postponed, the first time on the ground that he could not be present and the second time on the ground his witnesses could not be present. The agent noted that the defendant proclaimed that he would have the case continued "from time to time indefinitely" and that there was no indication that the justice would prevent him from doing so.

Moreover, the jurisdiction of justices of the peace was limited to cases involving small amounts. Although the limitation varied from state to state, in no state could justices assume jurisdiction if the amount involved exceeded $100 and in South Carolina they could hear no case which involved more than $20. If laborers could not bring suit in a justice court, they had to wait until the state circuit or district court convened before they could commence action. Not only did impoverished freedmen find it difficult to wait until these courts convened, but they were often unable to pay the higher costs demanded by district or circuit judges.60

Discriminatory treatment of freedmen by magistrates, judges and juries reinforced and exacerbated all of the other difficulties freedmen met in seeking redress through litigation. Some justices and state judges, either because of their sense of fair play or their fear that unpaid freedmen might become unruly, strove to clear the path to
justice for freedmen. George B. Slaughter, a justice of the peace who lived near Tuskegee, Alabama, complained to Wager Swayne of planters who defrauded their hands but vowed that he would do his best to aid freedmen in obtaining payment. "Some [freedmen] report to me that their employer has sold out without giving them anything but a note of hand for wages due," he wrote, "and in their present condition they cannot live without their wages & . . . [to do so] will cause them to pilfer and steal." 61

Slaughter's conservative, "rational" appraisal of the situation undoubtedly gratified Swayne since it suggested that Bureau officials' faith in the rationality of the South's "best men" might not be misplaced. In too many instances, however, justices, judges and juries were hostile to freedmen. Justices often placed every impediment they could in the way of freedmen who brought suits against planters. The agent in Augusta County, Virginia noted that many freedmen had been cheated by employers and complained that magistrates were reluctant to assume jurisdiction in such cases. "[E]very possible obstruction to such trials is made," he reported, "and many freedmen are suffering for want of money . . . which they have no means of collecting." While agents reported that judges in courts of record were much more impartial than magistrates, in courts of record juries decided cases, and white jurors remained hostile to blacks. Moreover, the injustice perpetrated by state courts did more than prevent freedmen from obtaining compensation
for their labor. Dozens of agents noted that many freedmen, convinced that they could not obtain justice in state courts, refused even to attempt to obtain their wages through litigation.\textsuperscript{62}

In the face of these difficulties, Bureau agents attempted to aid blacks in settling with their employers. Although agents were spread too thinly to exercise a thorough surveillance, they generally either visited plantations or called planters to their offices when freedmen complained that their employers underpaid them or failed to pay them at all. In cases in which planters had obviously defrauded their employees, agents merely demanded that the planters make full payment. However, when planters claimed that they were justified in withholding wages, agents examined the case, allowing planters and freedmen to substantiate their own claims and to refute those made against them. Moreover, when planters made claims against laborers for lost time or for goods advanced, agents often inspected planters' accounts and disallowed deductions which were unfair or too high. After examining such cases, agents decided how much planters owed their hands and ordered them to make payment. In some cases in which there were legitimate grounds for disagreement, the agent convened a board composed of himself and two other individuals (one chosen by the planter and the other by the laborer) to arbitrate the dispute.\textsuperscript{63}
Although in many instances planters complied with agents' demands, on numerous occasions they simply ignored agents. And when planters refused to comply with their demands, agents found it difficult to coerce planters into compliance. In order to emphasize his belief that presidential action had already restored the seceded states and that they were entitled to representation in Congress, President Johnson put tight restraints on interference with southern civil authorities by Bureau and military officials. When military men attempted to free themselves of these restraints, the ever-watchful Johnson frustrated their attempts. As a result, Bureau officials, fearing that any interference would be reversed by the White House, were reluctant to authorize agents to compel planters to pay their employees. Moreover, as agents' inability to enforce their recommendations became known, planters became bolder in defrauding freedmen. 64

Howard gave assistant commissioners very little direction in this area. In September he issued a circular authorizing assistant commissioners to establish Bureau courts to adjudicate cases in which the amount in dispute was less than $300. However, since he issued the circular without first obtaining Johnson's approval, he ordered assistant commissioners not to make the circular public. Because the circular was shrouded in secrecy, most assistant commissioners, well aware of Johnson's opposition to military interference, were reluctant to authorize agents to
convene Bureau courts to decide wage disputes. And in mid-December, during his confrontation with Johnson over the Watson case, Howard revoked the circular.65

In late October, Howard made one other attempt to give central direction to the Bureau's attempt to aid freedmen obtain their wages. At the suggestion of General E.O.C. Ord, he asked the Commissioner of Internal Revenue, E.A. Rollins, to aid the Freedmen's Bureau in securing blacks' wages. Under a congressional statute which placed a tax on cotton, federal revenue agents were to see that no cotton moved to market before planters paid the tax and placed revenue stamps on the cotton. Howard asked Rollins to instruct revenue agents to prohibit removal of cotton from plantations unless planters produced a certificate from the Bureau showing that they had settled with their hands. However, Rollins replied that he possessed authority to stop the movement of cotton only as long as planters had not paid the cotton tax and declined to implement Howard's suggestion. These two measures, neither of which were implemented, were Howard's only attempts to develop a central policy to secure payment of wages. Although in other instances he advised assistant commissioners in specific cases, he gave no effective general policy direction.66

As a result of this absence of central direction, many assistant commissioners were reluctant to take consistently firm action in dealing with planters who cheated their hands. In Mississippi, where Thomas Wood succeeded Samuel Thomas as
assistant commissioner, lack of central direction, combined with Wood's conservatism, resulted in Bureau officials sitting on their hands. Wood allowed agents to use their influence in behalf of freedmen, but absolutely refused to permit agents to coerce planters into paying their hands. Because the Civil Rights Act secured blacks equal rights, he reasoned, they had the same opportunity that other free men had to vindicate their rights through litigation in state courts. And this being so, they should be able to protect themselves without assistance from the Bureau.

Bureau officials in Virginia took a similar position. In two counties in which the civil courts refused to accept jurisdiction in cases involving freedmen, they authorized agents to re-establish Bureau courts. In these two counties, agents possessed authority to compel planters who refused to pay their hands to appear before them and to decide wage disputes. Moreover, if planters declined to accept the agents' verdicts, these agents could seize and sell property to satisfy judgments they gave. But in the state's other hundred-odd counties, agents could do nothing except cajole planters who cheated their employees and refer laborers who were cheated to the civil authorities.

Even though they did not go as far as they might have gone had they received encouragement from Washington, officials in other states resorted to varying degrees of coercion. Wager Swayne, reluctant to resort to military authority, directed Alabama agents to seek redress for
freedmen through the civil authorities. In order to make this more feasible, Swayne resumed his lobbying activities when the legislature convened in the fall of 1866. By working with legislators, he obtained passage of legislation giving agricultural laborers a lien on the crops they produced. The new statute worked no miracles, however, because it gave laborers a lien inferior to that of persons who leased land or advanced supplies to their employer. Consequently, laborers found that if there was a bad crop (as there was in many parts of the state in 1866), merchants and lessors took the bulk of the crop. Moreover, even if there were no other creditors who had a claim against their employer, the lien often proved meaningless. In order to enforce their lien, laborers had to go before a justice of the peace or state judge and ask him to attach the crop. Yet even if the justice felt that there was justification to have the crop attached, freedmen were often unable to post the bond which Alabama law required before a judicial official could issue a writ of attachment. One Alabama justice of the peace, dismayed by blacks' inability to use the civil courts to collect wages, was convinced that the normal legal channels simply could not provide blacks adequate remedies. "There ought it seems to me," he wrote Swayne, "be some more summary process for the enforcement of debts due. . . ." 69

Because of the difficulties inherent in working through the civil authorities, agents resorted, with Swayne's
acquiescence, to firmer measures. Instead of working through the civil authorities when employers attempted to defraud laborers, agents sometimes seized crops themselves and held them until planters agreed to pay their hands. Although agents achieved some success, the new measure was far from perfect. Because agents were spread so thinly, they were often unable to seize crops before planters shipped them to market. And once planters had shipped the crop, agents could only write to the factor who handled the crop and request that, when he sold the crop, he pay to the Bureau the amount due the laborers. However, agents had no means of compelling factors to cooperate. Even if agents got to the crop before planters could ship it, planters often ignored them and shipped crops over their protests. By late 1866, the few troops in the state were concentrated at a few posts and were, therefore, usually unable to aid agents in seizing crops. 70

Although Arkansas Bureau officials did not give them blanket authorization to do so, military agents (i.e., Bureau agents who were Army officers) often coerced planters into paying freedmen. If freedmen reported that their employer refused to pay them or that he paid them insufficiently, most military agents seized and held the planter's crop. In most cases this was sufficient to cause planters, anxious to get their crop to market, to make a settlement. Moreover, if, after an agent seized his crop, the planter refused to pay his hands, agents sometimes resorted to more
stringent measures. When a Columbia County planter refused, after repeated warnings from an agent, to settle with his hands, the agent seized his crop and arrested and incarcerated him. Shortly after the agent took him into custody, however, the planter agreed to pay his laborers. In some cases, agents even sold planters' crops to satisfy laborers' claims for wages. Although the agent at Pine Bluff seized one planter's crop, the planter refused to pay his hands what the agent suggested he owed them. As a result, the agent convened a board of arbitration composed of himself, one party selected by the planter and one party selected by the freedmen to determine how much the planter owed his laborers. And when the planter refused to accept the decision of the arbitrators, the agent ordered the crop sold and had the amount agreed upon by the board given to the freedmen. 71

Arkansas agents were relatively successful in compelling payment, but they, too, were often unable to secure freedmen their pay. Many Arkansas agents were civilians and were unwilling to incur the risk of a lawsuit by seizing planters' crops without express authorization from the assistant commissioner. "Local agents . . . know that the freedmen have a lien on the crops . . . but how to assert the lien . . . is a question not so easily settled, there being no orders . . . sufficiently explicit on the subject," complained the agent at Washington in January, 1867. "Agents are afraid to take the responsibility." And since
the assistant commissioner, himself unwilling to go out on a limb, refused to issue a circular authorizing agents to seize crops, civilian agents remained unwilling to act.\textsuperscript{72}

Even if agents were willing to take the initiative, they were spread too thinly to deal adequately with the massive numbers of complaints which they received. Commonly, agents were so swamped with complaints that they were unable to deal with cases which arose on the peripheries of their districts. Moreover, by the time freedmen made complaints and agents investigated them, planters had often already shipped their crop to market. In this case, agents might do one of three things. In the first place, they might apply to a state court to attach the crop before it was sold by the factor. When a planter from Napoleon gave his hands "due bills" in lieu of wages and shipped the crop to a Memphis factor for sale, the laborers complained to the agent at Napoleon. The agent took the "due bills" and proceeded to Memphis where, finding the cotton unsold, he succeeded in having a Memphis court attach it. Because subsequently the planter did not appear in court to show why the cotton should not be awarded the laborers, the court ordered the cotton sold and directed that the proceeds go to pay the freedmen's wages. However, this case is highly unusual; in most instances, after a planter shipped his crop, agents were unable to have courts attach it. The second remedy open to laborers in such cases was to institute proceedings against their employers' real and/or
personal property. Thus one agent was able, by commencing suits to attach plantation property, to frighten planters into paying their laborers. Yet because of the costs involved and freedmen's inability to obtain impartial hearings in state courts, such suits were rarely instituted and, if instituted, were rarely successful. Finally, agents might encourage freedmen to sue employers for debt in a state court. But, again, freedmen faced so many obstacles in such proceedings that they were rarely successful in obtaining redress. 73

In Georgia, Tillson realized that Johnson's restoration policy limited Bureau officials in settling wage disputes, but developed a policy which made the most of the authority which the Bureau possessed. When planters refused to accept an agent's decision concerning wages due a freedman, Tillson ordered agents to appoint a three-man arbitration board to settle the dispute. If the planter refused to accept the decision of the board, the agent was to arrest and confine him under authority of Grant's General Order No. 44 until he decided to change his mind. Moreover, when an agent learned that an employer intended to ship his crop before settling with his employees, Tillson authorized the agent to seize the crop and hold it until the planter decided to pay his hands. And if a planter succeeded in shipping his crops before paying his hands, Tillson permitted agents to incarcerate the planter until he decided to settle with his laborers. Although his policy contained
many of the same elements used in other states, he was probably more successful in protecting blacks. For unlike the measures which evolved in Arkansas and Alabama, Tillson's policy was well articulated and agents felt confident that they would be supported by their superiors when they seized property or arrested civilians.74

* * * * *

Although in several states, Bureau officials were somewhat successful in preventing employers from cheating their hands, by the end of 1866, it was clear that there were certain fundamental faults in Bureau labor policy. Bureau officials had adopted the contract system in order to ensure an orderly transition from slavery to freedom, and in this they succeeded. But there was a great deal more to Bureau labor policy than keeping freedmen at work. The contract system, Bureau officials had believed, would provide planters with reliable labor and assure freedmen that they would receive fair wages for their labor. In the process, both groups would find that they had mutual rather than conflicting interests; planters, eager to encourage energetic labor, would find that it was to their advantage to pay freedmen well and to treat them fairly and freedmen, encouraged by good wages and fair treatment, would labor assiduously. The result, Bureau officials had predicted, would be creation in the South of the same orderly, progressive and economically dynamic free labor system which they pictured as existing in
the North. The entire system, however, was built on quicksand. Southern whites were unable to view black laborers in the detached, "rational" fashion necessary to set in motion the system which Bureau officials contemplated. As a result, the optimistic goals embodied in the contract system were stillborn, and it served primarily to provide planters with reluctant labor and to perpetuate blacks' dependence on planters.
Epilogue

The Bureau and Military Reconstruction

In early 1867, when Congress enacted the Reconstruction Act, many Bureau officials believed that the frustrations which they experienced in 1866 were at an end. Yet during 1867 and 1868, Bureau officials' hopes were unfulfilled. Military commanders were not only stingy in using the authority which the act conferred on them, but used their expanded authority over assistant commissioners, in many instances, to restrict the activities of Bureau agents. However, military officials' uncooperativeness was only the tip of the iceberg; there were certain fundamental faults in Bureau policy and in federal reconstruction policy in general which conspired to prevent success. Although in the short-run Bureau officials felt that they should shield blacks from injustice, they believed that freedmen would ultimately have to vindicate their liberty through the normal state-centered governmental-legal channels. Similarly, congressional policy was based on the assumption that if blacks were guaranteed equal rights in state law and allowed to elect governmental officials, they would be able to protect themselves (primarily) through state government and the state courts. Although these assumptions would not be fully
discredited until the 1870's, by the end of 1868, when the
Bureau was discontinued, there were strong indications that
federal policy rested on faulty assumptions.

*   *   *   *   *

1866 had been a bad year for the Bureau. White preju-
dice and violence against the freedmen had not decreased
appreciably since the end of the war, and state and local
officials remained either unable or unwilling to afford
blacks relief. In the face of southern recalcitrance,
Bureau officials had found their hands tied. Andrew John-
son, driven by conflict with Congress to vindicate his own
reconstruction policy, had denied Bureau and military offi-
cials the right to interfere with southern civil authorities
in behalf of freedmen. Unable to use military power to
protect blacks, the men of the Bureau had looked to Con-
gress' Civil Rights Act, but had found it unworkable as a
means of securing blacks' justice. They had been able to
use their influence in behalf of the freedmen and that fail-
ing, to threaten those who will-treated blacks or denied
them justice. But they had been generally unable to back up
their threats with force, and, as a result, their influence
was at its nadir by the end of 1866. Frustrated in his
attempts to cope with conditions in the South, Howard, upon
learning of the July massacre at New Orleans, hoped that the
tragic affair would educate the nation to the need for
firmer reconstruction measures. "The work at New Orleans is
sad, but I believe that it is for the good of the whole
country," he wrote. "Our eyes are open."¹

When the second session of the Thirty-ninth Congress
convened in December, 1866, Howard pressed Republican legis-
lators for relief. Although he did not present them with a
precise program as he had done in late 1865, he urged con-
gressional Republicans to strengthen the hand of the mili-
tary in protecting blacks from injustice. Throughout the
session, he was in contact with congressional leaders and
undoubtedly informed them of the way in which Johnson's
southern policy had damaged the Bureau's effectiveness.
During Congress' Christmas recess, he accompanied a group of
congressmen on a southern tour, thus helping them gain
first-hand knowledge of conditions in Dixie. Moreover, in
mid-January he drew up, at Grant's request, a report on
southern violence which the commanding general circulated on
Capitol Hill.²

Congressmen, who already had an inkling of conditions in
the South from the press, their personal correspondence and
several congressional investigations, were impressed with
the need for firm action. Republican radicals, convinced
that there could be no security for southern Unionists,
white or black, without martial law, sought legislation
declaring the civil authorities subordinate to the military
and authorizing military officials to try civilians by mili-
tary commission. Moreover, radicals wanted to sweep aside
existing state governments and create new ones based on
black suffrage and widespread disfranchisement of whites. Although they felt that these new regimes would be more solicitous of blacks' needs, radicals were not certain that, unaided, they could provide blacks sufficient security. Consequently, they were adamant against guaranteeing southerners that, as soon as new governments were created, their senators and representatives would be admitted to Congress. Radicals wanted to maintain freedom of action in the South so that if it became necessary to reimpose martial law, Congress could easily do so.  

Although radicals had an important impact on congressional policy, they were not able to convince other Republicans to adopt their proposals whole-cloth. Moderates and conservatives, who made up the bulk of the party, were deeply impressed with the intensity of southern prejudice and violence. Even Senator William Pitt Fessenden, the influential Maine conservative, worried that if Congress did not develop a viable reconstruction policy "everything will remain unsettled, and violence [will] continue to be the order of the day." However, moderates and conservatives, anxious to woo moderate former Confederates into the Republican fold and wary of alienating northern voters, refused, as they had done in debates on the Fourteenth Amendment, to disfranchise large numbers of whites. Moreover, believing that northern voters demanded a speedy settlement of the "southern question," they sought a policy which guaranteed
southerners restoration if they complied with certain specified demands.  

The Reconstruction Act, passed over a presidential veto on March 2, 1867, compromised these differences. In order to deal with disorder and violence in the South, something which alarmed Republicans of all stripes, the act gave military officials plenary authority to protect citizens. Contending that "no legal state governments or adequate protection for life or property" existed in the rebel states, the act divided the ten unreconstructed states into five military districts and authorized the president to appoint a commander for each district. These commanders might work through existing state authorities to deal with crime and disorder, but, if they deemed it necessary, they might arrest offenders themselves and try them by military courts. However, the act stipulated that this authority would be short-lived. As soon as state conventions, elected on the basis of manhood suffrage, adopted constitutions which recognized the principle of manhood suffrage, had the constitutions ratified by a majority of registered voters, and obtained congressional approval of the documents, the states would be entitled to readmission. Thus, Congress, under the lead of Republican moderates, provided blacks short-term military protection, but guaranteed that recon- struction would end when the rebel states granted blacks the vote. And once the states gained restoration, military
authority in the South would cease and blacks would have to protect themselves with the ballot.⁵

Although there were many who felt that it did not go far enough, most Bureau officials welcomed the legislation. After a year of moving from one stop-gap to another, they felt, the Bureau would finally have the military support it needed to do its job. Wager Swayne, Bureau chief in Alabama, had been bothered by state officials' apprenticing of black children who were old enough to support themselves and use of the "chain gang" to punish black criminals, but had not felt authorized to interfere. Shortly after Congress passed the Reconstruction Act, however, Swayne became sufficiently bold to order probate judges to release from apprenticeship any black children who were old enough to support themselves and directed sheriffs and justices of the peace to stop punishing blacks by working them in chain gangs. Virginia assistant commissioner Orlando Brown did not immediately test the authority which it conferred, but he was, nonetheless, convinced that the act was the answer to the Bureau's woes. In late May, he informed Howard that the civil authorities had treated blacks with more fairness since passage of the act. "This change is undoubtedly due," he enthused, "in part to a wholesome fear of military commissions, and in part to the new political status of the freedmen, making their good will more desirable to their white neighbors."⁶
In spite of Brown's assessment, the new measure did not, in itself, provide blacks security. Although it undoubtedly made many whites less eager to resort to violence, the act did not alter their determination to maintain white supremacy. Unable to conceive of freedmen as equals or of a viable social order in which freedmen were not clearly subordinate, whites remained unwilling to accept "insolence" from blacks and continued to brand as "insolent" or "insubordinate" any behavior by blacks which was not properly deferential. Consequently, whites often became enraged when freedmen disagreed with them, refused to obey their orders, or declined to treat them with sufficient respect. "Complaint books" kept by Bureau agents indicate that, while individual acts of violence ebbed and flowed, they persisted throughout the post-war years.7

If anything, the Reconstruction Act probably brought an increase of violence against freedmen. Since the end of the war whites had, from time to time, formed regulator groups aimed at controlling the labor force or disciplining unruly freedmen. However, when freedmen began to participate in the political process, group violence against them became more intense and widespread. Not only were whites frightened into such action in order to prevent blacks from controlling government, but they feared that if, through politics, blacks formed strong local organizations, they would be less amenable to white control. During 1867, as blacks became involved in political organizations such as the Union League
and went to the polls to choose delegates to state conventions, there were sporadic instances of organized violence. And in 1868, when it became obvious that whites could not easily break blacks' allegiance to Republicanism, organized violence rapidly spread. Under the banner of Ku Klux Klan, Palefaces, Knights of the White Camellia, and White Brotherhood, whites in many parts of the South launched a campaign of terror designed to destroy local Republican leadership and to intimidate blacks from participating in Republican activities.  

Although this organized violence was primarily political in nature, once loosed, it spread beyond politics. In many instances, organized bands turned their wrath on freedmen (and often whites) who, quite apart from politics, violated community norms. Blacks who lived with white women and white prostitutes who served blacks, for example, were often the targets of vigilantes. Moreover, these groups, on occasion, helped planters control their employees. In some instances, they punished workers who had left their employers, while in others they drove unwanted laborers from plantations.

As had been true in the past, civil authorities' unwillingness to afford freedmen redress compounded the problem. Despite Brown's optimistic prediction that the Reconstruction Act would bring state officials to dispense even-handed justice, these men continued to treat blacks unfairly. Law enforcement in rural nineteenth century
America was, to be sure, extremely primitive, and, as a result, those guilty of crimes often escaped arrest. But in all too many instances of white violence against blacks, sheriffs refused to act or acted ineffectively because they sympathized with the criminals. Similarly, many judicial officials, either out of contempt for blacks or fear of public opinion, refused to punish whites who committed acts of violence against freedmen. When, for example, a Mississippi freedman who had been shot by his employer presented his case to a McNut justice of the peace, the justice turned him away. After ascertaining that the freedman had no money, the magistrate exclaimed, "Do you suppose I am going to insult a white man for you niggers? Go away." Moreover, even if sheriffs arrested criminals and magistrates bound them to appear before a grand jury, grand juries and petit juries were often unwilling to act justly. "Thus has justice once more been outraged," commented a Virginia agent after a jury imposed a one-cent fine on a white who had shot a freedman, "and the sacred right of trial by jury so carefully guarded by the Constitution, has been again covered with scorn and contempt." 10

In numerous instances blacks, realizing that they could expect no aid from the civil authorities, sought to protect themselves. In Bullock County, Alabama, freedmen in one neighborhood became angry when a planter whipped a black woman who was in his employ. The night after the planter had whipped the woman, a group of blacks broke into the
planter's house, placed him under arrest, took him to a justice of the peace and convinced the justice to bind him to appear at the next session of the state circuit court. Moreover, freedmen who were visited by regulators sometimes put their tormentors to flight. In Lexington, Virginia, where disguised Virginia Military Institute students often harassed blacks, one freedman shot and killed one of a group of students who raided his house. 11

Blacks who resisted, however, often found themselves worse off than if they had remained passive. In Newton County, Mississippi, a white man who suspected his black neighbor of stealing a pig obtained a search warrant from a justice of the peace and searched the freedman's cabin. When he failed to find the pig there, he and some friends began to search all dwellings in the neighborhood occupied by freedmen. When local blacks banded together and attempted to stop the whites, a fracas ensued in which one freedman and three whites were wounded and two whites were killed. Subsequently, however, local whites rallied and lynched a number of freedmen who had been involved in the fight. In many instances, when freedmen defended themselves from assault, their assailants prosecuted them for assault. In Northumberland County, Virginia, for example, two blacks went to their employer to ask for wages which he owed them. When the planter became angry and started to beat one of the freedmen, the other struck the planter. Although local authorities did not prosecute the planter, they arrested and
tried the freedman for assault. And even though during the
trial the planter attacked the freedman, cutting him with a
knife on the arm and face, the court convicted the freedman
of assault and sentenced him to four years' imprisonment.
Subsequently, when the civil authorities prosecuted the
planter for his courtroom antics and a local court convicted
him of assault, he received a jail sentence of one day.12

Bureau officials needed military power to cope with
acts of violence which were ignored by the civil authori-
ties, but they soon found that the Reconstruction Act only
indirectly aided them. The act authorized commanders of
military districts, not Bureau officials to interfere with
the civil authorities. Thus when agents or assistant com-
mmissioners felt that civil officials should be removed from
office or that cases involving blacks should be tried by a
military tribunal, they had to obtain the approval of their
district commander. Consequently, the men of the Bureau
could act only as boldly as district commanders would per-
mit. Moreover, in almost every state, the Bureau assistant
commissioner was also the department commander and, as such,
was under the direct control of the district commander.
This situation, combined with the fact that when department
commanders—assistant commissioners were replaced, Howard
had little voice in the selection of their successors,
further undermined the Bureau's ability to act independently.
Assistant commissioners became increasingly dependent on
district commanders and the commissioner found it difficult
to implement policy because of lack of authority over his nominal subordinates.  

Although Bureau officials found it virtually impossible to act independently, military officials often aided them in their attempts to secure blacks' justice. Because the Reconstruction Act gave district commanders plenary authority over southern civil officials, most commanders ordered county sheriffs to impanel black as well as white jurors. Black jurors, they hoped, would neutralize the prejudice of juries and enable freedmen to obtain justice in the state courts. In August, 1867, General John Pope, commander of the Third Military District (Georgia, Florida and Alabama) directed sheriffs to select jurors from lists of voters whom federal officials had registered under the Reconstruction Act. Other commanders (with the exception of General John Schofield who commanded the First Military District) issued jury orders, but none were as favorable to blacks as that issued by Pope. In the Second Military District (North and South Carolina) and the Fifth Military District (Louisiana and Texas), commanders stipulated that the civil authorities add to jury lists all who were registered to vote and paid taxes.  

It is difficult to say with precision how successful the jury orders were in securing blacks' justice, but there is reason to believe that they caused no great change for the better. Military officials did remove several judges who refused to permit blacks to serve on juries in their
courts, but these were cases in which judges openly and blatantly refused to comply with a jury order. In many instances, judges avoided military interference by covertly excluding blacks from jury duty or by allowing a very few to serve as jurors. Even if men of their own race sat on juries, however, blacks could not be certain of obtaining justice. In minor cases, when freedmen sought redress before justices of the peace, jury orders were of no help at all. And when they actually got their cases before grand or petit juries which included freedmen, generally there were enough whites on the jury to prevent indictments or convictions of whites for ill-treatment of blacks. Moreover, on some occasions, white jurors intimidated their black colleagues from voting for indictment or conviction of whites who wronged freedmen.  

Because the Reconstruction Act authorized district commanders to remove state functionaries, Bureau officials often asked commanders to remove those who treated blacks unfairly. However, the men of the Bureau could only recommend, and district commanders used the power of removal sparingly. For the most part, they removed only those officials who blatantly and consistently discriminated against freedmen, and state officials therefore escaped removal by making a pro forma appearance of acting justly. A Virginia agent, for example, reported that the civil authorities merely went through the motions of attempting to secure blacks justice. "The courts under pressure of government
officers continue to deal out so much of justice to the colored people as will exempt them from interference by the military authorities," he complained. Moreover, when commanders removed officials, if the men whom they appointed as replacements attempted to mete out impartial justice, the white community often frustrated their efforts. General Joseph Mower, who commanded the Fifth Military District during the fall of 1867, removed the mayor of St. Martinville, Louisiana and replaced him with a black. However, the town's white citizens refused to recognize the black magistrate and appointed their own mayor, thus throwing the town into chaos.16

Bureau officials also urged district commanders to try by military commission cases in which the civil authorities denied blacks justice. All commanders authorized trial of civilians by military commission at one time or another, but none of them made sufficient use of military tribunals to secure blacks justice. Many commanders took little interest in the plight of the freedmen and were therefore reluctant to take officers away from their regular duties to sit on military commissions. But even the most zealous district commanders found that they had too few enlisted men and officers to arrest and try by military commission large numbers of civilians. Consequently, military commanders generally demanded clear evidence of gross injustice before convening military commissions to try cases of violence against blacks. In being so selective, commanders could
only hope that, by removing a few cases from the civil courts, they could awe state officials into treating blacks more fairly. 17

In Virginia, Schofield pursued a cautious policy, putting tight restraints on the activities of Bureau agents and refusing to try persons guilty of acts of violence by military commission. He appointed virtually all Bureau agents "military commissioners" and authorized them to assume jurisdiction in minor cases involving blacks when the civil authorities failed to mete out justice. In serious instances of injustice, he stipulated, military commissioners should report the cases to district headquarters, where he would decide whether to try them by military commission. However, agents soon discovered that they possessed limited authority as military commissioners. Because Schofield ordered them to try cases according to Virginia law and permitted them as much authority as justices of the peace exercised, commissioners could punish persons only by fining them or binding them to keep the peace. Moreover, when agents attempted to use their paltry authority, they often ran into trouble. Schofield demanded that commissioners make certain that civil officials treated freedmen unjustly before trying a case themselves. However, since he failed to issue instructions specifying what constituted denial of justice, agents, uncertain of their authority, tried relatively few cases. And when agents referred serious cases to district headquarters with the
recommendation that Schofield order them tried by military commission, they received little satisfaction. Schofield frequently asked Virginia Governor H.H. Wells to pardon blacks unfairly convicted of crimes, but he never tried a civilian by military commission for an act of violence against a black.  

In the second district, Daniel Sickles and his successor, E.R.S. Canby, pursued a more vigorous policy. In several counties in North and South Carolina, they denied civil courts jurisdiction in cases involving blacks and established provost courts (with authority to impose fines of up to $100 and prison terms of up to two months) to try such cases. They instructed post commanders in other parts of their district not to interfere unnecessarily with the civil authorities, but authorized them to arrest persons guilty of violence against blacks when the civil authorities failed to mete out justice. After making such arrests, post commanders were to send information concerning the case to Charleston, where the district commander would decide how it should be tried. In serious matters, Sickles and Canby convened military commissions, while in minor cases, they generally ordered post commanders to try persons by "post courts."  

However, Bureau officials did not benefit from this expansion of military authority. Except when post commanders doubled as Bureau agents, military officials denied agents authority to arrest or to try citizens. Even when
Howard suggested to Robert K. Scott, the assistant commis-
sioner for South Carolina, that he organize Bureau courts,
the district commander refused to permit Scott, who, as
department commander, was subject to orders from district
headquarters, to do so. Consequently, when an agent felt
that the civil authorities denied blacks justice, he had to
apply to the nearest post commander to have persons arrested
and tried. In many instances this procedure worked satis-
factorily, but in others uncooperative post commanders
declined to interfere with the civil authorities when agents
asked them to do so. Moreover, when post commanders proved
calcitrant, assistant commissioners were unable to compel
them to comply with agents' requests. Although assistant
commissioners were also department commanders, they had
little control over post commanders, who received their
orders directly from district headquarters. In late 1867,
Nelson Miles, the assistant commissioner for North Carolina
complained that this situation made it impossible for the
Bureau to protect blacks. "I am constantly meeting rebuffs
from these little post commanders," he informed Howard, "who
seem to take delight in telling me or my agents that they
are entirely independent of the Bureau and if they render
any assistance to agents it is purely an act of courtesy."²⁰

In the third district, agents also found it difficult
to offer blacks redress in cases of injustice. Although
John Pope instituted a vigorous program of removals aimed at
intimidating the civil authorities into treating blacks
justly, he declined to permit agents to try cases involving freedmen and was reluctant to try such cases by military commission. He stipulated that when the civil authorities failed to mete out justice to blacks, Bureau agents and post commanders should forward evidence in the case to district headquarters. Then, if Pope felt that there was sufficient evidence to obtain a conviction before a military commission, he would convene a commission to try the case. Because this procedure was cumbersome and, in practice, Pope convened few military commissions, Bureau officials in Georgia, Alabama and Florida found it difficult to secure blacks justice independent of the civil authorities. Moreover, when George Meade replaced Pope in December, 1867, Bureau officials' plight was made no easier. While Meade actually convened a few more military commissions than had Pope, he was, in principal, much more adamantly opposed to military interference with the civil authorities and on several occasions caustically rebuked Bureau agents who attempted to coerce magistrates into granting freedmen justice. As a result, Bureau officials became even more cautious in their dealings with the civil authorities and more reluctant to request the district commander to convene military commissions.21

E.O.C. Ord, who commanded the Fourth Military District, permitted department commanders to establish their own procedures for agents to follow in dealing with cases of injustice. General C.H. Smith, in charge of Bureau and
military affairs in Arkansas, authorized agents to arrest persons guilty of outrages against freedmen when the civil authorities failed to act or refused to prosecute criminals fairly and vigorously. Once they made an arrest, Smith stipulated, agents should send the accused and evidence against him to Little Rock for trial by military commission. Although Smith's policy gave agents broad authority, in practice, they were unable to use the authority effectively. In many instances, the civil authorities, in dealing with instances of violence against blacks, merely went through the motions. However, agents, bound by Smith's order to allow the civil authorities to try cases as long as they acted fairly, were often unable to prove that a state official who gave the appearance of impartial action had actually acted unfairly. Further, agents generally needed troops to make arrests, but since troops were not stationed in every county, agents had to apply for them to the assistant commissioner or to the nearest post commander. This procedure was too slow to cope successfully with violence; by the time soldiers arrived, the guilty parties had either fled or were no longer detectable.22

In Mississippi, General Alvan Gillem followed a more cautious policy. Although he was not averse to trying civilians by military commission, Gillem, lacking "confidence in the judgement and discretion" of Mississippi Bureau agents and refused to permit agents to judge when cases should be tried by military commission. Thus he instructed
agents to attempt to redress acts of violence against freed-
men through state officials or through the federal courts
under the Civil Rights Act. If these remedies failed,
agents might then report the case to Gillem, who would send
an officer to investigate and to determine whether the case
should be tried by military commission. Because this pro-
cedure was extremely cumbersome, however, agents found it
difficult to bring perpetrators of outrages to justice.
Even in minor cases, agents found it difficult to secure
blacks justice. Gillem did not allow them to reestablish
Bureau courts to try cases which were too petty to be tried
by military commission, and, as a result, they had to work
through the civil authorities in such cases. "[T]his com-

munity, not slow in finding out that I am powerless, have
come to treat my official acts with perfect indifference,"
complained the agent at Macon. "If something is not done to
make the power of the Bureau felt and compel respect for its
authority, its usefulness here is gone." 23

It is difficult to evaluate how successful Bureau and
military officials in the South as a whole were in using
their limited authority to curb injustice. Many agents
believed that, while they were unable to punish all whites
guilty of violence against blacks, by making examples of a
few state officials and private individuals, they dis-
couraged violence and encouraged the civil authorities to
act impartially. To a certain extent this was true. When,
for example, district commanders removed a state functionary,
others, anxious to escape removal, began to act more fairly in their dealings with freedmen. Similarly, when military officials arrested individuals guilty of outrages against blacks, other individuals, realizing that such acts had dire consequences, became less eager to resort to violence in their dealings with freedmen. "A speedy arrest... I find has a very good effect," the agent at Du Vail's Bluff, Arkansas noted, "even in a whole county if there is but one example made in a great while."

Agents' evaluations, however, were often overly optimistic. Consider the case of Lieutenant Hiram Willis, the Bureau agent at Rocky Comfort, Arkansas. When Willis assumed his duties as agent in January, 1867, there were several groups of local whites who plundered and terrorized freedmen in the vicinity of Rocky Comfort. During the course of the year, Willis, with the aid of troops from the post at Washington, launched an intensive campaign against white violence, and, by the end of 1867, had seemingly broken the back of anti-black violence in southeastern Arkansas. "The summary punishment extended to... [men] who have always been the leading bad characters has produced an excellent impression on this 'generation of vipers'...," he exulted in January, 1868. "The freedmen now feel secure and peaceable in the county and no one will leave it because of any fear." Yet less than a month after he penned these lines, Willis was gunned down by the notorious outlaw
Cullen Baker, and southeastern Arkansas was once again thrown into an orgy of terror.25

Moreover, limited as the Bureau's authority was under the Reconstruction Act, it declined even further during the summer of 1868. In July, Congress restored North and South Carolina, Florida, Alabama, Arkansas and Louisiana, thus removing martial law from those states. As a result, military officials concentrated troops in each state at a very few posts and notified Bureau agents that they were, under no circumstances, to interfere with the civil authorities. In this situation, agents were completely powerless. The case of V.V. Smith, the agent at Lewisville, Arkansas is typical. In August, Smith reported that during the previous month, whites had murdered eight blacks in LaFayette County. The newly-appointed Republican civil authorities, he noted, had arrested one of the murderers, but an armed band of the murderer's friends appeared in court when he was examined by a magistrate and intimidated the magistrate into ruling that there was insufficient evidence to hold him. "Unless a detachment of soldiers are sent here," Smith lamented, "I shall have to . . . leave or do as our Circuit Judge and others do . . . --take to the woods at night." In response, the assistant commissioner informed the agent that, since martial law no longer existed, he could not send troops and advised him that his duties as an agent were "simply advisory." "You are to be the friend and the advisor of the freedmen in every case of difficulty or injustice and assist
them in making proper representations to the civil authorities," the assistant commissioner wrote, "but you are not responsible for the peace and without the proper civil authorities through whom to act your services must be very limited."26

* * * * *

Bureau officials were ultimately no more successful in dealing with the plight of the black worker. During 1867 and 1868, they found that most planters either made verbal agreements with their hands or that they refused to bring written contracts to agents for approval. When this happened, agents, unable to coerce planters into making Bureau-approved contracts, found it impossible to continue the contract system as it had existed in 1865 and 1866. In some instances, planters' refusal to enter into written contracts with freedmen disturbed the men of the Bureau. The agent in St. Bernard Parish, Louisiana, for example, argued that "[t]he impolicy and insecurity of such agreements is the experience of every business man" and warned that unless the assistant commissioner ordered agents to visit plantations and make memoranda or verbal agreements between planters and laborers planters would take advantage of freedmen at harvest time. However, Bureau officials, less apprehensive in 1867 and 1868 that freedmen would refuse to work for planters, were generally less active in encouraging contracting. Although both of these trends meant that fewer blacks
entered into Bureau-approved (or even written) contracts, this did little to alter the predicament of the former bondsmen. They continued to work for white landowners and found it difficult to escape the vulnerability to white control which such dependence bred. 27

Even though agents were less active in the contracting process, they continued to play an important role in supervising labor relations. To be sure, many Bureau officials were disillusioned by the failure of the contract system to transform southern society and were less optimistic that their activities would create a progressive free labor system in the South. They continued to mediate between planters and laborers, in part, because, in the course of their uphill struggle to transplant their vision of northern society in the South, means became ends. Unable to see alternatives and unwilling to admit that their prescription for the good society was unworkable, they clung to the immediate protection which the contract system provided planters and workers.

They also continued to act as mediators because of their conservatism. Bureau officials, in part at least, viewed the contract system as a means of keeping blacks at work, impressing upon laborers and planters their obligations to one another and, generally, bringing order and stability to the South. And if their optimism was fading, their concern about order was not. By 1867, the specter of disorder was less immediate than it had been two years
earlier, but Bureau officials, convinced that order was fragile, continued to promote stability by mediating between planters and laborers. Moreover, their conservatism prevented them from seeing alternatives to the contract system. Because they were unable to provide blacks with land, perhaps the only way that they could have aided blacks obtain independence of whites was by encouraging assertiveness and collective action. However, such thoughts were not only alien but frightening to the men of the Bureau, as they were to most middle class Victorians. Collective action would undermine the market system by giving undue power to one group, while assertiveness would lead freedmen to seek redress in a non-orderly, disruptive fashion. Consequently, Bureau officials continued to pursue a policy which provided blacks with immediate protection, but which failed to have a long-term impact.

Although some agents refused to intervene in behalf of planters who had not made Bureau-approved contracts, most came to the aid of any employer when workers violated agreements without cause. As planters had learned in previous years, they were often unable to maintain authority over black workers. On numerous occasions, freedmen, dissatisfied with wages or working conditions, engaged in work slowdowns or actually refused to work until planters redressed their grievances. When planters complained to the Bureau of such insubordination, agents generally examined the validity of blacks' complaints, but, nonetheless, compelled blacks to
fulfill their agreements. In the spring of 1867, for example, workers on a large plantation in Plaquemines Parish, Louisiana struck for higher wages. In response, the owner of the plantation refused to accede to their demands and ordered them either to go back to work or to leave the plantation. However, the freedmen remained recalcitrant until the local Bureau agent came to the plantation and informed them that he would use military force to remove them from the plantation if they did not return to work.28

Agents protected planters' authority over laborers in other ways as well. Often freedmen who worked for a share of the crop claimed that they were partners in the planting enterprise and had just as much authority as the planter to determine what work they needed to do and when they needed to do it. Although agents generally admitted that those who worked for shares had a special status, they did not include as part of this special status sharecroppers' right to direct their own labor. Thus, when laborers called their employer's authority into question, agents often visited plantations and informed workers that they must obey their employers' instructions, regardless of whether they worked for a share of the crop. Similarly, many blacks who worked for a share of the crop contended that they were obliged to do no work after they harvested the crop. In such cases, agents, responding to the pleas of employers, demanded that if laborers had contracted to labor until the end of the
year, they work as their employer directed even after the crop was harvested.\(^{29}\)

Agents also reinforced planters' authority to compel freedmen to be punctual in their labor. When planters complained that laborers were absent without permission during working hours, agents generally permitted employers to fine laborers for lost time. And if freedmen were absent so often that they endangered the crop, agents allowed planters to hire additional hands and to deduct the amount paid such laborers from the wages of absentees. In some instances, agents resorted to more stringent measures. An Arkansas agent, for example, arrested laborers who were chronic absentees and punished them by imprisonment at hard labor. Moreover, agents often exhorted freedmen to be more punctual. A Louisiana planter complained to the agent at Baton Rouge that his hands refused to live on his plantation, residing instead on an abandoned plantation three miles away. As a result, the planter explained, they were often "very late getting to their labor." In response, the agent ordered a subordinate to go to the plantation and convince the laborers that they should live on the plantation on which they had contracted to work.\(^{30}\)

Although agents sought to protect rights secured planters by contract, they resisted planters' demands that the Bureau return absconding laborers to their employers. In virtually every state a few agents arrested laborers who violated their contracts and returned them to their
employers, but only in Mississippi and Texas did agents do so as a matter of course. To be sure, Bureau officials in other states felt that freedmen should fulfill their contracts. In some instances they lectured freedmen on the importance of honoring contracts, but they did not compel specific performance. In mid-1867, General Robert K. Scott, the assistant commissioner for South Carolina, informed Howard that agents often persuaded freedmen to fulfill their contracts by warning them that their employers could sue them for damages if they failed to do so. Yet if laborers failed to take agents' advice, Scott refused to allow agents to compel freedmen to return to their employers. In Alabama, Wager Swayne not only prohibited agents from compelling specific performance, but prohibited the civil authorities from punishing persons hiring laborers who ran away from their original employers.31

Moreover, Bureau officials attempted to provide freedmen redress when employers were guilty of violation of contract or treated laborers unfairly. Thus agents sought to prevent planters from summarily discharging employees. When freedmen had no written or verbal contract with their employer agents refused to prevent an employer from unilaterally terminating a worker's employment. However, when employers had agreed to employ laborers for the entire year and discharged them before the contract expired, agents attempted to discern whether planters' actions were justified. If they found that the laborer had not violated
his contract, they demanded that the planter allow the laborer to return to work or that he pay the laborer all back wages due plus damages.\textsuperscript{32}

Agents were apparently more successful in obtaining payment and damages for freedmen than they had been in 1866. Although some district commanders did prohibit agents from coercing planters into paying their laborers, most seem to have been willing to allow agents a great deal of authority in dealing with labor relations. In addition, planters, aware of the broad authority which the Reconstruction Act gave military officials, seem to have been more willing to comply with agents' decisions. While there was no uniform policy with regard to collection of damages and agents' practice varied from place to place, agents were generally better able than in 1866 to provide redress when employers violated their contracts.

Even if freedmen had violated their contracts, agents afforded them protection. When freedmen were guilty of minor contract violations, agents often persuaded planters to retain the worker, and if a planter did dismiss an employee, agents generally allowed the planter to retain some, but not all, of the wages due the discharged employee. Moreover, by 1867, Bureau officials were extra protective of laborers who worked for a share of the crop. Because they realized that freedmen working for a share of the crop who were discharged would receive no remuneration for their labor, Bureau officials established special procedures for
the dismissal of sharecroppers. They stipulated that planters retain, in spite of violations of contract, laborers who worked on shares or that they pay them the value of their share of the crop when they dismissed them.\textsuperscript{33}

As in 1866, Bureau officials were most active in obtaining redress for black workers at harvest time. Aided by General E.O.C. Ord, commander of the Fourth Military District, Bureau officials in Arkansas and Mississippi were quite effective in making planters pay their hands. Under orders from district headquarters, agents, when they feared that planters would attempt to ship their crop without first paying their hands, ordered planters not to move their crops until they had paid their laborers. If a planter ignored an agent's injunction and attempted to ship the crop, the agent often seized the crop and held it until the planter settled with his hands. After stopping shipment, agents supervised the settlements, and if parties could not agree, convened a board of arbitration composed of two persons (one chosen by the planter and one by the laborers) and a third chosen by the first two. The agent then directed the arbitrators to examine the case and to decide, not only how much was due laborers, but also how much the planter owed persons who provided him supplies or leased him land. If the planter refused to accept the decision of the board, the agent sold the crop and used the proceeds to satisfy the claims of laborers and creditors.\textsuperscript{34}
Mississippi and Arkansas agents also sought to prevent creditors from depriving freedmen of their wages or their share of the crop. In many instances, at the end of the season planters owed substantial sums to persons who had advanced them supplies or leased them land. And when lessors and suppliers had planters' crops attached by the civil courts, laborers were in danger of losing payment for their year's work. Consequently, Ord instructed Bureau officials to proceed in such a manner that would, by protecting laborers, "afford proper encouragement to free labor" and, by protecting lessors and suppliers, provide security for creditors. He directed agents to order state courts which had attached crops to satisfy debts against the planter not to dispose of the crop until he could convene a board of arbitration to determine what proportion of the crop should be given the laborers. After the board had reached its decision, agents were to have creditors pay laborers or post bond guaranteeing that they would pay them in the future. Although in most instances agents followed this procedure, they sometimes resorted to more summary measures. When creditors refused to post a bond to guarantee payment, agents sold the crop and divided the proceeds among laborers and creditors. Moreover, at least one Arkansas agent, fearing that creditors would make laborers resort to expensive, time-consuming litigation to collect, sold the crop and divided the proceeds among laborers and creditors as a matter of course. 35
In Alabama, assistant commissioner Wayer Swayne chose to work through the state courts. In November, he issued orders which gave laborers a first lien on the crops they raised and, seeking to make justice inexpensive, required judges and magistrates to issue writs of attachment without requiring a bond if the applicant averred that he was unable to post bond. With state courts open to rich and poor alike, Swayne ordered agents to aid freedmen work through the civil courts to attach enough of their employer's crop or other property to secure payment. Because agents maintained close contact with judges and justices of the peace to whom they referred laborers, the system seems to have worked relatively well. While many judges undoubtedly drug their feet and thus prevented freedmen from obtaining redress, the system had one decided advantage. There were large numbers of judicial officials in the state and, in working through them, the small number of Bureau agents were able to deal with more cases than if they had to deal with them themselves. 36

In Louisiana, the policy of working through the state courts fared worse than in Alabama. In the fall of 1867, General Joseph Mower, the assistant commissioner, authorized agents to act vigorously in behalf of blacks. If planters refused to settle with freedmen before shipping their crops, Mower stipulated, agents should seize enough of the crop or other property owned by the planter and sell it to satisfy the laborers' claims. While Mower's instructions gave
agents broad authority, they were short-lived; in December, Lieutenant Colonel William Wood replaced Mower and reversed his policy. Wood ordered agents to release property which they had already seized and stipulated that, in the future, agents would encourage freedmen who were unable to obtain their wages to seek redress through the civil courts. Only when agents could produce conclusive evidence that the civil authorities would not act justly were they to seize crops themselves. Although the assistant commissioner informed agents that, under a little-known provision of Louisiana law, judges could issue attachments without the plaintiff first posting bond, Louisiana agents were unsuccessful in obtaining justice for laborers under the new policy. Agents failed to build the close contacts with judicial officials that their Alabama counterparts did and Louisiana judges were much less willing than those in Alabama to cooperate with the Bureau. 37

Bureau officials in Virginia were no more successful in aiding freedmen obtain wages due. Although Bureau agents, as military commissioners, possessed authority to try cases which involved less than $100, in practice agents tried few cases. As in cases of personal violence, agents had to test the civil courts and obtain conclusive evidence that they denied freedmen justice before they could try cases themselves. Because freedmen were often unable to pay the costs necessary to bring suit and judges and magistrates were able to discriminate against blacks in subtle ways, it was
extremely difficult for agents to prove that state judges treated blacks unfairly. As a result, they generally refused to assume jurisdiction and blacks' only means of collecting wages lay in proceeding through the civil courts, where they were often denied justice and where the cost of obtaining redress was frequently higher than the judgments they received. In November, 1867, the agent at Greenville reported that blacks in his district were unable to obtain their wages, but despaired of a remedy. "This evil cannot be . . . obviated . . . under a mixed jurisdiction," he wrote. "If the Bureau or the military alone had the authority to make all contracts and all settlements . . . justice might be done."\(^\text{38}\)

Although Bureau officials were often unable to collect wages due freedmen, there was a more basic problem which they were even less successful in solving. Before freedmen could obtain payment by applying to a Bureau agent or to a state court, their employers had to owe them for services rendered. However, freedmen increasingly found themselves in debt to their employers at the end of the year. Many blacks continued to work in gang labor situations under tight restrictions and their employers generally retained authority to make deductions from their wages or share of the crop for time lost, regardless whether the time was lost through natural causes (e.g. rainy days) or through absenteeism. Moreover, many freedmen who worked in gangs and most of the increasing number of those who were tenants
received supplies from their employers or from local merchants on credit. Consequently, when the time for settlement came, blacks often found that charges against them for lost time and for goods advanced were greater than the wages or the share of the crop to which they were entitled.\textsuperscript{39}

This situation posed a much more subtle problem than planters' simple refusal to pay their hands. While agents sometimes examined these deductions and reduced inflated charges against laborers, this did not come close to solving the problem. Agents might, in a limited number of cases, reduce unfair deductions, but there were not enough agents to examine every planter's account with his hands. And even when agents did scrutinize charges against laborers they were often unable to prevent freedmen from ending up in debt to their employer. Because planters usually maintained written records, they found it easy to justify deductions while freedmen, who generally did not maintain records, found it difficult to dispute charges made against them. As a result, at harvest time freedmen, and particularly those with large families, found their wages or their share of the crop eaten up by charges against them for goods already advanced.

Moreover, what little success Bureau officials enjoyed was fleeting. In mid-summer, 1868, when Congress restored the bulk of the rebel states, agents lost most of their authority and six months later, when all but the educational operations of the Bureau ceased, most agents left their
posts. As a result, freedmen had to protect themselves through the civil officials and court systems of the Republican governments which they elected. However, white hostility undermined the ability of the new governments to function effectively, and they were often unable to provide freedmen remedies against whites who assaulted freedmen and employers who treated them unjustly. Shortly after the inauguration of Republican government in Alabama, for example, P.E. O'Connor, the new probate judge for Greene County complained to the Bureau agent at Demopolis that local whites made it difficult for him to perform his duties. As he was holding court, he wrote, a white man attacked him with a knife, but when he ordered those present in the courtroom to arrest the assailant, no one responded. Although O'Connor vowed that he was "determined to fight it out to the last," such conditions boded ill for establishment of an effective legal system.40

Yet federal reconstruction policy depended for success upon creation of state legal systems which could provide blacks redress against violence and injustice. Federal policy sought to provide freedmen with civil and political equality so that they could defend their liberty, as did other free men, through the normal political-legal channels. However, this was not adequate to cope with realities in the South. Poverty-stricken freedmen could ill-afford to prosecute their cases effectively before the civil courts and when they did, they were frequently denied justice by
prejudiced judges and jurors. Not only did Bureau officials' belief that southerners would perceive that it was in their best interest to treat blacks fairly fail to materialize, but freedmen were ultimately unable to obtain redress by using the ballot. Whites' were unwilling to end blacks' subordination and were, therefore, unwilling to acquiesce in the actions of local Republican officials like O'Connor who sought to provide blacks justice through law. Consequently, they resorted to violence to prevent local Republican officials from acting effectively in behalf of blacks. The simple fact was that the normal governmental-legal channels, upon which both Bureau and congressional policy rested, were inadequate in the face of whites' massive resistance.
### Abbreviations Used in the Notes

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<th>Abbreviation</th>
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<tr>
<td>AAAG</td>
<td>Acting Assistant Adjutant General</td>
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<tr>
<td>AAG</td>
<td>Assistant Adjutant General</td>
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<tr>
<td>AC</td>
<td>Assistant Commissioner's Records</td>
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<td>AJ Papers</td>
<td>Andrew Johnson Papers (Library of Congress)</td>
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<tr>
<td>BRFAL</td>
<td>Records of the Bureau of Refugees, Freedmen and Abandoned Lands (Record Group 105, National Archives)</td>
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<td>ES</td>
<td>Endorsements Sent</td>
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<td>LR</td>
<td>Letters Received</td>
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<td>LS</td>
<td>Letters Sent</td>
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<tr>
<td>OOH Papers</td>
<td>Oliver Otis Howard Papers (Hawthorne-Longfellow Library, Bowdoin College)</td>
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<tr>
<td>OR</td>
<td>Operations Reports</td>
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<td>PMGF</td>
<td>Provost Marshal General of Freedmen</td>
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<td>RCBA</td>
<td>Reports on the Conditions of Bureau Affairs</td>
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<td>RLR</td>
<td>Registers of Letters Received</td>
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<td>RRTFVC</td>
<td>Reports Relating to the Treatment of Freedmen in the Virginia Courts</td>
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<tr>
<td>ULR</td>
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Notes

Introduction


4 SAL, XIII, 507.
Notes

Chapter I


5Wilson, The Black Codes, p. 35.


7Hahn as quoted in Willie Malvin Caskey, Secession and Restoration of Louisiana (Baton Rouge, 1938), p. 147. For Lincoln's remarks, see Lincoln to Stephen A. Hurlbut,


11 Jacobus ten Broek, in The Anti-Slavery Origins of the Fourteenth Amendment, argued that the framers of the Thirteenth Amendment intended the amendment to grant blacks equal rights, as well as to abolish slavery. However, recent scholarship has brought ten Broek's interpretation into question. See Fairman, Reconstruction and Reunion, pp. 1136-1159, esp. 1149 and 1159 and Flanigan, "The Criminal Law of Slavery and Freedom," pp. 241-248. Fairman and Flanigan agree that the framers did not specifically intend the amendment to grant blacks equal rights. However, their analyses differ in several respects. Fairman was most interested in the debates in the second session of the
Thirty-eighth Congress, the session which passed the amendment. Flanigan, on the other hand, found the debates in the first session, the session in which the amendment was first introduced, more revealing. Moreover, Flanigan pointed out Republican confusion concerning the precise meaning of freedom. The thrust of Fairman's argument is that Republicans simply did not go beyond the problem of abolishing slavery to consider the meaning of freedom.


13 For the Freedmen's Bureau bill, see S.A.L., XIII, 507-09. James Speed to Edwin M. Stanton, June 22, 1865, BRFAL, LR (reel 13).

14 My understanding of Johnsonian policy is based on a reading of Johnson's reconstruction proclamations and his correspondence with provisional governors, as well as material in Bureau and military records. The proclamations are in James D. Richardson, comp., A Compilation of the Messages and Papers of the Presidents, 1789-1897 (Washington, 1897), VI, 310-331. The correspondence is in the Andrew Johnson Papers. Also important to my understanding of presidential policy is Michael Perman, Reunion Without Compromise: The South and Reconstruction: 1865-1868 (London, 1973), pp. 68-81; Eric L. McEurty, Andrew Johnson and Reconstruction (Chicago, 1960), pp. 3-4 and 120-213 and Lawanda Cox and John H. Cox, Politics, Principle, and Prejudice 1865-1866 (Glencoe, Illinois, 1963), passim. For Johnson's suggestion to the Mississippi convention, see Johnson to William Sharkey, August 15, 1865, AJ Papers, series IIIB (reel 43).

15 For Johnson's approval of Bureau adjudication of cases involving blacks where state officials refused to allow blacks to testify, see Circular #2, BRFAL, La., June 14, 1865, BRFAL, La., AC, vol. 28, Orders and Circulars Issued. See also Reuben Mussey (Johnson's secretary) to William Wallace (Nashville), August 22, 1865, AJ Papers, series IIIB (reel 43).

16 General Quincy Gillmore to Edwin M. Stanton, July 31, 1865 and Gillmore to General Lorenzo Thomas (Adjutant General of the United States Army), August 1, 1865, Dept. of the South, vol. 15, LS; Johnson to Perry, August 30, 1865 and Johnson to Meade, August 31, 1865, AJ Papers, series IIIB (reel 43); G.O. #30, Dept. of the South, September 8, 1865, Dept. of the South, General Orders.
Lewis Parsons to Andrew Johnson, September 23, 1865 and J.P. Pryor to Johnson, October 10, 1865, AJ Papers, series I (reel 18).

Circular #5, BRFAL, May 30, 1865, BRFAL, Orders and Circulars Issued (reel 7); Howard to Capt. Charles Soule, June 21, 1865, BRFAL, LS (reel 1). For another example of Howard's early commitment to equal rights, see Ed. Fisher to Howard, April 20, 1865, OOH Papers.


Genl. Alfred Terry to Howard, July 1, 1865, OOH Papers. The notation is found on the copy of Terry's order owned by Mr. Layton; this particular document was endorsed by Howard and sent to General E.M. Gregory, the assistant commissioner for Texas. Wager Swayne to Howard, July 24, 1865, BRFAL, LR (reel 17); Gillmore to Howard, August 17, 1865, BRFAL, LR (reel 15).


See, for example, unmarked newspaper clipping in Col. Samuel Thomas to AAG, Dept. of Miss., December 8, 1865, Dept. of Miss., Box 24, LR.

Genl. Wager Swayne to Governor Lewis Parsons, July 31, 1866, BRFAL, Ala., AC, LS (reel 1); endorsement by Lt. D.G. Fenno, August 7, 1865, on letter from Lt. W.E. Dougherty (Algiers, La.), BRFAL, La., AC, vol. 22, ES; Thomas Conway (New Orleans) to Salmon P. Chase, August 8, 1865, Salmon P. Chase Papers; Capt. Andrew Morse to John Mitchell (Mayor of Jefferson, La.), August 16, 1865, BRFAL, La., vol. 128, PMGF, LS; (Monroe, La.) Intelligencer, July 22, 1865, loose copy found in BRFAL, La., AC, Box 5, LR; Col. J.S. Fullerton (Washington, D.C.) to Col. O. Brown (Richmond, Va.), June 15, 1865, BRFAL, Va., AC, Box 1, LR; Francis H. Pierpont (Richmond, Va.) to Howard, October 7, 1865, BRFAL, LR (reel 25); Genl. J.W. Sprague (St. Louis, Mo.) to Capt. William A. Stuart (Arkadelphia, Ark.), September 20, 1865, BRFAL, Ark., AC, vol. 9; LS; "Memorandum," found with Genl.
Davis Tillson (Memphis, Tenn.) to Genl. Clinton B. Fisk (Nashville), August 19, 1865, BRFAL, Tenn., AC, Box 4, LR (thanks to Professor John Carpenter).

24 Capt. H.H. Rouse (Amite City) to Thomas Conway, September 18, 1865, BRFAL, La., AC, Box 6, LR.

25 G.O. #6, Southern Dist. of Mississippi, August 1, 1865, BRFAL, Miss., AC, Scrapbook of Orders Issued and Received (reel 29); Circular #2, BRFAL, La., July 14, 1865, BRFAL, La., AC, vol. 28, Orders and Circulars; Eliphalet Whittlesey to Howard, October 15, 1865, BRFAL, LR (reel 21); Clinton B. Fisk to Genl. Davis Tillson, August 9, 1865, BRFAL, Tenn., AC, Box 4, LR; G.O. #102, Dept. of the South, June 27, 1865, Dept. of the South, General Orders Issued; G.O. #2, BRFAL, Va., July 10, 1865, BRFAL, Va., AC, Order Book (1865); Kenneth Edson St. Clair, "The Administration of Justice in North Carolina during Reconstruction, 1865-1876" (Unpublished Ph.D. dissertation, Ohio State University, 1939), pp. 62-63.

26 Eliphalet Whittlesey (Raleigh, N.C.) to Howard, October 15, 1865, BRFAL, LR (reel 21); Lt. Stuart Eldridge to Lt. Col. R.S. Donaldson, August 29, 1865, BRFAL, Miss., AC, LS (reel 1), Lt. Stuart Eldridge to Maj. George Reynolds (Natchez), August 29, 1865, BRFAL, Miss., AC, LS (reel 1).

27 Circular letter, BRFAL, Tenn., June ?, 1865, in "... Orders Issued by ... Assistant Commissioners," House Ex. Docs., No. 70, 39 Cong., 1 sess., p. 44; Circular #16, BRFAL, Ark., October 26, 1865, BRFAL, Ark., AC, vol. 22, Circulars Issued.

28 Orlando Brown to Howard, July 20, 1865, BRFAL, LR (reel 18); Capt. Stuart Barnes (Petersburg) to Maj. I.M. Howard, AAG, Dist. of Nottoway, July 21, 1865, BRFAL, Va., AC, Box 2, LR; Capt. C.B. Wilder (Norfolk), November 14, 1865, BRFAL, Va., AC, vol. 12, LS; endorsement by Capt. T.F.P. Crandon (Gordonsville), November 14, 1865, on letter from Maj. P.J. Platt, BRFAL, Va., vol. 132, Charlottesville, Proceedings of the Freedmen's Court; Lt. E. Lyon (Charlottesville) to Col. O. Brown, May 31, 1866, BRFAL, Va., AC, Box 37, RCBA; F.S. Tukey (Staunton) to Capt. W.S. How (Winchester), Feb. 1866, BRFAL, LR (reel 30).

29 G.O. #102, Dept. of the South, June 27, 1865, Dept. of the South, General Orders Issued; Capt. Charles Soule to Howard, September 8, 1865, BRFAL, LR (reel 17); [C.C. Bowen], "Cases Tried in the Provost Court, Charleston, S.C., October, 1865," BRFAL, S.C., AC, LR (reel 7); endorsement by Genl. Charles Devens, November 25, 1865, on C.C. Bowen to Maj. H.W. Smith, November 4, 1865, BRFAL, S.C., AC, LR (reel 7).
"Abstract of Proceedings of Freedmen's Court for the County of Elizabeth City... September 30, 1866," in BRFAL, Va., AC, Box 4, LR; Lt. Watson Wentworth (Essex Co.) to Capt. T.F.P. Crandon (Gordonsville), February 24, 1866, BRFAL, Va., AC, Box 37, RCBA; Jno Williams (Columbia, S.C.) to Genl. C.H. Howard (Charleston), Dec. 14, 1865, BRFAL, AC, LR (reel 9); Commanding Officer, Post of Chesterville to AAAG, Western Dist. of S.C., Feb. 2, 1866, Dept. of the South, Box 24, Correspondence Relating to Freedmen; Davis Tillson (Augusta, Ga.) to Howard, October 5, 1865, BRFAL, LR (reel 20); Samuel Thomas (Vicksburg, Miss.) to Howard, July 11, 1865, BRFAL, Miss., AC, LR (reel 1).

Col. O. Brown to Howard, August 16, 1865, BRFAL, LR (reel 13); Eliphalet Whittlesey to Howard, August 21, 1865, BRFAL, LR (reel 16).

S.O. #384, War Dept., A.G.O., July 20, 1865, BRFAL, Miss., AC, Orders and Circulars Issued and Received (reel 29); Genl. J.W. Sprague (Little Rock) to Howard, September 21, 1865, BRFAL, LR (reel 17); John A. Rawlins to Col. Samuel Thomas, August 26, 1865, BRFAL, Miss., AC, LR (reel 10); Thomas M. Vincent, AAG to Howard, June 9, 1865, BRFAL, LR (reel 13); Endorsement by Max Woodhull, September 27, 1865, on letter from Genl. J.W. Sprague, BRFAL, Ark., AC, Box 1, LR; J.S. Fullerton to Col. O. Brown, August 23, 1865, BRFAL, Va., AC, Box 1, LR. The Veteran Reserve Corps consisted of officers who were physically unfit for strenuous duty. They were used in non-combatant capacities, thus freeing able-bodied officers for more vigorous duty.

Eliphalet Whittlesey to Howard, October 15, 1865, BRFAL, LR (reel 23); Genl. E.A. Wild to Genl. Rufus Saxton, September 13, 1865, BRFAL, S.C., AC, LR (reel 8); Genl. C.H. Howard (Darien, Ga.) to Howard, December 12, 1865, OOH Papers; Col. J.S. Fullerton (Augusta, Ga.) to Howard, July 28, 1865, BRFAL, LR (reel 14); Circular #5, BRFAL, Ark., July 10, 1865, BRFAL, Ark., AC, vol. 22, Circulars Issued; Clinton B. Fisk to Howard, July 21, 1865, BRFAL, LR (reel 14); Thomas Conway to Maj. Wickham Hoffman, August 5, 1865, BRFAL, La., AC, vol. 15, LS.

The best study of black population movement during early Reconstruction is Peter Kolchin, First Freedom: The Responses of Alabama's Blacks to Emancipation and Reconstruction (Westport, Conn., 1972), pp. 3-29. Evidence from the Bureau records suggests that Kolchin's conclusions regarding black migration to towns and cities might apply to other states. Although there had been tremendous improvements in long-distance transportation facilities in the first half of the nineteenth century, local transportation facilities remained rudimentary throughout the century. See,
George Rogers Taylor, The Transportation Revolution, 1815-1860 (New York, 1951), p. 31. The Bureau records abound with agents' complaints about the difficulty of transportation within their districts. R.K. Diossy (Lafourche Parish) to Thomas Conway, September 8, 1865, BRFAL, La., AC, Box 2, LR; Capt. H. Sweeney (Helena, Ark.) to Col. Samuel Thomas, n.d. [sometime in 1865], BRFAL, Ark., AC, vol. 5, LR.


36 Maj. W.L.M. Burger (Charleston) to Genl. Rufus Saxton, October 25, 1865, Dept. of S.C., vol. 15, LS; Maj. George Reynolds (Natchez) to Lt. Stuart Eldridge (Vicksburg), August 1, 1865, BRFAL, Miss., vol. 211, Natchez, LS.

37 "From Louisa Court House," unsigned, n.d. [August, 1865], BRFAL, Va., AC, Box 2, LR; K.R. Diossy (Lafourche Parish) to Thomas Conway, September 8, 1865, BRFAL, La., AC, Box 2, LR. In Virginia, the three-man courts, which were introduced in September, 1865, often treated blacks cruelly and unjustly. Blacks were not permitted to serve on the courts, but were required to choose a "respectable" white man as their representative. In some places, they were not even allowed to select the white men who were supposed to represent them. Moreover, by interacting with the white civilian members of the court, the Bureau agents sometimes became more sympathetic to the views and interests of the white community. As a result, in some districts, local whites came to exercise a great deal of control over blacks through the Bureau courts. In some places, the Bureau court was so hostile to blacks' interests that the freedmen refused to take cases before it. Lt. H.B. Scott (Richmond) to Capt. C.B. Wilder (Norfolk), November 14, 1865, BRFAL, Va., AC, vol. 12, LS; Maj. P.J. Platt, Charlottesville, Proceedings of the Freedmen's Court; Capt. James A. Bates (Richmond) to Capt. S. Barnes, January 13, 1866, BRFAL, Va., vol. 12, LS; Capt. D. Jerome Connolly (Farmville) to Capt. Stuart Barnes, February 10, 1866, BRFAL, Va., Box 16, Farmville, Unentered LR; Lt. Watson Wentworth (Essex Co.) to Capt. T.F.P. Crandon (Gordonsville), February 24, 1866, BRFAL, Va., AC, Box 37, RCBA.

Charleston), November 14, 1865, Dept. of S.C., vol. 46, LS; Col. J.S. Fullerton (Hilton Head, S.C.) to Howard, July 20, 1865, OOH Papers.

39 Maj. W.L.M. Burger (Charleston) to Genl. E.L. Molineaux, Commander, Northern Dist. of Ga. (Augusta), July 8, 1865, Dept. of the South, vol. 15, LS; endorsement by Genl. E.L. Molineaux, July 18, 1865, Dept. of Ga., vol. 8/18A, DGA, PMG, LS&ES (thanks to Jerry Thornberry); Capt. J.E. Bryant (Augusta) to Maj. S. Willard Saxton, August 4, 1865, BRFAL, S.C., LR (reel 7); G.O. #4, Dept. of Ga., July 14, 1865, BRFAL, LR (reel 14); Genl. Davis Tillson (Augusta) to Howard, October 5, 1865, BRFAL, LR (reel 20); Genl. James E. Steedman to Andrew Johnson, August 15, 1865, AJ Papers, series I (reel 17).

40 Circular #2, BRFAL, La., June 14, 1865, BRFAL, La., AC, vol. 28, Orders and Circulars; endorsements by Thomas Conway, July 26, 1865, and Lt. D.G. Fenno, August 12, 1865, on a letter from George F. Brackett, BRFAL, La., AC, vol. 22, ES; endorsement by Maj. Charles Lowell, PMG, Dept. of La., September 2, 1865, on Capt. George W. Cole (St. Bernard Parish) to Thomas Conway, August 26, 1865, BRFAL, La., AC, Box 1, LR. On Canby's unwillingness to interfere with the civil authorities and the regular processes of the law as long as blacks were given equal rights, see endorsement by Lt. D.G. Fenno, August 21, 1865, on petition by Thomas J. Durant and others, BRFAL, La., AC, vol. 22, ES.

41 "Instructions to City, Town and Parish Officials," unidentified newspaper clipping, BRFAL, La., AC, Box 2, LR; Thomas Conway to Salmon P. Chase, August 8, 1865, Salmon P. Chase Papers; Lt. W.H. Van Ornum (St. Charles parish) to Capt. D.G. Fenno, August 26, 1865, BRFAL, La., AC, Box 7, LR.

42 Col. Saml. Thomas to Howard, August 4, 1865, BRFAL, LR (reel 18); Thomas to Howard, September 21, 1865, BRFAL, LR (reel 21); Clifton L. Ganus, "The Freedmen's Bureau in Mississippi" (Unpublished Ph.D. dissertation, Tulane University, 1953), p. 234.

43 Wager Swayne to Lewis Parsons, July 29, 1865, in Swayne to Howard, July 31, 1865, BRFAL, LR (reel 13).

44 Swayne to Howard, August 7 and 21, 1865, BRFAL, LR (reel 13).

"Circular Letter," August 18, 1865, BRFAL, Ala., AC, LR (reel 6); Swayne to Howard, September 29, 1865, BRFAL, LR (reel 19). For the response of Alabama's judges and magistrates, see BRFAL, Ala., AC, LR.

Clinton Fisk to Howard, September 2, 1865, Orlando Brown to Howard, September 8, 1865, and Samuel Thomas to Howard, September 21, 1865, BRFAL, LR (reels 13, 14, and 21).

Howard to all assistant commissioners, September 6, 1865 and Howard to Clinton Fisk, September 9, 1865, BRFAL, LS (reel 1).

Wager Swayne to Manning Force, October 3, 1865, Manning Ferguson Force Papers.

This was Howard's assumption. See Howard to Horace Greeley, September 15, 1865, OOH Papers.

Although many Republicans personally disapproved of Johnson's policy, the party was loath to publicly criticize the President. Many Republicans felt that if they criticized presidential policy, they would drive Johnson from the party. This, they feared, would weaken and divide the party and allow the Democrats to return to power. In consequence, most Republican state conventions passed resolutions praising the President. See, Benedict, "The Right Way," pp. 117-150, esp. 117-118 for a superb analysis of Republican response to Johnsonian policy. Swayne noted that one of the reasons he bartered Bureau jurisdiction for equal rights was uncertainty as to what Congress would do to protect blacks: "It being wholly uncertain yet how far the rights of the freedmen would be vindicated by the nation, the legal status thus established and imperfectly maintained was considered of more value, because it was likely to be permanent, than results otherwise temporarily obtainable." BRFAL, Ala., AC, Annual Report of the Assistant Commissioner, October, 1866 (reel 2).

J.S. Fullerton (Washington) to Howard, August 18, 1865 and Howard to his wife, September 2, 9, and 13, 1865, OOH Papers.

Howard spent the month of August lecturing in the midwest and vacationing at his home in Maine. He did not return to Washington until early September.

Howard's frequent interviews with Johnson, see Howard to his wife, September 2, 9 and 13, 1865, OOH Papers.

55 On Howard's confrontation with Johnson on the land issue, see William S. McFeely, Yankee Stepfather: General O.O. Howard and the Freedmen (New Haven, 1968), pp. 130-33 and [Oliver Otis Howard], Autobiography of Oliver Otis Howard (New York, 1907), II, 234-35. There is little doubt that pressure from Johnson was important in Howard's decision to support Swayne. See Howard to Andrew Johnson, September 21, 1865 and Howard to Rufus Saxton, September 12, 1865, BRFAL, LS (reel 1).


57 [Howard], Autobiography, II, 226; Howard to Clinton Fisk, September 9, 1865, BRFAL, LS (reel 1); Swayne as quoted in Elizabeth Bethel, "The Freedmen's Bureau in Alabama," Journal of Southern History, XIV (February, 1948), 51. See also Swayne to Col. George D. Robinson (Mobile), September 13, 1865, BRFAL, Ala., AC, LS (reel 1).

58 Swayne to Howard, August 21, 1865, BRFAL, LR (reel 17); Howard to Clinton B. Fisk, September 9, 1865, BRFAL, LS (reel 1). For the Bureau's interaction with state constitutional conventions and legislatures, see chapter 3.

Howard to William Trescott, October 23, 1865; Howard to all agents and officers of the Bureau, October 23, 1865; Howard to Charles Nordhoff, March 19, 1866, BRFAL, LS (reel 1); "Report of the Assistant Commissioner of Refugees, Freedmen and Abandoned Lands [December, 1865]," House Ex. Docs., No. 11, 39 Cong., 1 sess., pp. 11-13.

Thomas Conway was an exception. See, Conway to Salmon P. Chase, August 8, 1865, Salmon P. Chase Papers.

Samuel Thomas to Howard, July 29, 1865, BRFAL, LR (reel 18).

Lt. Stuart Eldridge to Col. R.S. Donaldson, September 11, 1865, AJ Papers, series I (reel 18).

William Sharkey to Samuel Thomas, September 18, 1865, in Thomas to Howard, September 21, 1865, BRFAL, LR (reel 22); G.O. #8, BRFAL, Miss., September 20, 1865, in Thomas to Howard, September 23, 1865, BRFAL, LR (reel 22); Thomas to Sharkey, September 24, 1865, BRFAL, Miss., AC, LS (reel 1); for Sharkey's proclamation, see Thomas to Howard, September 29, 1865, BRFAL, LR (reel 22). While Thomas' order demanded that civil authorities grant blacks equal rights, Sharkey's proclamation instructed judges and magistrates only to admit blacks to testify where at least one of the parties was black. This discrepancy occurred in other states.

For judges and magistrates' responses, see BRFAL, Miss., AC, LR. G.O. #13, BRFAL, Miss., October 31, 1866, BRFAL, Miss., AC, Orders and Circulars Issued (reel 28).

Circular #15, BRFAL, La., BRFAL, La., AC, vol. 28, Orders and Circulars; Thomas Conway to J. Madison Wells, September 26, 1865, BRFAL, La., AC, vol. 15, LS; Wells to Conway, September 27, 1865, in Conway to Howard, September 29, 1865, BRFAL, LR (reel 21).

Davis Tillson to James Johnson, October 25, 1865, BRFAL, Ga., LS (reel 1); Tillson to Howard, November 1, 1865, BRFAL, LR (reel 20); Tillson to James Johnson, November 7, 1865, BRFAL, Ga., LS (reel 1); Circular #4, BRFAL, Ga., November 15, 1865, in Tillson to Howard, November 15, 1865, BRFAL, LR (reel 20); Alan Conway, The Reconstruction of Georgia (Minneapolis, 1966), p. 77.

Circular #9, BRFAL, Fla., November 15, 1865, BRFAL, LR (reel 20); Thomas Osborne to Howard, December 31, 1865, BRFAL, LR (reel 20).
69 Francis H. Pierpont to Howard, October 7, 1865, BRFAL, LR (reel 25); Howard to W.W. Holden, September 13, 1865, OOH Papers; Holden to Howard, September 26, 1865, BRFAL, LR (reel 16); Eliphalet Whittlesey to Howard, November 16, 1865, BRFAL, LR (reel 16).

70 Wager Swayne to Alabama judges and magistrates, September 9, 1865, BRFAL, Ala., AC, LS (reel 1); Maj. George Reynolds (Natchez) to AAAG (Vicksburg), November 4, 1865, BRFAL, Miss., AC, LR (reel 11); Capt. Julius Clark (Opelousas) to Lt. D.G. Fenno, November 15, 1865, BRFAL, La., AC, Box 2, LR.

71 A.W. Ballard (Sevier Co.) to D.N. Williams, February 28, 1866, BRFAL, Ark., AC, vol. 6, LR; W.P. Coffin (Aberdeen) to Col. R.S. Donaldson, October 16, 1865, BRFAL, Miss., AC, LR (reel 9).

72 Samuel Thomas to William Sharkey, October 17, 1865, BRFAL, Miss., AC, LS (reel 1); AAG to W.J. Weems (Russell County), September 2, 1865, BRFAL, Ala., AC, LS (reel 1).

73 Maj. George Reynolds (Natchez) to AAAG (Vicksburg), November 4, 1865, BRFAL, Miss., AC, LR (reel 11).

74 Endorsement by Lt. D.G. Fenno, August 7, 1865, on letter from Lt. W.E. Dougherty (Orleans Parish), BRFAL, La., AC, vol. 22, ES.

75 Lt. W.E. Dougherty (Orleans Parish) to Lt. D.G. Fenno, October 23, 1865, BRFAL, La., AC, Box 2, LR; Circular #24, BRFAL, La., October 30, 1865, BRFAL, La., AC, vol. 28, Orders and Circulars.

76 AAG to Henly Brown (Prattville), December 5, 1865, BRFAL, Ala., AC, LS (reel 1); Swayne to Howard, November 28, 1865, BRFAL, LR (reel 19); Lt. Stuart Eldridge to Lt. Col. R.S. Donaldson, October 2, 1865, BRFAL, Miss., AC, LS (reel 1). Thomas' demoralization and discouragement are apparent in his correspondence during the fall of 1865. See, BRFAL, Miss., AC, LS.

77 Capt. A.S. Bradwell (Savannah) to Col. H.P. Sickles, December 14, 1865, BRFAL, Ga., Box 28, Savannah, Unentered LR; Lt. Col. R.S. Donaldson (Jackson) to Lt. Stuart Eldridge, October 9, 1865, BRFAL, Miss., AC, LR (reel 9).

78 Davis Tillson to Judge ?, December 7, 1865, BRFAL, Ga., LS (reel 1); G.O. #7, BRFAL, Ala., August 4, 1865, BRFAL, Ala., AC, General Orders, Circulars and Circular Letters Issued (reel 17); Circular Letter, BRFAL, Ala., August 18, 1865, BRFAL, Ala., AC, LR (reel 6); G.O. #8, BRFAL, Miss., September 20, 1865, BRFAL, LR (reel 22);
Samuel Thomas to Howard, September 29, 1865, BRFAL, LR (reel 22); Richard Nolen (Mayor, Greensboro, Miss.) to Hdqrs., BRFAL, Miss., October 14, 1865, BRFAL, Miss., AC, LR (reel 10); Capt. A.L. Brown (Greenville) to Maj. C.A. Miller, September 28, 1865, BRFAL, Ala., LR (reel 5); Wager Swayne to Lewis Parsons, October 21, 1865, BRFAL, Ala., AC, LS (reel 1); James Cobb (Judge, Ala. 7th Judicial Circuit) to General Wager Swayne, November 23, 1865, Ala., AC, LR (reel 5).

Notes

Chapter II


2 Robert Kerby, Kirby Smith's Confederacy (New York, 1972), pp. 253-256; Joel Williamson, After Slavery: The Negro in South Carolina during Reconstruction, 1861-1865 (Chapel Hill, N.C., 1965), pp. 41-42; Col. O. Brown to O.O. Howard, July 20, 1865, BRFAL, Va., AC, vol. 1, LS; Lt. H.N. Crydenwise (Demopolis) to Genl. Swain, August 4, 1865, BRFAL, Ala., AC, LR (reel 5); Maj. George Davis (Franklin) to Capt. B.B. Campbell, August 2, 1865, BRFAL, La., AC, Box 4, LR.

3 Capt. A.S. Flagg (Fort Monroe) to Col. O. Brown, July 13, 1865, BRFAL, Va., AC, Box 3, LR.

4 Provost Marshal (Columbus) to ?, July 7, 1865, BRFAL, Miss., AC, LR (reel 8); Capt. Stuart Barnes (Petersburg) to AAAG, July 9, 1865, BRFAL, Va., AC, Box 3, LR; Capt. J.A. Hawley to Col. Samuel Thomas, July 4, 1865, BRFAL, Miss., AC, LR (reel 10).

5 Lt. E.W. Bridges (Clinton) to Thomas Conway, July 29, 1865, BRFAL, La., AC, Box 1, LR; Charles Johnson (Norfolk) to S.P. Jackson, October 24, 1865, BRFAL, Va., AC, Box 1, LR; Maj. C.W. Hawes (Port Hudson) to AAAG, October 30, 1865, BRFAL, La., AC, Box 3, LR.

6 Capt. A. Moorhous (Lexington) to AAAG, July 8, 1865, BRFAL, Miss., AC, LR (reel 10); Lt. W.R. Stickney (Shreveport) to Thomas W. Conway, July 2, 1865, BRFAL, La., AC, Box 6, LR.

7 Lt. W.R. Stickney (Shreveport) to Thomas Conway, July 2, 1865, BRFAL, La., AC, Box 6, LR; C.W. Buckley (Montgomery)
to AAG, October 7, 1865; J.T. Persons (Mason County) to Gen'l. Swayne, September 16, 1865, BRFAL, Ala., AC, LR (reels 5, 6). See also, Williamson, After Slavery, pp. 32-42 and Peter Kolchin, First Freedom: The Responses of Alabama's Blacks to Emancipation and Reconstruction (West- port, Conn., 1972), pp. 3-8.

8 Lysurgius Johnson (Memphis) to ?, August 24, 1865, BRFAL, Ark., AC, vol. 5, LR; Lt. W.R. Stickney (Shreveport) to Thomas Conway, July 2, 1865, BRFAL, La., AC, Box 6, LR; Lt. D.H. Williams to Gen'l. J.W. Sprague, September 25, 1865, BRFAL, Ark., Box 1, LR.

9 Col. J.L. Haynes (Vicksburg) to Capt. B. Fellery, July 8, 1865; Col. H.R. Brinkeroff (Clinton) to Gen'l. O.O. Howard, July 8, 1865, BRFAL, Miss., AC, LR (reel 10).

10 Capt. J.A. Hawley to Col. Samuel Thomas, July 4, 1865, BRFAL, Miss., AC, LR (reel 10).

11 Col. J.L. Haynes (Vicksburg) to Capt. B. Fellery, July 8, 1865, BRFAL, Miss., AC, LR (reel 10). See also Capt. J.H. Weber (Jackson) to Col. Samuel Thomas, June 21, 1865, BRFAL, Miss., AC, LR (reel 12); Lt. W.R. Stickney (Shreveport) to Thomas Conway, July 2, 1865, BRFAL, La., Box 6, LR; Capt. D.W. Whittle to Howard, June 8, 1865, BRFAL, LR (reel 18).

12 Lorenzo James to Gen'l. Wager Swayne, August 16, 1865, BRFAL, Ala., AC, LR (reel 5).

13 See, for example, Dr. Allen Shakespeare (Centreville, La.) to Howard, February 8, 1866; Richard Irby (Nottoway County, Va.) to Howard, September 23, 1865, OOH Papers.

14 Capt. J.R. Montgomery (Washington) to Maj. Sargeant, September 27, 1865, BRFAL, Ark., AC, Box 9, OR. See also Capt. A. Moorhous (Lexington) to AAAG, July 8, 1865, BRFAL, Miss., AC, LR (reel 10); Gen'l. Quincy A. Gillmore (Charleston, S.C.) to Carl Schurz, July 27, 1865, Dept. of the South, vol. 15, LS.

15 Capt. J.H. Weber (Jackson) to Col. Samuel Thomas, July 1, 1865, BRFAL, Miss., AC, LR (reel 12); Lt. W.R. Stickney (Shreveport) to Thomas Conway, July 2, 1865, La., AC, Box 6, LR; Lt. C.W. Clarke (Meridian, Miss.) to ?, July 14, 1865, BRFAL, Ala., AC, LR (reel 5). For a different interpretation, see Leon Litwack, "Free at Last," in Tamara Haraven, ed., Anonymous Americans (Englewood Cliffs, N.J., 1970), pp.
16. Lt. W.R. Stickney (Shreveport) to Thomas Conway, August 26, 1865, BRFAL, La., AC, Box 6, LR; Capt. E.G. Barker (Monticello) to Genl. J.W. Sprague, January 26, 1866, BRFAL, Ark., AC, Box 1.

17. W.H. Berfels (Matthews County) to Col. O. Brown, September 15, 1865, BRFAL, Va., AC, Box 1, LR; Col. James Beecher (Summerville) to AAG, October 7, 1865, BRFAL, S.C., AC, LR (reel 7).

18. The counties were Amberst, Bath, Brunswick, Clarke, Dinwidie, Essex, and Roanoke. Col. O. Brown to Howard, June 15, 1865; Genl. Alfred Terry to E.M. Stanton, July 7, 1865; AAAG, Mil. Dist. of Lynchburg to Jno. Griffin, June 12, 1865, BRFAL, LR (reels 13, 25, 15); L.P. Dameron (Bath County) to Capt. W. Storer How, July 15, 1865, BRFAL, Va., AC, Box 2, LR; Capt. Frank Crandon (Gordonville) to Col. O. Brown, September 31, 1865, BRFAL, Va., AC, Box 2, LR; Capt. W. Storer How to Col. O. Brown, October 28, 1865, BRFAL, Va., AC, Box 2, LR; Capt. James A. Bates to Capt. S. Barnes, November 6, 1865, BRFAL, Va., AC, Box 2, LR; Capt. C.B. Carter to Lt. Col. H.B. Scott, November 7, 1865, BRFAL, Va., AC, Box 3, LR. For examples of planter combinations in other states, see Lt. C.W. Clarke to ?, July 14, 1865, BRFAL, Ala., AC, LR (reel 5); Lt. Col. H.R. Brinkerhoff (Clinton) to Genl. O.O. Howard, July 8, 1865, BRFAL, Miss., AC, LR (reel 10); Col. H.N. Frisbee (Baton Route) to Thomas Conway, August 2, 1865, BRFAL, La., AC, Box 2, LR.

19. Col. O. Brown to Howard, June 15, 1865, BRFAL, LR (reel 13); William Seth (Charlotte County) to Lt. Edward Lyon, May 1, 1866, BRFAL, Va., AC, Box 37, RCBA.

20. Capt. Frank Crandon (Gordonville) to Col. O. Brown, September 31, 1865, BRFAL, Va., AC, Box 2, LR; Patrick O'Hare (Terrebonne Parish) to Thomas Conway, October 11, 1865, BRFAL, La., AC, Box 5, LR.


22. Walter L. Fleming, ed., A Documentary History of Reconstruction (orig. ed., 1906; New York, 1966), I, 279-281; Lt. W.B. Stickney (Shreveport) to Thomas W. Conway, August 15, 1865; Col. H.N. Frisbee (Baton Rouge) to Thomas Conway, August 2 and October 2, 1865, BRFAL, La., AC, Box 2, LR; Col. C.W. Clarke (Meridian) to Col. Samuel Thomas, July 9, 1865, BRFAL, Miss., AC, LR (reel 8).

23. Maj. George Carse (Lexington) to Maj. W.S. How, May 8, 1866, BRFAL, Va., AC, Box 7, LR.
Chaplain J.A. Hawley to Col. Samuel Thomas, July 4, 1865, BRFAL, Miss., AC, LR (reel 10); Lt. C.W. Clarke (Meridian) to Col. Samuel Thomas, BRFAL, Miss., AC, LR (reel 8); Lt. C.W. Clarke to ?, July 14, 1865; Capt. W.R. Gallian (Winchester, Miss.) to Genl. Charles Woods, August 19, 1865; George A. Harmount (Mobile) to Genl. Wager Swayne, August 7, 1865; Harmount to Swayne, July 26, 1865; Capt. W.A. Padlow (Mobile) to General Wager Swayne, August 24, 1865, BRFAL, Ala., AC, LR (reels 5, 6).

On the quantity of emigration, see Kolchin, First Freedom, p. 17; Capt. W.A. Padlow (Mobile) to Genl. Wager Swayne, August 24, 1865, BRFAL, Ala., AC, LR (reel 6); Capt. W.S. How (Staunton) to Col. O. Brown, August 8, 1865, BRFAL, Va., AC, Box 2, LR.

Lt. Col. G.H. Williams (Du Vall's Bluff) to Genl. J.W. Sprague, August 9, 1865, BRFAL, Ark., AC, Box 2, LR.

Rodney Churchill (Gloucester) to Capt. A.S. Flagg, July 28, 1865, BRFAL, Va., AC, Box 1, LR; Lt. H.N. Crydenwise (Demopolis) to Genl. Swain, August 4, 1865, BRFAL, Ala., AC, LR (reel 5); Lt. Col. G.H. Williams (Du Vall's Bluff) to Genl. J.W. Sprague, August 9, 1865, BRFAL, Ark., Box 2, LR.

See, for example, William S. McFeely, Yankee Stepfather: General O.O. Howard and the Freedmen (New Haven, Conn., 1966) and Gettelis, From Contraband to Freedman. For an excellent discussion of this literature, see Herman Belz, "The New Orthodoxy in Reconstruction Historiography," Reviews in American History, I (March, 1973), pp. 106-12.

Capt. A.S. Flagg (Fortress Monroe) to Col. O. Brown, July 16, 1865, BRFAL, Va., AC, Box 1, LR; Genl. R. Saxton to Genl. E.A. Wilde, August 11, 1865, BRFAL, S.C., AC, LS (reel 1).

Benjamin P. Thomas and Harold M. Hyman, Stanton: The Life and Times of Lincoln's Secretary of War (New York, 1963), p. 344; Willie Lee Rose, Rehearsal for Reconstruction: The Port Royal Experiment (Indianapolis, 1964), pp. 325-28; Thomas Conway to Howard, July 28 and August 21, 1865, BRFAL, LR (reel 14); Col. Samuel Thomas to Howard, August 15, 1865, BRFAL, Miss., AC, LS (reel 1); Genl. M.C. Meigs to Howard, August 22, 1865, BRFAL, LR (reel 16).

32 Genl. William T. Sherman to Howard, May 17, 1865, OOH Papers.

33 Thomas Conway to Howard, August 22, 1865, BRFAL, La., AC, vol. 15, LS; New York Times, September 26, 1865.


35 James Speed to E.M. Stanton, June 22, 1865, BRFAL, LR (reel 13).


38 J. Hubley Ashton to Howard, May 22, 1865, BRFAL, LR (reel 13).

39 Howard to Speed, July 1, 1865, BRFAL, LS (reel 1).

40 Howard to all assistant commissioners, June 26, 1865; Howard to Speed, June 27, 1865; Howard to Speed, July 11, 1865; Fullerton to Brown, July 10, 1865; Howard to Brown, July 24, 1865, BRFAL, LS (reel 1).

41 Howard to Brown, July 19, 1865, BRFAL, LS (reel 1).

42 Howard to Stanton, July 19, 1865; Howard to Tillson, July 20, 1865; Howard to Brown, July 24, 1865, BRFAL, LS (reel 1).

43 Circular #13, BRFAL, July 28, 1865, BRFAL, LS (reel 7); Lately Thomas, The First President Johnson (New York, 1966), p. 353; Samuel Taggart to Thomas Conway, August 7, 1865, BRFAL, LS (reel 1).

44 Bentley, A History of the Freedmen's Bureau, p. 93; McFeely, Yankee Stepfather, pp. 108-09.

45 Howard to B.F. Perry, July 29, 1865, OOH Papers; New York Times, August 20, 1865.

46 Endorsement on William T. Moore to Andrew Johnson, August 3, 1865, BRFAL, LR (reel 22); Genl. James S. Fullerton to Genl. J.W. Sprague, August 18, 1865, BRFAL, Ark., AC, Box 8, LR.
47 Fullerton to Sprague, August 19, 1865, BRFAL, Ark., AC, Box 8, LR; Fullerton to Genl. Clinton B. Fisk, August 19, 1865, BRFAL, LS (reel 1); Fowler to Samuel Thomas, August 19, 1865, BRFAL, Miss., AC, LR.

48 Howard to his wife, September 2, 1865, OOH Papers; New York Times, September 6, 1865.

49 Richardson, Messages and Papers, VI, 349; Reuben D. Mussey to Howard, September 7, 1865; Howard to his wife, September 9, 13, 1865, OOH Papers.

50 New York Times, September 14, 1865.


52 Col. O. Brown to Lt. H.S. Merrill, June 15, 1865, BRFAL, Va., AC, vol. 12, LS; "Letter of Advice to Assistant Commissioners," June 14, 1865, BRFAL, LS (reel 1).


54 Genl. Rufus Saxton to Howard, May 24, 1865, Circular #9, BRFAL, Miss., August 4, 1865, BRFAL, Miss., AC, Scrapbook of Orders Issued (reel 29); Howard to William Hayward, December 23, 1865, OOH Papers.


56 Samuel Gardner to Thomas Conway, July 3, 1865, BRFAL, LR (reel 15).

57 Howard to William Hayward, December 23, 1865, OOH Papers.

58 "Letter of Advice to Assistant Commissioners," June 14, 1865, BRFAL, LS (reel 1); Col. Samuel Thomas to Howard, June 27, 1865, BRFAL, Miss., AC, LS (reel 1); Samuel Gardner to Thomas Conway, July 3, 1865, BRFAL, LR (reel 15).

59 C.H. Howard to Howard, May 24, 1865, OOH Papers; Genl. R. Saxton to Howard, October 13, 1865, BRFAL, S.C., AC, LS (reel 1).

61 William F. Young (Branchville) to Maj. S.W. Saxton, June 24, 1865, BRFAL, S.C., AC, LR (reel 8); Howard to Capt. Charles Soule, June 21, 1865, BRFAL, LS (reel 1).

62 "Letter of Advice to Assistant Commissioners," June 14, 1865, BRFAL, LS (reel 1); Chaplain Thomas Smith (Jackson) to Capt. J. Weber, November 3, 1865, BRFAL, Miss., AC, LR (reel 12); Genl. G.L. Beal to AAG, Dept. of S.C., August 23, 1865, BRFAL, LR (reel 13).

63 Genl. J.J. Reynolds to Howard, July 13, 1865, BRFAL, LR (reel 16); Genl. Quincy A. Gillmore to Genl. Carl Schurz, July 27, 1865, Dept. of the South, vol. 15, LS.

64 Howard to Horace Greeley, September 15, 1865, OOH Papers; Howard to James Yeatman, July 10, 1865, BRFAL, LS (reel 1).

65 Circular #2, BRFAL, May 19, 1865; Circular #5, BRFAL, May 30, 1865, BRFAL, LS (reel 7).

66 Circular #5, BRFAL, May 30, 1865; Circular #11, BRFAL, July 12, 1865, BRFAL, LS (reel 7); New York Times, August 20, 1865.

67 Howard to Dr. P. Parker, October 9, 1865, OOH Papers; Howard to Genl. J.W. Sprague, June 20, 1865, BRFAL, Ark., AC, vol. 5, LR; Col. Samuel Thomas to Howard, June 27, 1865, BRFAL, Miss., AC, LS (reel 1).

68 Lt. Stuart Eldridge to Capt. S.A. Cooper (Macon), June 29, 1865, BRFAL, Miss., AC, LS (reel 1); G.O. #9, Dist. of Fla., July 3, 1865, in Genl. J.G. Foster to Thomas Osborne, December 15, 1867, BRFAL, LR (reel 20); Thomas Conway to Lt. Bridges, July 8, 1865, BRFAL, La., AC, vol. 15, LS; Genl. J.W. Sprague to Maj. W.G. Sargeant, July 10, 1865, BRFAL, Ark., AC, vol. 9, LS.

69 C.W. Buckley (Montgomery) to AAG, October 7, 1865, BRFAL, Ala., AC, LR (reel 5); Lt. W.R. Stickney (Shreveport) to Thomas Conway, July 2, 1865, BRFAL, La., AC, Box 6, LR; Capt. S. Barnes (Petersburg) to Col. O. Brown, July 19, 1865, BRFAL, Va., AC, Box 3, LR.

70 Capt. J.H. Weber to Col. Samuel Thomas, June 21 and 23 and July 1, 1865, BRFAL, Miss., AC, LR (reel 12).

Thomas Conway to Col. J.S. Crosby, July 15, 1865; Conway to Howard, July 21, 1865; Conway to Lt. J.E. Shepherd (St. Mary's Parish), August 10, 1865, BRFAL, La., AC, vol. 15, LS.

Col. J.S. Fullerton to Col. Orlando Brown, June 15, 1865, BRFAL, LS (reel 1); Col. O. Brown to Howard, June 19, 1865, BRFAL, LR (reel 13).

Howard to E.M. Stanton, July 18, 1865, BRFAL, LS (reel 1); G.O. #129, War Dept., July 25, 1865, reprinted in G.O. #9, BRFAL, Ala., August 11, 1865, BRFAL, Ala., AC, General Orders, Circulars and Circular Letters Issued (reel 17).

C.W. Buckley (Montgomery) to Thomas Conway, June 1, 1865, BRFAL, LR (reel 13); Lt. W.B. Stickney (Shreveport) to Thomas Conway, July 2, 1865, BRFAL, La., AC, Box 6, LR; G.O. #4, Port of Monroe, in The Monroe (Louisiana) Intelligencer, July 22, 1865; G.O. #12, BRFAL, Ala., August 31, 1865, BRFAL, Ala., AC, General Orders, Circulars and Circular Letters Issued (reel 17).

This evaluation is based primarily on an examination of the extensive contract files in the Bureau records for Louisiana and Mississippi.

Lt. H.E. Dougherty (Jefferson Parish) to AAG, June 28, 1865, BRFAL, La., AC, Box 2, LR; Maj. G. Reynolds (Natchez) to Lt. Babcock (Franklin), August 12, ibid., BRFAL, Miss., vol. 211, Natchez, MS; G.O. #16, BRFAL, Va., September 9, 1865, BRFAL, Va., AC, Order Book, 1865; Capt. Andrew Geddes (Tuskegee) to AAG, September 13, 1865, BRFAL, Ala., AC, LR (reel 5).

Lt. Col. A.L. Mock (Gainesville) to AAG, October 12, 1865, BRFAL, Ala., AC, LR (reel 6); Lt. Edward Ehrlich (Amite) to AAG, October 10, 1865, BRFAL, La., AC, Box 2, LR; Commander of the Post at Chesterville to AAAG, Western Dist. of S.C., February 22, 1866, Dept. of the South, Box 24, Correspondence Relating to Freedmen; G.O. #14, BRFAL, Ala., September 15, 1865, BRFAL, Ala., AC, General Orders, Circulars and Circular Letters (reel 17); Lt. Ed Murphy (Hanover CH) to Capt. Frank Crandon, February 28, 1866, BRFAL, Va., AC, Box 37, RCBA.
Notes

Chapter III

1 New York Times, February 18, 1866.

2 For a full-length description and analysis of labor and race relations, see chapters 1 and 2, above.

3 Jackson News, November 7, 1865 in Col. Samuel Thomas to AAG, Dept. of Miss., December 8, 1865, Dept. of Miss., Box 24, LR.

4 Theodore Brantner Wilson, The Black Codes of the South (University, Alabama, 1965), pp. 56-57; James E. Sefton, The United States Army and Reconstruction (Baton Rouge, 1967), p. 43. For Bureau policy earlier in 1865, see chapters 1 and 2, above.

5 Contrast this argument with Wilson, The Black Codes, pp. 95, 115, who contends that the "milder" black codes enacted in the spring of 1866 were a product of the fact that blacks began to enter into contracts in early 1866. As I demonstrate below, the legislatures enacting codes in early 1866 considered legislation almost identical to those enacted in late 1865 and grudgingly turned away from them when they ascertained northern and congressional response. Moreover, Wilson's argument is weakened, as I show below, by the fact that most of the so-called "milder" codes attempted to impose the most essential restrictions of the earlier codes under the guise of equal rights. These differences are fundamental; they reflect Wilson's belief that the codes are explainable in terms of white prejudice and fear that the "indolent" freedmen would not work without compulsion. I agree with this, but go much further: the black codes were produced by white fear of losing racial mastery and were designed to reinforce black subordination.

6 William Harris, Presidential Reconstruction in Mississippi (Baton Rouge, 1967), pp. 132-33; Manning Force to Peter Force, November 27, 1865, Manning Ferguson Force Papers.

7 Andrew Johnson to Benjamin Humphreys and to William Sharkey, November 17, 1865, AJ Papers; Percy Lee Rainwater,

8 Laws of the State of Mississippi . . . (Jackson, 1866), pp. 82-86.


12 On the question of specific performance, see, for example, Theophilus Parsons, The Law of Contracts (6th ed.; Boston, 1873), II, 36.


15 Lt. A.T. Hemingway (Pass Christian) to Maj. Geo. D. Reynolds (Natchez), February 21, 1866, BRFAL, Miss., AC, LR (reel 17); We the colored people of Mississippi to the Governor, December 3, 1865, BRFAL, Miss., AC, LR (reel 9).

16 Samuel Thomas (Vicksburg) to Rev. Alvord, November 14, 1865, BRFAL, LR (reel 22); Col. Max Woodhull to Samuel Thomas, December 27, 1865, BRFAL, LS (reel 2).

17 Lt. Col. R.S. Donaldson (Jackson) to Capt. J.H. Weber (Vicksburg), November 6, 1865; Capt. Adam Kemper (Natchez) to Col. Saml. Thomas (Vicksburg), January 1, 1866, BRFAL, Miss., AC, LR (reels 9, 14).

18 Genl. Thomas Wood (Vicksburg) to Benjamin Humphreys (Jackson), November 28 and December 3 and 20, 1865; Wood to Genl. Geo. Whipple, CS, Mil. Div. of the Tenn. (Nashville), December 3, 1865 and January 13, 1866, Dept. of Miss., LS, vol. 2; Edwin M. Stanton to Genl. Geo. Thomas (Nashville), Andrew Johnson Papers, series III B.
Endorsement by Lt. Stuart Eldridge (Vicksburg), January 6, 1866 on Clinton Fisk (Nashville) to Saml. Thomas, December 16, 1865, BRFAL, Miss., AC, ES (reel 4); BRFAL, Miss., vol. 165, Jackson, LS, passim; Endorsement by Lt. Stuart Eldridge, January 10, 1866, on Thomas Smith (Jackson) to Eldridge, January 4, 1866.

Saml. Thomas (Vicksburg) to Howard, November 27, 1865; E.M. Stanton to Howard, November 30, 1865, BRFAL, LR (reels 22, 25); Howard to Thomas, December 1, 1865, BRFAL, Miss., AC, LR (reel 11); Maj. Marcus Bestor (Vicksburg) to Genl. M.F. Force (Jackson), December 6, 1865, Dept. of Miss., LS, vol. 2.

John A. Carpenter, Ulysses S. Grant (New York, 1972), pp. 64-66; G.O. #4, Dept. of Miss., January 26, 1866, Dept. of Miss., General Orders and Circulars.

Lt. Col. G. Reynolds (Natchez) to Lt. A.T. Hemmingway (Pass Christian), February 14, 1866, BRFAL, Miss., vol. 211, Natchez, LS; Hemmingway to Reynolds, February 21, 1866, BRFAL, Miss., AC, LR (reel 17); Lt. Col. R.S. Donaldson (Jackson) to Judge of Probate, Madison County, February 13, 1866, BRFAL, Miss., vol. 155, Jackson, LS.

Wood disliked the apprenticeship law and asked George Thomas for permission to nullify it. However, during the time in which he awaited Thomas' reply, as well as after Thomas refused to permit him to nullify the law, Wood refused to allow Bureau agents to interfere with its enforcement. Wood to Genl. Geo. Thomas, February 8, 1866 and Wood to Humphreys, March 1, 1866, Dept. of Miss., LS, vol. 2; Wood to Col. Saml. Thomas, February 9, 1866, BRFAL, Miss., AC, LR (reel 15).

Wood's pressure on Thomas is evident in Saml. Thomas to Lt. Col. R.S. Donaldson, February 28, 1866 and Thomas to Wood, March 12, 1866, BRFAL, Miss., AC, LS (reel 1).

Samuel Thomas, "Digest of Orders and Instructions . . . ," [March 1, 1866], BRFAL, Miss., AC, Letters & Circulars Issued (reel 28).

Samuel Thomas to Lt. Col. R.S. Donaldson, February 28, 1866; Thomas to Wood, March 12, 1866; Thomas to Wood, March 12, 1866, BRFAL, Miss., AC, LS (reel 1).

Saml. Thomas to Wood, February 3, 1866, BRFAL, Miss., AC, LS (reel 1).

29 Hooker's opinion is reprinted in Circular #5, March 17, 1866, BRFAL, Miss., AC, LR (reel 18).

30 Maj. Jno Knox (Meridian) to Lt. S. Eldridge, March 22, 1866, BRFAL, Miss., AC, LR (reel 14); Capt. A.W. Preston (Vicksburg) to Maj. Jno Knox (Meridian), March 23, 1866; Preston to the Probate Judge, Sunflower Co., Miss., March 27, 1866; Preston to Capt. Hezekiah Gardner (Jackson), April 2, 1866, BRFAL, Miss., AC, LS (reel 1); G. Gordon Adam ( Solicitor for the Bureau) to Wood, April 30, 1866, BRFAL, Miss., AC, LR (reel 13).

31 Howard (Charleston, S.C.) to Benjamin F. Perry (Columbia, S.C.), October 21, 1865 and Howard (Charleston, S.C.) to William H. Trescott, October 23, 1865, BRFAL, LS (reel 1); Daniel Sickles to Perry, December 15, 1865, Dept. of S.C., vol. 46, LS.


33 The Nation, II (January 18, 1866), 75-76; Statutes at Large of South Carolina [1865] (Columbia, 1866), pp. 245-85.

34 Sickles to Benjamin F. Perry, December 15, 1865, Dept. of S.C., vol. 46, LS; G.O. #1, January 1, 1866, Dept. of S.C., vol. 48, General Orders Issued; Sickles to Howard, January 23, 1866, BRFAL, LR (reel 24).

35 On editorial and congressional response to the Mississippi code, see Eric L. McKitrick, Andrew Johnson and Reconstruction (Chicago, 1960), pp. 11, 178. On Johnson's response, see Johnson to W.L. Sharkey, November 11, 1865 and Johnson to Benjamin F. Perry, November 27, 1865, AJ papers, Series I (reel 19).

36 The committee's report is reprinted in John Wallace, Carpetbag Rule in Florida (Jacksonville, 1888), pp. 28-35.

37 Osborne to William Marvin, December 30, 1865, BRFAL, LR (reel 20).


Osborne to Howard, December 30, 1865, BRFAL, LR (reel 20); Howard to Osborne, January 12, 1866, BRFAL, LS.

Osborne to Howard, February 4, 1866 and April 1, 1866, BRFAL, LR (reels 20, 27).

Willie Malvin Caskey, The Secession and Restoration of Louisiana (Baton Rouge, 1939), p. 193, n. 36; Baird to Howard, December 20, 1865, BRFAL, La., AC, vol. 17, LS.

For introduction of the measure, see New Orleans Daily Picayune, December 5, 1865. The only text of the bill that I have come across is the one entered into the Congressional Globe by Henry Wilson. See Cong. Globe, 39 Cong., 1 sess., p. 39.

New Orleans Daily Picayune, December 15, 17, 1865; Circular #29, BRFAL, La., December 4, 1865, BRFAL, La., AC, vol. 28, Orders and Circulars Issued.

Texts of these measures are enclosed in Baird to Howard, December 20, 1865, BRFAL, LR (reel 21).

For texts of the bills, see Baird to Howard, December 20, 1865. The expeditious manner in which the legislature enacted the committee's proposal is noted in the New Orleans Daily Picayune, December 14, 15, 1865.

Baird to Wells, December 18, 1865, BRFAL, La., AC, vol. 17, LS; Wells to Baird, December 18, 1865, BRFAL, La., AC, Box 4, LR; Duncan Kenner (Chmn., Joint Committee on Labor) to Baird, December 19, 1865 and Baird to Howard, December 20, 1865, BRFAL, LR (reel 21); Howard to Baird, January 4, 1866, BRFAL, LS (reel 2).

Howard to Baird, January 4, 1866, BRFAL, LS (reel 2); Acts passed by the General Assembly of . . . Louisiana . . . (New Orleans, 1866), pp. 16-20, 28-30.

Baird to Howard, December 20, 1865, BRFAL, LR (reel 21); AAG to Capt. L. Harrigan (Shreveport), January 2, 1866, AAG to Capt. J.C. Clark (Opelousas), January 30, 1866, BRFAL, La., AC, vol. 17, LS.

Acts of the Session of 1865-6 of the General Assembly of Alabama . . . (Montgomery, 1866), p. 98; for texts of the other bills, see Wager Swayne to Howard, December 20, 1865, BRFAL, LR (reel 19).

Swayne to Howard, December 26, 1865, BRFAL, LR (reel 19).
54. Montgomery Daily Advertiser, February 16, 1866; Acts
   . . . of the General Assembly . . ., pp. 128-130; Swayne
   to Howard, January 31, 1866, BRFAL, LR (reel 19); Walter L.
   Fleming, The Civil War and Reconstruction in Alabama


56. Columbus (Georgia) Daily Sun, December 14, 19, 1865;
   Alan Conway, The Reconstruction of Georgia (Minneapolis,
   1966), pp. 54-55.

57. Davis Tillson to Howard, January 6, 1866, BRFAL, LR
   (reel 20); Columbus Daily Sun, January 18, 1866; Report of
   the Commissioners Appointed to Prepare a System of Laws
   (Milledgeville, 1866), passim.

58. Columbus Daily Sun, March 6, 1866; Acts of the General
   Assembly of the State of Georgia . . . (Milledgeville,
   1866), pp. 6-8, 74-75, 239-40.

59. Brown to Howard, December 9, 1865, BRFAL, LR (reel
   25); Howard to Brown, December 12, 1865, BRFAL, LS (reel 1);
   Brown to Howard, January 24, 1866, OOH Papers.

60. Acts of the General Assembly of the State of
   Virginia . . . (Richmond, 1866), pp. 82-85, 90-93.
Notes

Chapter IV

1 Howard (Columbia, S.C.) to Edwin M. Stanton, October 21, 1866; Max Woodhull to Samuel Thomas (Vicksburg, Miss.), November 24, 1866, BRFAL, LS (reel 1); Howard to Henry Wilson, November 25, 1866, OOH Papers.

2 Tillson to Howard, December 21, 1865, BRFAL, LR (reel 20).

3 Osborne to Howard, December 8, 1865, BRFAL, LR (reel 20).

4 Baird to Howard, December 20, 1865 (reel 20).


6 Howard to Wilson, November 25, 1865; Lyman Trumbull to Howard, January 4, 1866; Howard to Thaddeus Stevens, January 6, 1866, OOH Papers; "Report of the Commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands [December, 1865]," House Ex. Docs., No. 11, 39 Cong., 1 sess., pp. 32-33.

7 "Report of the Commissioner . . . [1865]," pp. 31-33.


12 For the text of the Bureau extension as it passed Congress, see Cong. Globe, 39 Cong., 1 sess., p. 318.

13 SAL, XIV, 27–30.

14 Circular letter, February 23, 1866, in Max Woodhull to Col. Orlando Brown, February 28, 1866, BRFAL, Va., AC, Box 11, LR; Howard to Tillson, February 28, 1866, OOH Papers.

15 Lt. Col. A.M. York (Paducah) to Genl. C.B. Fisk, March 10, 1866, BRFAL, LR (reel 28); Genl. J.W. Sprague (Little Rock) to ?, BRFAL, Ark., AC, vol. 10, LS; Col. E. Whittlesey (Raleigh, N.C.) to Howard, February 27, 1866, OOH Papers.

16 James D. Richardson, comp., A Compilation of the Messages and Papers of the Presidents, 1789-1897 (11 vols.; Washington, 1897), VI, 429–32.

17 James E. Sefton, The United States Army and Reconstruction (Baton Rouge, 1967), p. 61; Thomas to Grant, April 9, 1866, Headquarters Records, vol. 54, Grant Papers; Tillson to Howard, April 7, 1866, BRFAL, LR (reel 27).

18 I have no proof that Stanton actually spoke with Johnson concerning Woods' inquiry. However, the fact that Stanton's April 5 interpretation of the proclamation is exactly the same as what Johnson subsequently issued and more conservative than the position that Stanton himself took a week later indicates that the Secretary consulted with Johnson. Genl. Joseph Holt to Genl. Charles Woods, April 5, 1866, Telegrams Collected by the Office of the Secretary of War (Bound) (reel 90).

19 Holt to Woods, April 5, 1866, Telegrams Collected by the Office of the Secretary of War (Bound) (reel 90).

20 Endorsement on Tillson to Howard, April 7, 1866, BRFAL, LR (reel 27); Cincinnati Commercial, April 12, 1866.

21 Genl. E.D. Townsend to Genl. J.M. Brannan, April 9, 1866 (copy), BRFAL, Miss., AC, LR (reel 13); Howard to Tillson, April 15, 1866, BRFAL, LS (reel 2); Grant to Thomas, April 10, 1866, Headquarters Records, vol. 47, Grant Papers. Grant also had a lengthy interview with Johnson on April 9. Cincinnati Commercial, April 10, 1866.

22 G.O. #17, Dept. of Georgia, April 17, 1866, in Atlanta Daily Intelligencer, April 14, 1866; Jenkins' proclamation is enclosed in Tillson to Howard, April 20, 1866, BRFAL, LR (reel 27); G.O. #28, Dept. of Florida, April 27, 1866
(thanks to Harold Hyman); AAAG to Maj. W.S. How (Staunton), April 10, 1866, BRFAL, Va., AC, vol. 13, LS; G.O. #33, Dept. of Louisiana, April 16, 1866, Dept. of Louisiana, General Orders, 1865-1866, 1866-1870.

23Swayne to Woods, February 27, 1866, BRFAL, Ala., AC, LS (reel 1); Col. George Robinson (Mobile) to Swayne, April 21, 1866, BRFAL, Ala., AC, LR (reel 9); Genl. W.D. Whipple (Nashville) to Wood, April 11, 1866, Dept. of Miss., Box 25, LR.

24Richardson, Messages and Papers, VI, 440; Edward Cooper to Jonathan Worth (Raleigh, N.C.), April 27, 1866, AJ Papers.

25For Johnson's messages, see Richardson, Messages and Papers, VI, 398-413.

26For contrasting interpretations, see Sefton, The United States Army and Reconstruction, pp. 77-82; Harold M. Hyman, "Johnson, Stanton and Grant: A Reconsideration of the Army's Role in the Events Leading to Impeachment," American Historical Review, LXVI (October, 1960), 85-100; Benjamin F. Thomas and Harold M. Hyman, Stanton: The Life and Times of Lincoln's Secretary of War (New York, 1963), pp. 471-78.

27E.D. Townsend to Wood, May 4, 1866, Dept. of Miss., Box 25, LR; Ruger to Rutherford, May 11, 1866, BRFAL, LR (reel 29); Holt to Vincent, June 9, 1866, Bureau of Military Justice, vol. 19, LS.


29E.M. Stanton to Sickles, June 16, 1866, Telegrams Collected by the Office of the Secretary of War (bound) (reel 90); Sickles to Genl. E.D. Townsend, June 17, 1866, Dept. of the Carolinas, vol. 52/98, LS; James Orr to Sickles, June 19, 1866, Dept. of the Carolinas, LR; S.O. #19, Dept. of S.C., June 26, 1866, Dept. of S.C., vol. 53/100, Special Orders.

30Maj. James T. Watson (Jacksonport) to AAAG, November 30, 1866, BRFAL, Ark., AC, Box 10, OR; William M. Todd (Columbia) to Capt. William Sterling, February 28, 1867, BRFAL, La., AC, Box 32, OR; to Maj. L. Walker (Columbia), March 9, 1866, Dept. of South, Box 24, Correspondence Relating to Freedmen.

31Capt. Silas May (Grenada) to Genl. Thomas Wood, May 21, 1866, BRFAL, LR (reel 28); May to AAG, July 13, 1866, BRFAL, Miss., AC, LR (reel 15).
32 Lt. A.S. Dyer (Jacksonport) to AAAG, October 31, 1866, BRFAL, Ark., AC, Box 10, OR.

33 Maj. Alexander Moore (Charleston) to General Daniel Sickles, April 30, 1866, Dept. of the South, Box 24, Correspondence Relating to Freedmen.

34 Maj. Fred Thibant to AAAG, November 6, 1866, BRFAL, LR (reel 38); James Seymour (Drummondtown) to AAAG, June 30, 1866, BRFAL, Va., AC, Box 10, LR; Sgt. F.H. Evans (Drummondtown) to Maj. G.H. French, July 27, 1866, BRFAL, Va., AC, Box 4, LR; Statement by B. Alexander (Aberdeen), BRFAL, Ala., AC, LR (reel 8).

35 Affidavit of Primus Washington, in Lt. J.S. Taylor (Hamburg) to Col. ?, February 18, 1867, BRFAL, Ark., Box 4, LR; E. Yulee (Walthourville) to Capt. J.K. Smith, June 22, 1866, BRFAL, Georgia, Box 28, Savannah, ULR.

36 Genl. R.K. Scott to Howard, October 22, 1866, BRFAL, LR (reel 39).

37 John Martin (Covesville Depot) to Lt. Joyce, n.d., BRFAL, Va., Box 11, Charlottesville, LR; James Parks to John Collins, April 20, 1866, BRFAL, Ga., vol. 151, Augusta, LS; F.P. Gross (Little Rock) to AAAG, January 24, 1867, BRFAL, Ark., AC, Box 4, LR; BRFAL, Miss., vol. 169, Jackson, Complaint Book.

38 See, for example Capt. H. Sweeney (Helena) to AAAG, October 31, 1866, BRFAL, Ark., AC, Box 10, OR; William V. Turner (Wetumpka) to H. Thompson, June 15, 1866, BRFAL, Ala., AC, LR (reel 9).

39 Julius J. Fleming (Sumter) to Genl. R.K. Scott, February 8, 1867, BRFAL, S.C., LR (reel 13); W.G. Delaney (Buckeyville) to Genl. Swayne, January 15, 1867, BRFAL, Ala., AC, LR (reel 10).

40 For an example of Bureau officials' faith in the best men, see Lt. Col. Jno. W. Jordan (Farmville) to Maj. J.R. Stone (Petersburg), September 30, 1866, BRFAL, Va., AC, Box 38, RCBA.

41 Lt. J. Arnold Yeckley (Lunnenburg C.H.) to Capt. S. Barnes (Petersburg), May 10, 1866, BRFAL, Va., AC, Box 5, LR.

42 Lt. Benjamin Cook (Richmond) to Capt. J.A. McDonald, July 30, 1866, BRFAL, Va., Box 43, RRTFVC; Maj. G. Reynolds (Natchez) to Lt. S. Eldridge, February 2, 1866, BRFAL, Miss., AC, LR (reel 16).
Report of an investigation of the cause, origin and result of the late riots in the city of Memphis made by Col. Charles F. Johnson . . . and Maj. F.W. Gilbreath . . .," in Gilbreath to Howard, May 22, 1866, BRFAL, LR (reel 33); Donald Nieman, "Presidential Reconstruction in Louisiana and the New Orleans Riot" (unpublished manuscript), Appendix I.

Maj. H.F. Wallace (Point Coupee Parish) to Maj. J.H. Mahuken, July 31, 1866, BRFAL, La., AC, Box 32, OR; Lt. Col. A.E. Niles (Greenville) to Lt. J.M. Johnson, November 8, 1866, BRFAL, S.C., AC, LR (reel 10).

See, for example Lt. George Cook to James A. Bates (Richmond, Va.), July 31, 1866, BRFAL, LR (reel 40); William V. Turner (Wetumpka) to H. Thompson, June 15, 1866, BRFAL, Ala., AC, LR (reel 9).

Maj. T.S. Free to Howard, BRFAL, LR (reel 22); Capt. Z. Chatfield to Maj. George Reynolds (Natchez), March 5, 1866, BRFAL, Miss., AC, LR (reel 16); Capt. D.J. Connally (Burkeville) to Genl. O. Brown, February 28, 1867, BRFAL, Va., AC, Box 43, RRTFVC.


Circular Letter, July 18, 1866, BRFAL, Ark., vol. 131, Monticello, LS; Lt. A.S. Dyer (Jacksonport) to ?, January 31, 1867, BRFAL, Ark., AC, Box 10, OR.

Lt. Henry Ayres (Richmond County) to Maj. James Johnson, March 18, 1867; Lt. J. Arnold Yeckley (City Point) to Capt. T. Crandon, August 29, 1866, BRFAL, Va., AC, LR, Boxes 6, 14. See also Lt. A.S. Ayer, "Report . . . for the Month Ending August 31, 1866," BRFAL, Ark., AC, Box 10, OR.

W.S. McCullough (DuVall's Bluff) to AAAG, January 31, 1867, BRFAL, Ark., AC, Box 10, OR; Lt. William Fernald (Martinsville) to Genl. O. Brown, September 11, 1866, BRFAL, Va., AC, Box 8, LR.

Genl. Thomas Wood to Howard, September 27, 1866, BRFAL, LR (reel 38).

Lt. W.F. De Knight (Amherst C.H.) to James Shrader, June 10, 1866, Shrader to De Knight, June 19, 1866, BRFAL, Va., AC, Box 6, LR.

Maj. J.R. Stone (Nansemond County) to AAAG, April 10, 1866, BRFAL, Va., AC, Box 11, LR; S.O. #106, BRFAL, Va., July 5, 1866, BRFAL, Va., AC, vol. 34, Orders and Circulars, 1866.
54. (Marshall) Texas Republican, March 30, April 13, 1866, February 23, 1867; General C.H. Griffin to Howard, February 18, 1867, BRFAL, LR (reel 44).

55. BRFAL, Ky., Louisville, Minutes of the Freedmen's Court. (Thanks to Dan Flanigan.)

56. See, for example, Lt. Theo. Forbes to Mr. Pease (McIntosh County), June 15, 1866, BRFAL, Ga., AC, LS (reel 3).

57. Capt. R. Gardner (Pass Christian) to Genl. Thomas Wood, September 1, 1866, BRFAL, Miss., AC, LR (reel 14); Maj. A.W. Preston to Gardner, September 10, 1866, BRFAL, Miss., AC, LS (reel 2).


60. W.T.C. Brannen (Pike County) to Genl. Davis Tillson, October 15, 1866, Attorney General's Papers, LR, Georgia (Private Citizens).

61. "Violations of the Civil Rights Bill," pp. 2-11. Judge John Erskine of the United States district court for Georgia, upon learning of the case, informed Pitch that the civil authorities' treatment of Fincher was "a palpable revival of human slavery." Although he advised Pitch to bring the case to the attention of a United States commissioner, his letter indicates that he believed that only if Fincher had been punished under a discriminatory statute would the Civil Rights Act be applicable. See, John Erskine to Henry Pitch, December 12, 1866, Attorney General's Papers, LR, Georgia (U.S. Atty.).


63. Circular #30, BRFAL, Ark., December 14, 1866, BRFAL, Ark., AC, vol. 22, Circulars Issued; Maj. William J. Dawes (Pine Bluff) to AAG, December 27, 1866, January 5, 1867, BRFAL, Ark., AC, Box 3, LR.

64. John Whytock to Col. C. Smith, April 16, 1867; H.C. Caldwell to Col. C. Smith, n.d., BRFAL, Ark., AC, Box 3, LR.
65. H.B. Allis to Col. Charles Smith, April 18, 1867, BRFAL, Ark., AC, Box 5, LR.


67. Robert A. Hill to Salmon P. Chase, November 11, 1866, Salmon P. Chase Papers; Hill to Howard, January 5, 1866, BRFAL, LR (reel 42); Hill to Thomas Wood, November 9, 1866; Hill to Alvan C. Gillem, February 25, 1867, BRFAL, Miss., AC, LR (reels 14, 19).

68. Maj. W.P. Carlin to Howard, February 12, 1867; Genl. Charles Griffin to Howard, February 12, 1867, BRFAL, LR (reel 44).


70. Isaac Brooks (U.S. commissioner, Baltimore) to Genl. E.M. Gregory, January 27, 1867; William Van Derlip to William Rogers, March 7, 1867, BRFAL, LR (reel 41).

71. Howard to Stanton, January 19, 1867, BRFAL, LS (reel 3).

72. Howard to Grant, July 3, 1866, BRFAL, LS (reel 2); G.O. #44 as reprinted in G.O. #58, Dept. of La., July 16, 1866, Dept. of La., General Orders.

73. Lt. Col. Garrick Mallery to Col. O. Brown, August 9, 1866, BRFAL, Va., AC, Box 4, LR. See also J.F. McCogy (Greenville) to Lt. J.F. Conyham, October 12, 1866, BRFAL, Ala., AC, LR (reel 8); Maj. C.W. Pierce to Genl. Wager Swayne, October 25, 1866, BRFAL, Ala., vol. 138, Demopolis, LS; Genl. Davis Tillson to Howard, Nov. 1, 1866, BRFAL, Ga., AC, OR (reel 32).

74. Sefton, Army and Reconstruction, pp. 261-62; Genl. E.O.C. Ord to Howard, December 21, 1866, BRFAL, Ark., AC, Box 10, OR; Genl. J.B. Kiddoo to Howard, August 8, 1866, BRFAL, LR (reel 36); Capt. J. Keraney Smith to Capt. W.W. Deane, July 26, 1866, BRFAL, Ga., vol. 347, Savannah, LS; Endorsement by Genl. A. Baird, August 21, 1866, BRFAL, La., AC, ES; Genl. R.K. Scott to Howard, November 11, 1866, BRFAL, S.C., AC, LS (reel 1).

75. Lt. Col. Garrick Mallery to Col. O. Brown, August 9, 1866, BRFAL, Va., AC, Box 4, LS.
Maj. A.P. Ketchum to Genl. A.H. Terry (Richmond), July 16, 1866, BRFAL, Va., AC, Box 11, LR; Howard to each assistant commissioner, September 19, 1866, BRFAL, LS (reel 2).

Endorsement of October 29, 1866 by E.M. Stanton on circular dated October 14, 1866, BRFAL, LR (reel 40); Genl. Samuel Thomas to Genl. Thomas Wood (Vicksburg), December 8, 1866, BRFAL, Miss., AC, LR (reel 16).

Howard to each assistant commissioner, September 19, 1866, BRFAL, LS (reel 2).


"Violations of the Civil Rights Bill," pp. 20-37; "Case of Dr. Watson," n.d., BRFAL, Va., AC, Box 8, LR; Howard to Schofield, December 10, 1866, BRFAL, LS (reel 2); E.D. Townsend to Schofield, December 21, 1866, BRFAL, LR (reel 40).


Henry S. Fitch (Savannah) to Orville Browning, February 6, 1867, AJ Papers, Series I (reel 26); Howard to Sibley, February 24, 1867, BRFAL, LS (reel 3).
Notes

Chapter V


3 Wager Swayne to Howard, January 31, 1866, in "Reports of the assistant commissioners of freedmen . . .," Senate Ex. Docs., No. 6, 39 Cong., 1 sess., pp. 287-88.

4 On blacks' desire to rent land, see Lt. Col. B.F. Smith (Georgetown) to AAG, January 21, 1866, BRFAL, S.C., AC, LR (reel 11); William Gillespie (Louisa CH) to ?, November 9, 1865, BRFAL, Va., AC, Box 3, LR; Lt. L.W. Stevenson (Lovingston) to AAAG, January 31, 1866, BRFAL, Va., AC, Box 8, LR. On planters' unwillingness to rent, see Capt. A.P. Slaughter (Columbus, Ga.) to Davis Tillson, October 15, 1865, BRFAL, Ala., AC, LR (reel 6); William Seth (Charlotte County) to Lt. Edward Lyon, May 1, 1866, BRFAL, Va., AC, Box 37, RCB.

5 Howard (Charleston, S.C.) to William Trescott, October 23, 1865; Howard to all agents and officers of the Bureau, October 23, 1865; Howard to Charles Nordhoff, March 19, 1866, BRFAL, LS (reel 1); "Report of the Commissioner . . . [December, 1865]," pp. 11-13.

6 Howard to Henry Wilson, November 25, 1865; Howard to Maj. G.W. Nichols, April 29, 1865; Howard to J.K. Chapin, January 10, 1866; Lyman Trumbull to Howard, January 4, 1866, OOH Papers; Howard to William Trescott, October 23, 1865, BRFAL, LS (reel 1).

7 For Howard's relations with Johnson, see chapters 1-3, above.

8 Genl. C.H. Howard (Cheraw) to Genl. Rufus Saxton, November 17, 1865, BRFAL, S.C., AC, OR (reel 34).

10 Thomas C. Arnold (Savannah) to Col. Sickles, December 27, 1865, BRFAL, Ga., Box 28, Savannah, ULR; "We the colored people" to Governor [Benjamin Humphreys], December 3, 1865, BRFAL, Miss., AC, LR (reel 9); Henry Bram et al. (Edisto, S.C.) to Howard [late 1865], BRFAL, LR (reel 19).

11 Capt. H. Sweeney (Helena) to Genl. J.W. Sprague, March 31, 1866, BRFAL, Ark., AC, Box 9, OR; Capt. D.T. Corbin (Mt. Pleasant) to H.W. Smith, February 1, 1866, BRFAL, S.C., AC, LR (reel 9); Wager Swayne to Howard, January ?, 1866, BRFAL, LR (reel 19).

12 Swayne to Howard, January 31, 1865, in "... Orders Issued by Assistant Commissioners ...," House Ex. Docs., No. 70, 39 Cong., 1 sess., p. 287; G.O. #12, BRFAL, Ala., August 12, 1865, BRFAL, Ala., AC, General Orders and Circulars Issued (reel 17); Circular #16, BRFAL, Ark., October 16, 1865, in "... Orders Issued by Assistant Commissioners ...," pp. 77-79; Davis Tillson to Maj. William Gary, January 31, 1866, BRFAL, Ga., AC, LS (reel 1); Absalom Baird to the planters of St. Martin Parish, February 3, 1866, in "... Orders Issued by Assistant Commissioners ...," pp. 361-63.

13 Endorsement by Col. Orlando Brown on Circular #1, BRFAL, Va., District IX, February 21, 1866, BRFAL, Va., AC, Box 11, AC.

14 Circular #5, BRFAL, Ga., December 22, 1865, BRFAL, Ga., AC, Orders and Circulars Issued (reel 34); Lt. George Pratt to Davis Tillson, January 23, 1866, in "... Orders Issued by Assistant Commissioners ...," p. 323; Tillson to Howard, January 23 and February 1, 1866, BRFAL, Ga., AC, LS (reel 1); Howard to Tillson, January 23 and 25, 1866, BRFAL, LS (reel 2).

15 Capt. C.B. Wilder (Fortress Monroe) to Brown, February 1 and 7, 1866, BRFAL, Va., AC, Box 11, LR; AAAG to Wilder, February 4, 1866, BRFAL, Va., AC, LS.

16 Col. T.W. Osborne (Talasaassee) to Howard, February 19, 1866, BRFAL, LR (reel 27).

17 Lt. Hiram Willis (DuVall's Bluff) to AAG, August 31, 1866, BRFAL, Ark., AC, Box 10, OR; Genl. J.W. Sprague to Rev. Albert Gratton (DuVall's Bluff), October 5, 1866, BRFAL, Ark., AC, vol. 10, LS; Capt. L.H. Carhart (Camden)
to Genl. J.W. Sprague, November 17, 1865, BRFAL, Ark., AC, vol. 5, LR; Carhart to Sprague, December 23, 1865, BRFAL, Ark., AC, Box 9, OR.

18"Digest of Orders and Instructions . . . ," BRFAL, Miss., AC, General Orders and Circulars Issued (reel 28); Maj. George Reynolds (Natchez) to AAAG, February 2, 1866, BRFAL, Miss., AC, LR (reel 16); Genl. Thomas J. Wood to T.J. Randolph (mayor of Vicksburg), July 18, 1866, Dept. of Miss., LS, 1864-1867. On relations between Thomas and Wood, see chapter 3, above.

19Circular #5, BRFAL, Ga., December 22, 1865, BRFAL, Ga., Orders and Circulars Issued (reel 34); Lt. Col. Ira Ayer (Augusta) to William Wigham, March 3, 1866, BRFAL, Ga., vol. 150, Augusta, LS; Howard to Tillson, January 25, 1866, BRFAL, LS (reel 2).

20Circular, BRFAL, Va., November 4, 1865, BRFAL, Va., AC, order Book, 1865.

21William Gillespie (Louisa CH) to ?, November 11, 1865 and M.Q. Holt (Isle of Wight County) to Col. O. Brown, December 5, 1865, BRFAL, Va., AC, Boxes 3, 7, LR.

22Capt. N. Brooks (New Kent County) to Brown, April 30, 1866; Capt. J.W. Sharp (Dinwiddie County) to Brown, February 28, 1866; Lt. J. Jones (Charlottesville) to Brown, May 31, 1866, BRFAL, Va., AC, Box 37, RCBA.

23Colonel George Robinson (Mobile) to Swayne, January 17, 1866; Col. John Callis (Huntsville) to Swayne, October 31, 1866; Lt. Spencer Smith (Tuskegee) to Swayne, December 23, 1865 and January 13, 27, 1865, BRFAL, Ala., AC, OR (reel 19); Swayne to Howard, January ?, 1866, in "Reports of Assistant Commissioners . . . ," Senate Ex. Docs., No. 6, 39 Cong., 1 sess., p. 70.

24Circular #32, BRFAL, La., December 19, 1866, BRFAL, La., AC, vol. 28, Circulars and Orders; AAG to Capt. L. Harrigan (Shreveport), January 2, 1866, BRFAL, La., AC, vol. 17, LS; Endorsement by Col. M.A. Reno, April 11, 1866, BRFAL, La., vol. 128, PMGF, LS.

25G.O. #5, BRFAL, S.C., October 19, 1865, BRFAL, S.C., AC, LR (reel 8).

26Circular, BRFAL, Eastern Dist., November 20, 1865, Dept. of the South, Box 24, Correspondence Relating to Freedmen; Genl. James Beecher (Summerville) to AAG, December 20, 1865, BRFAL, S.C., AC, LR (reel 7); Beecher to AAAG, April 28, 1866, Dept. of the South, Box 24, Correspondence Relating to Freedmen.
27. Genl. Absalom Baird to Genl. Wheeler, December 6, 1865, BRFAL, La., AC, vol. 16, LS; G.O. #1, BRFAL, Miss., January 16, 1866, BRFAL, Miss., AC, Orders and Circulars Issued (reel 28); G.O. #1, Dept. of S.C., January 1, 1866, to Genl. Daniel Sickles to Genl. George Meade, January 24, 1866, BRFAL, LR (reel 19).

28. Genl. James C. Beecher (Combahee Ferry) to AAAG, January 21, 1866, Dept. of the South, Box 24, Correspondence Relating to Freedmen; "Committee in behalf of the people" (Edisto, S.C.) to Howard, n.d., BRFAL, LR (reel 19).

29. On the demand for laborers, see Capt. Samuel Gardner to Col. C. Cadle, February 8, 1866, BRFAL, Ala., AC, OR (reel 19); Capt. H. Sweeney (Helena) to Genl. J.W. Sprague, March 31, 1866, BRFAL, Ark., AC, Box 9, OR; Capt. W.W. Deane to J.A. Ward, November 16, 1865, BRFAL, Ga., AC, LS (reel 1).

30. See, for example, J.R. Duvall (Monticello) to Genl. J.W. Sprague, February 1, 1866, BRFAL, Ark., AC, vol. 6, LR; Capt. D.T. Corbin (Mount Pleasant) to AAAG, February 1, 1866, BRFAL, S.C., AC, LR (reel 9).

31. See, for example, endorsement by Col. M.A. Reno, dated January 23, 1866, BRFAL, La., vol. 128, PMGF, LS; Genl. Ralph Ely (Columbia) to Capt. J.A. Clark, January 9, 1866, BRFAL, SC, AC, OR (reel 34).

32. Davis Tillson to Col. Sickles (Savannah), December 6, 1865, BRFAL, Ga., AC, LS (reel 1); Tillson to Howard, December 8, 1866, BRFAL, LR (reel 20).

33. My evaluation of patterns of labor in this and the following paragraphs is based on the following Bureau records: labor contracts for freedmen assistant commissioners' records for Mississippi and Louisiana, the Operations Reports in the records of the assistant commissioner for Arkansas and the Reports on Conditions of Bureau Affairs located in the Virginia assistant commissioner's records.

34. See, for example, contract executed between E.R. Warfield (Holmes County) and freedmen, January 12, 1866, BRFAL, Miss., AC, Contracts of Freedmen (reel 49); contract executed between R.A. Todd and freedmen, January 1, 1866, BRFAL, La., Agreements with Freedmen, Box 26 (St. Mary's Parish).

35. See, for example contract executed between Thomas Billups and freedmen, January 9, 1866; contract executed between L.P. King and freedmen, January, 1866, BRFAL, Miss., AC, Contracts of Freedmen (reel 49).
Contract executed between J.V. Harris and freedmen, December 28, 1865, BRFAL, Miss., AC, Contracts with Freedmen (reel 49).

Capt. Robert Gardner (Pass Christian) to AAAG, July 30, 1866, BRFAL, Miss., AC, LR (reel 10); Lt. J.E. Greentree (Madison, Fla.) to T.W. Osborne, March 31, 1866, BRFAL, LR (reel 27); Capt. H.W. Leidtke (Monck's Corner) to AAAG, May 15, 1866, BRFAL, S.C., AC, LR (reel 10); Lt. L.W. Stevenson (Lovingston) to AAAG, January 31, 1866, BRFAL, Va., AC, Box 8, LR.

On planters' desire for specific performance, see chapter 2, above; on the absence of specific performance as a remedy in common law, see chapter 3, above.

Genl. Thomas J. Wood to Howard, June 20, 1866 and Howard's endorsement thereon, BRFAL, Miss., AC, LR (reel 16).


Col. Irvine Gregg to O.B. Tripler (Jefferson Parish), December 22, 1865; Capt. A.F. Hayden to Capt. J.C. Clark (Opelousas), January 30, 1866; Hayden to Capt. J.C. Stimmel, March 10, 1866, BRFAL, La., AC, vol. 17, LS.

Col. Samuel Thomas to T.A. Harman (Greenville), March 29, 1865; Capt. A.W. Preston to T.B. Gray (sheriff, Washington), May 30, 1866; Capt. A.W. Preston to Maj. J.J. Knox (Meridian), June 2, 1866, BRFAL, Miss., AC, LS (reel 2).


S.R. Cockrill (Pine Bluff) to Genl. J.W. Sprague, February 2, 1866, BRFAL, Ark., vol. 6, LR; Sprague to Cockrill, February 27, 1866, BRFAL, Ark., AC, vol. 10, LS; Circular #19, BRFAL, Ark., March 1, 1866, BRFAL, Ark., AC, vol. 22, Circulars Issued.

F.A. Butts to Genl. S.C. Armstrong, August 31, 1866, BRFAL, Va., AC, Box 38, RCBA; Col. M.A. Reno to L.L. Butler (Alexandria), BRFAL, La., vol. 127, PMGF, LS; Lt. Theodore Forbes to T.P. Pease (Darien), June 21, 1866, BRFAL, Ga., AC, LS (reel 2); Genl. J.W. Sprague to Thomas Hunnicutt (Chicot County), January 19, 1866.
46 W.W. Meyers (Greenville) to Col. Samuel Thomas, April 19, 1866, BRFAL, Miss., AC, LR (reel 15); E.G. Black to Col. Callis, BRFAL, Ala., vol. 58, Huntsville, LR.

47 Capt. A.W. Preston to Lt. S. Eldridge, June 7, 1866, BRFAL, Miss., AC, LR (reel 15).

48 Capt. A.W. Preston to Lt. S. Eldridge, June 7, 1866, BRFAL, Miss., AC, LR (reel 15); Lt. Col. B.F. Smith (Georgetown) to Maj. W.H. Smith, April 4, 1866, BRFAL, S.C., AC, OR (reel 34).

49 BRFAL, Va., vol. 163, Farmville, LS; Case of Mr. E. DeGolyer in Circuit Provost Court of St. Helena Island, July 20, 1866, in BRFAL, S.C., AC, LR.

50 Circular Letter, BRFAL, Ark., Luna Landing, August 10, 1866, BRFAL, Ark., vol. 6, LR; G.O. #9, Dept. of S.C., June 29, 1866, in BRFAL, LR (reel 36); Maj. William Coramley (Pine Bluff) to Mr. William J. Dabes, December 26, 1866, BRFAL, Ark., AC, LR.

51 Jonathan Pressley (Kinston) to Gov. James Orr, December 3, 1866, BRFAL, S.C., AC, LR; unidentified newspaper clipping in Capt. E.G. Barker (Monticello) to Genl. J.W. Sprague, July 31, 1866, BRFAL, Ark., AC, Box 3, LR; Lt. R. Cullen (Mecklenburg County) to Genl. O. Brown, August 31, 1866, BRFAL, Va., AC, Box 38, ACBA.

52 Lt. H. Neide to Genl. John Schofield, August 20, 1866, BRFAL, Va., AC, Box 9, LR.

53 Endorsement by Genl. J.W. Sprague dated March 7, 1866 on letter Lt. Wakefield, BRFAL, Ark., AC, vol. 16, ES; AAAG to Capt. Hill (Macon), September 4, 1866, BRFAL, Ga., AC, LS (reel 3); Capt. William Tidball to Mr. James W. Twyman (Earlysville), June 2, 1866, BRFAL, Va., vol. 128, Charlottesville, LS.

54 Capt. H. Gardner (Jackson) to AAAG, November 1, 1866, BRFAL, Miss., AC, LR (reel 14); Genl. P.H. Sheridan to Howard, September 12, 1866, BRFAL, La., AC, vol. 17, LS; Lt. J.W. Davidson (Madison) to Genl. E.O.C. Ord, November 30, 1866, BRFAL, Ta (vol. 38); Maj. George Carse (Lexington) to Capt. R.S. Lacey, August 25, 1866, BRFAL, Va., AC, Box 8, LR.

55 Capt. H. Sweeney (Helena) to AAAG, January 5, 1867, BRFAL, Ark., AC, Box 5, LR; Maj. C.W. Pierce to Genl. Wager Swayne, September 17, 1866, BRFAL, Ala., vol. 130, Demopolis, LS; Genl. P.D. Sewall to Howard, December 15, 1866, BRFAL, LR (reel 39); Capt. W. McNulty (Culpepper County) to Genl. O. Brown, October 13, 1866, BRFAL, Va., AC, Box 38, RCBA.
56 "Advertisement," January 21, 1867, BRFAL, Ala., vol. 139, Demopolis, LS; C.C. Sheats (Decatur) to Col. John Callis, December 24, 1866, BRFAL, Ala., vol. 59, Huntsville, LR; E. Webster (Pine Bluff) to Maj. W.J. Dawes, February 27, 1866, BRFAL, Ark., AC, Box 4, LR; Maj. M. Hopkins (Prince William County) to Maj. W. Morse, November 30, 1866, BRFAL, Va., AC, Box 38, RCBA.

57 Lt. J.E. Quentin (Madison CH, Fla.) to AAG, May 1, 1866, BRFAL, LR (reel 27).

58 Brian Maguire to Davis Tillson, December 15, 1866, BRFAL, LR (reel 42); letter of Lt. Col. Martin Flood (Shreveport), September 10, 1866, BRFAL, La., AC, vol. 2, RLR; Henry Rainals (Meridian) to AAG, December 31, 1866, BRFAL, Miss., AC, LR (reel 16); Genl. R.K. Scott to Howard, January 23, 1867, BRFAL, LR (reel 44). For analysis of the importance of having a native white bring the freedman's case, see Col. A.E. Niles (Kingstree) to Genl. R.K. Scott, December 10, 1866, BRFAL, S.C., AC, LR (reel 10).

59 C.C. Sheats (Decatur) to Col. John Callis, December 24, 1866, BRFAL, Ala., vol. 59, Huntsville, LR; agent (Pine Bluff) to AAG, December 27, 1866, BRFAL, Ark., AC, Box 3, LR; Brian Maguire to Davis Tillson, December 15, 1866, BRFAL, LR (reel 44); Capt. B.F. Shannon (Liberty) to Genl. O. Brown, May 31, 1866, BRFAL, Va., AC, Box 37, RCBA.

60 William F. De Knight (Franklin County) to Genl. O. Brown, December 31, 1866, BRFAL, Va., AC, Box 43, RRTFVC; Genl. R.K. Scott to Howard, January 23, 1867, BRFAL, LR (reel 44); E. Webster (Pine Bluff) to Maj. W.J. Dawes, February 27, 1867, BRFAL, Ark., AC, Box 4, LR.

61 G.B. Slaughter (Warrior Stand) to Genl. Swayne, November 5, 1866, BRFAL, Ala., AC, LR (reel 9).

62 Lt. G. Cook (Augusta County) to Capt. R.S. Lacey, November 30, 1866, BRFAL, Va., AC, Box 43, RRTFVC; J.E. Quentin (Madison CH) to E.C. Woodruff, March 1, 1867, BRFAL, LR (reel 42); Lt. William Turnald (Martinsville) to Maj. R.S. Lacey, July 24, 1866, BRFAL, Va., AC, Box 8, LR; Capt. W. Austin (Norfolk) to Genl. J. Schofield, September 30, 1866, BRFAL, Va., AC, Box 43, RRTFVC.

63 Capt. E.G. Barker (Monticello) to AAAG, November 30, 1866, BRFAL, Ark., AC, Box 10, OR; Endorsement by Maj. F.W. Thibaut dated November 29, 1866 on letter of H.A. Jones, BRFAL, Ark., AC, vol. 16, ES; AAAG to Col. T. Gaebel, July 23, 1866, BRFAL, Ga., AC, LS (reel 3); Maj. S.G. Willaner (Rapides Parish) to AAAG, January 31, 1867, BRFAL, La., AC, Box 32, OR; AAAG to J.S. Power (Beaufort), December 12,
1866, BRFAL, S.C., AC, LS (reel 1); Capt. W. McNulty (Culpepper) to Genl. O. Brown, October 31, 1866, BRFAL, Va., AC, Box 38, RCBA.

64 Lt. Col. A.P. Oliver (Unionville) to AAG, June 30, 1866, BRFAL, S.C., AC, LR (reel 9); AAAG to Capt. W.L. Ryan (Davis Bend), October 6, 1866, BRFAL, Miss., AC, LS (reel 2); Maj. O.D. Kinsman to A.T. Wright (Greensboro), October 18, 1866, BRFAL, Ala., AC, LS (reel 1).

65 See chapter 4, above.

66 E.A. Rollins to Howard, November 8, 1866, BRFAL, Ark., AC, Box 4, LR.

67 AAAG to Capt. W.L. Ryan (Davis Bend), October 6, 1866, BRFAL, Miss., AC, LS (reel 2).

68 S.O. #106, BRFAL, Va., July 5, 1866, BRFAL, Va., AC, vol. 34, Orders & Circulars; James A. Bates to Lt. W.S. Fernald, August 20, 1866, BRFAL, Va., AC, vol. 13, LS.

69 Genl. Wager Swayne to Howard, February 14, 1867, BRFAL, LR (reel 41); Robert A. Fleming (Union Springs) to Genl. Swayne, November 13, 1866; F.A. Dulany to Genl. Wager Swayne, October 10, 1866, BRFAL, Ala., AC, LR (reel 7).

70 Maj. C.W. Pierce (Demopolis) to Genl. Wager Swayne, January 2, 1867, BRFAL, Ala., AC, LR (reel 12); C.C. Sheats (Decatur) to Col. John Callis, December 12, 1866, BRFAL, Ala., vol. 59, Huntsville, LS.

71 William D. Hale (Pine Bluff) to AAAG, January 31, 1866, BRFAL, Ark., AC, Box 10, OR; Maj. Fred Thibant to AAAG, January 19, 1867, BRFAL, Ark., AC, Box 4, LR; AAAG to William D. Hale, February 13, 1867, BRFAL, Ark., AC, vol. 11, LS.

72 Maj. Fred W. Thibant to AAAG, January 19, 1867, BRFAL, Ark., AC, Box 4, LR.

73 Lt. J.C. Predmore (Napoleon) to Genl. E.O.C. Ord, March 3, 1867; Lt. Hiram Willis (Paraclifta) to AAAG, February 1, 1867, BRFAL, Ark., AC, Box 10, OR.

74 Brian Maguire (Washington) to Capt. W.F. White (Augusta), December 19, 1866, BRFAL, Ga., AC, LR (reel 15); Col. C. Sibley to Howard, March 19, 1867, BRFAL, Ga., AC, LR (reel 42); AAAG to J.H. Taylor, November 7, 1866, BRFAL, Ga., AC, LS (reel 4); Davis Tillson to Judge Clark of the Superior Court of Stewart County, December 31, 1866, BRFAL, Ga., AC, LS (reel 4); Lt. T.F. Forbes to Capt. N.S. Hill (Macon), September 4, 1866, BRFAL, Ga., Box 21, Macon, LR.
Notes

Epilogue

1Howard to Genl. Absalom Baird, August 6, 1866, OOH Papers.

2H.D. Beam (Howard's private secretary) to A.E. Chamberlain, December 14, 1866, Howard to Henry Wilson, December 17, 1866, Howard to E.O.C. Ord, January 16, 1817, Howard Papers; Rutherford B. Hayes to "Dear Uncle," December 26, 1866, Hayes Papers; Grant to Howard, January 18, 1867, BFRAL, LR (reel 41).


5S.A.L., XIV, 428-29.

6G.O. #3, BRFAL, Ala., April 16, 1867, BRFAL, Ala., AC General Orders Issued (reel 17); Brown to Howard, May 28, 1867, BRFAL, LR (reel 45).

7See, for example, BRFAL, Miss., vols. 165-169, Jackson, LS and BRFAL, Ga., AC, Reports Relating to Outrages (reel 32).

8On white fear of black organization, see, for example, J.W. Barnes (Suffolk) to Genl. O. Brown, October 31, 1867, BRFAL, Va., AC, Box 44, RRTFVC; John H. De Arman (Oxford) to Genl. Swayne, May 27, 1867, BRFAL, Ala., AC, LR (reel 10). On the growth of organized violence, see Allen W. Trelease, White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction (New York, 1971), pp. xv-xlviii, 49-110.
9 Trelease, White Terror, pp. xlvi-xlvii; J.L. Roberts (DeKalb) to Genl. Alvan Gillem, July 28, 1868, BRFAL, Miss., AC, LR (reel 25).

10 Statement of Samuel Young, August 21, 1867, in BRFAL, Miss., AC, LR (reel 22); Ira Ayer (Ashland) to Lt. P.R. Hambrick, December 10, 1868, BRFAL, Va., Box 20, LR.

11 W. Ivey (Bullock County) to Judge McCall (Union Springs), July 26, 1867, BRFAL, Ala., AC, LR (reel 12).

12 Genl. Alvan C. Gillem to Howard, March 31, 1868, BRFAL, LR (reel 54); E.M. Weber to Lt. Garrick Mallery, July 25, 1867, BRFAL, Va., AC, Box 18, LR.

13 For a shrewd analysis of this process, see Genl. F.D. Sewall to Howard, December 16, 1867, BRFAL, LR (reel 39).


15 "Annual Report of the Secretary of War, 1868," p. 337; Sefton, Army and Reconstruction, p. 148; Capt. William Morgan (Yell County) to AAAG, November 27, 1867, BRFAL, Ark., AC, Box 6, LF.

16 Sefton, Army and Reconstruction, pp. 138-39; William D. Hale (Fairdale) to AAAG, June 30, 1867, BRFAL, Ark., AC, Box 10, OR; Lt. C. McDougal (Wythesville) to Genl. O. Brown, December 31, 1867, BRFAL, Va., AC, Box 40, RCBA; John T. White (St. Martinville) to AAAG, December 10, 1867, BRFAL, La., AC, Box 16, LR.


18 G.O. #31, 1st Mil. Dist., May 28, 1867, in "Correspondence Relative to Reconstruction," p. 35; Schofield to sub-district commanders, September 21, 1867, in "Report of the Secretary of War, 1867," p. 291; Capt. James McDonnell (Winchester) to Genl. O. Brown, October 1, 1867, BRFAL, Va., AC, Box 14, RRTFVC; "Records of Military Commissioner's Court" (Burkeville), BRFAL, Va., AC, Box 21, LR; Report of Outrages, 1868, BRFAL, Va., AC, vol. 43.

20. Howard to Scott, July 26, 1867, BRFAL, SC, AC, LR (reel 13); Scott to Howard, July 17, 1867, BRFAL, SC, AC, LS (reel 1); Genl. F.D. Sewall to E. Whittlesey, December 25, 1867, BRFAL, LR (reel 55); Genl. Nelson A. Miles to Howard, October 15, 1867, OOH Papers.


22. Smith's policy continued the procedure he had directed agents to follow in enforcing the Civil Rights Act. AAAG to Capt. Walter Lathisnore (Batesville), March 23, 1867, BRFAL, Ark., AC, vol. 11, LS. On problems involved in executing the policy, see William D. Hale (Fairhope) to AAAG, June 30, 1867, BRFAL, Ark., AC, Box 10, OR; Lt. Henry Sweeney (Helena) to AAAG, September 10, 1867, BRFAL, Ark., AC, Box 6, LR.

23. Genl. A.C. Gillem to Genl. E.O.C. Ord, August 8, 1867, BRFAL, Miss., AC, LS (reel 3); George Smith (Macon) to AAAG, September 16, 1868, BRFAL, Miss., AC, NRSO (reel 32).

24. Maj. William McCullough (Du Vall's Bluff) to AAAG, November 30, 1867, BRFAL, Ark., AC, Box 11, OR.

25. Lt. Hiram F. Willis (Rocky Comfort) to AAAG, January 4, 1868, BRFAL, Ark., AC, Box 11, OR.

26. V.V. Smith (Lewisville) to AAAG, August 23, 1868, BRFAL, Ark., AC, Box 8, LR; AAAG to Smith, August 31, 1868, BRFAL, Ark., vol. 13, LS.

27. P.J. Smalley (St. Bernard Parish) to Capt. L.H. Warren, March 3, 1868, BRFAL, La., AC, Box 18, LR.
28. Lt. Ira D. McClay (Plaquemines Parish) to Capt. W. Sterling, March 10, 1867, BRFAL, La., AC, Box 32, OR.

29. Lt. D.M. White (Grenada) to F. Temple, October 2, 1867, BRFAL, Miss., vol. 137, Grenada, LS; Capt. F.A. Osborn to AAAG, October 10, 1867; Capt. J. Amrein to AAAG, August 31, 1867, BRFAL, La., AC, LR, Boxes 8, 12.

30. Lt. C.B. Hall to AAAG, November 11, 1867, BRFAL, Ark., AC, Box 6, LR; Lt. D.M. White (Grenada) to F. Temple, October 2, 1867, BRFAL, Miss., vol. 137, Grenada, LS; BRFAL, Ark., vol. 166, Washington, Complaint Book; Lt. Col. George Schayer (Baton Rouge) to Lt. L.O. Parker, June 30, 1867, La., AC, Box 14, LR.

31. Endorsement by AAAG dated July 17, 1867, on letter of Thomas Reed, BRFAL, Miss., AC, ES (reel 4); Mrs. M.A. Payton v. Eli Ball, BRFAL, Tx., vol. 70, Bowie County, Book of Cases Tried; Genl. R.K. Scott to Howard, June 22, 1867, BRFAL, LR (reel 48); Genl. George W. Gile (Beaufort) to B.T. Sellers, April 12, 1867, BRFAL, S.C., AC, LR (reel 13); Robert Spann (Uniontown) to Genl. Wager Swayne, May 9, 1867 and endorsement thereon by Maj. C.W. Pierce, BRFAL, Ala., AC, LR (reel 10); AAAG to A.A. McMillan (Coosa County), June 10, 1867, BRFAL, Ala., AC, LS (reel 2).

32. Complaint of Lewis Hargrass, BRFAL, Ark., vol. 89, Hamburg, Complaints; AAAG to Capt. James A. Greene (Newberry), June 18, 1868, BRFAL, S.C., AC, LS (reel 2); George Dunford (Concordia Parish) to Capt. J.H. Hastings (Vidalia), July 20, 1867, BRFAL, La., AC, Box 8, LR.

33. Genl. R.K. Scott to Lt. L. Cazaire, AAAG, 2nd Mil. Dist., October 11, 1867, BRFAL, S.C., AC, LS (reel 1); R.W. Mullen (St. Mary Parish) to AAAG, June 30, 1867, BRFAL, La., AC, Box 18, LR; George Harmont to J.W. McDade, August 13, 1867, BRFAL, Ala., vol. 93, Montgomery, LS.

34. G.O. #19, 4th Mil. Dist., August 13, 1867, reprinted in Circular #17, BRFAL, Ark., AC, vol. 22, Circulars Issued; Circular #22, 4th Mil. Dist., November 30, 1867, in O.D. Greene to Genl. A.C. Gillem, December 2, 1867, BRFAL, Miss., AC, LR (reel 21), Lt. Col. W.H. Eldridge (Port Gibson) to AAAG, December 31, 1867, BRFAL, Miss., AC, NRSO (reel 31); Endorsement dated September 30, 1867, by Lt. H.R. Williams on letter from Capt. William Tidball (Greenville), BRFAL, Miss., AC, ES (reel 4); William White (Okalona) to AAAG, January 11, 1868, BRFAL, Miss., AC, NRSO (reel 31).

35. AAAG to Thomas Palmer (Sheriff, Lowndes County), December 12, 1867, BRFAL, Miss., AC, LS (reel 3); Jno Williams (Durant) to AAAG, April 24, 1868, BRFAL, Miss., AC, LR (reel 26); Circular #19, BRFAL, Ark., November 6,
1867, BRFAL, Ark., AC, vol. 22, Circulars Issued; E.G. Barker (Marion) to O.D. Greene, November 16, 1867, BRFAL, Ark., AC, Box 6, LR; E.G. Barker to AAAG, December 9, 1867, Ark., AC, Box 6, LR.

AAAG to T.S. Herbert (Sheriff, Lowndes County), December 9, 1867, BRFAL, Ala., AC, LS (reel 2); A.L. Bartlett (justice of the peace, Montgomery County) to Swayne, November 5, 1867; Jno A. Hart (Greenville) to Col. O.D. Kinsman, November 22, 1867; J.C. Hendrix (Montgomery) to Asst. Comr., May 1, 1868, BRFAL, Ala., LR (reels 10, 11, 14); Maj. C.W. Pierce to Williamson A. Glover (justice of the peace, Forkland), January 1, 1868, BRFAL, Ala., vol. 132, Demopolis, LS; S. Gresham (Lowndesboro) to Jno C. Hendrix, November 15, 1867, BRFAL, Ala., Box 33, Montgomery, LR.

Circular #13, BRFAL, La., October 23, 1867, BRFAL, La., AC, vol. 28, Orders and Circulars; AAAG to E. Henderson (St. Joseph), December 7, 1867; AAAG to Jacob Martin (Waterproof), April 4, 1868, BRFAL, La., AC, vol. 19, LS; Lt. Col. W.H. Wood to Howard, December 31, 1867, BRFAL, LR (reel 53); Christian Rush (Concordia Parish) to AAAG, December 31, 1867, BRFAL, La., AC, Box 14, LR.

Lt. Kimball (Greenville) to Genl. O. Brown, November 27, 1867, BRFAL, Va., AC, Box 17, LR; Col. Jno Jordan (Farmville) to Maj. J.R. Stone, May 31, 1867; Thomas Jackson (Staunton) to Genl. O. Brown, October 31, 1867; Capt. W. Austin (Wythesville) to Capt. G. Mallery, September 30, 1867, BRFAL, Va., AC, Box 44, RRTFVC.

William Ross (Columbus) to Maj. A. Preston, July 6, 1867, BRFAL, Miss., AC, LR (reel 20); J.F. McGoy (Talladega) to Col. O.D. Kinsman, December 24, 1867, BRFAL, Ala., AC, LR (reel 12); Lt. James De Grey (East Feliciana Parish) to Lt. L.H. Webster (Baton Rouge), August 20, 1867, BRFAL, La., AC, Box 8, LR.

P.E. O'Connor to M. Wilson, August 17, 1868, BRFAL, Ala., Box 27, Demopolis, LR.
BIBLIOGRAPHY

I. Primary Sources

A. Personal Manuscripts

Bowdoin College Library
   William Pitt Fessenden papers
   Charles Howard papers
   Oliver Otis Howard papers

Library of Congress
   Salmon P. Chase papers
   Ulysses S. Grant papers (microfilm)
   Andrew Johnson papers (microfilm)
   Edward McPherson papers

University of Washington Library
   Manning Ferguson Force papers (microfilm)

B. Manuscripts in the National Archives of the United States

Record Group 60, "Records of the Office of the Attorney General"
   Letters Sent by the Attorney General (microfilm)
   Letters Received by the Attorney General

Record Group 105, "Records of the Bureau of Refugees, Freedmen and Abandoned Lands"

Washington, D.C. Headquarters
   Letters Sent by the Commissioner (microfilm)
   Letters Received by the Commissioner (microfilm)
Alabama (Assistant Commissioner)

Letters Sent by the Assistant Commissioner (microfilm)

Letters Received by the Assistant Commissioner (microfilm)

General Orders, Circulars and Circular Letters Issued (microfilm)

Reports of Operations from the Subdistricts (microfilm)

Miscellaneous Reports from Staff and Bureau Officials (microfilm)

Alabama (local records)

Demopolis, Letters Sent

Demopolis, Letters Received

Greenville, Miscellaneous Record Book

Huntsville, Letters Sent

Huntsville, Letters Received

Huntsville, Fair Copies of Contracts

Montgomery, Letters Sent

Montgomery, Letters Received

Arkansas (Assistant Commissioner)

Letters Sent by the Assistant Commissioner

Letters Received by the Assistant Commissioner

Endorsements Sent by the Assistant Commissioner

Narrative Reports of Operations from Subordinate Officers

Circulars Issued

Circulars and Circular Letters

Arkansas (local records)

Camden, Letters Sent and Received
Camden, Monthly Statement of Accounts Current and Register of Complaints

Hamburg, Letters Sent
Hamburg, Letters Received
Hamburg, Registers of Complaints
Monticello, Letters Sent
Monticello, Letters Received
Napoleon, Letters Sent
Napoleon, Registers of Letters Received
Napoleon, Letters and Orders Received
Napoleon, Register of Contracts and Register of Complaints

Georgia (Assistant Commissioner)
Press Copies of Letters Sent by the Assistant Commissioner
Letters Received by the Assistant Commissioner
Orders and Circulars Issued and Received
Reports of Murders and Outrages Received from Subordinate Officers

Georgia (local records)
Augusta, Letters Sent
Augusta, Letters Received
Macon, Letters Sent
Macon, Letters Received
Savannah, Letters Sent
Savannah, Letters Received

Louisiana (Assistant Commissioner)
Letters Sent by the Assistant Commissioner
Letters Received by the Assistant Commissioner
Endorsements Sent by the Assistant Commissioner

Register of Letters Received by the Assistant Commissioner

Orders Issued and Received

Scrapbook of Orders Received and Issued

Narrative Trimonthly Reports of Operations from Subordinate Officers

Miscellaneous Reports

Louisiana (Provost Marshal General of Freedmen)

Letters and Endorsements Sent

Press Copies of Letters Sent

Louisiana (Plantation Department)

Press Copies of Letters Sent

Labor Contracts with Freedmen

Mississippi (Assistant Commissioner)

Letters Sent by the Assistant Commissioner (microfilm)

Letters Received by the Assistant Commissioner (microfilm)

Endorsements Sent by the Assistant Commissioner (microfilm)

Scrapbook of Orders Issued and Received

General Orders and Circulars Issued

Labor Contracts with Freedmen

Narrative Reports of Operations from Subordinate Officers

Mississippi (local records)

Columbus, Letters Sent

Columbus, Complaints

Grenada, Letters Sent
Grenada, Complaints
Jackson, Letters Sent
Jackson, Complaints
Natchez, Letters Sent
Vicksburg, Letters Sent
Vicksburg, Letters Received

South Carolina (Assistant Commissioner)

Letters Sent by the Assistant Commissioner (microfilm)
Letters Received by the Assistant Commissioner (microfilm)
General Orders and Circulars Issued
Narrative Reports of Operations from Subordinate Officers

South Carolina (local records)

Columbia, Letters Sent
Columbia, Letters Received
Monck's Corner, Letters Sent
Monck's Corner, Letters Received
Orangeburg, Letters Sent
Orangeburg, Letters Received

Virginia (Assistant Commissioner)

Letters Sent by the Assistant Commissioner
Letters Received by the Assistant Commissioner
Orders and Circulars Issued
Order Book, 1865
Reports on Conditions of Bureau Affairs
Reports Relating to the Treatment of Freedmen in the Virginia Courts
Reports of Outrages, 1868
Virginia (local records)

Charlottesville, Letters Sent
Charlottesville, Letters Received
Farmville, Letters Sent
Farmville, Letters Received
Charlotte C.H., Letters Received
Drummondstown and Eastville, Letters Sent
Yorktown, Proceedings of the Freedmen's Court

Record Group 393, "Records of the United States Army Continental Commands, 1821-1920"

Department and District of Mississippi

Letters Sent
Letters Received
Endorsements Sent
General Orders and Circulars Issued

Fourth Military District

Letters Sent
General Orders, General Court Martial Orders and Circulars

Department of South Carolina

Letters Sent
Letters and Reports Received Relating to Freedmen and Civil Affairs
General Orders, 1862, 1865, 1870 and 1872-74
General Orders, January-May, 1866
General Orders, June-August, 1866

C. Government Documents

"Correspondence with the Provisional Governors," Sen. Ex. Docs, No. 6, 39 Cong., 1 sess.

"Murder of Union Soldiers," House Reports, No. 23, 39 Cong., 2 sess.


"Orders Issued by Assistant Commissioners," House Ex. Docs, No. 70, 39 Cong., 1 sess.


"Report of the Joint Committee on Reconstruction," House Reports, No. 30, 39 Cong., 1 sess.


D. Other Printed Primary Sources

Badeau, Adam. Grant in Peace from Appomattox to Mount Macgregor. Hartford, 1887.


Schofield, John M. *Forty-six Years in the Army*. New York, 1897.


II. Secondary Sources

A. Books


Porter, George H. *Ohio Politics during the Civil War.* New York, 1911.


B. Articles


C. Dissertations


