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BETWEEN EMANCIPATION AND ENFRANCHISEMENT:
LAW AND THE POLITICAL MOBILIZATION OF
BLACK SOUTHERNERS DURING PRESIDENTIAL
RECONSTRUCTION, 1865-1867

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The two years between the end of the Civil War and the advent of Radical Reconstruction witnessed a ferment of lawmaking and political agitation in the former slave states, as the war's winners and losers came to terms with the consequences of emancipation and the defeat of the Confederacy.¹ Black Southerners, most of them newly liberated slaves, could not participate directly in the reshaping of local, state, and federal laws that affected their future as free people. Nevertheless, they added their voices to the national debate on the status of black people in a reconstructed Union. Though excluded from the suffrage and other privileges of citizenship, they mobilized to demand equality before the law, to protest discriminatory and oppressive legislation, and to insist on justice in the enforcement of the law. Understanding that emancipation cast them in new relations of sovereignty, with the impersonal power of the law replacing the personal power of the slaveowner, they regarded the struggle for justice and equal rights as fundamental to their freedom. "[W]e have no massa now—we is come to the law now," declared Florida ex-slaves, articulating a sentiment shared by their counterparts across the South.²

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1. Overviews of emancipation and the law during Presidential Reconstruction include DAN T. CARTER, *WHEN THE WAR WAS OVER: THE FAILURE OF SELF-RECONSTRUCTION IN THE SOUTH, 1865-1867* (1985); ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877* (1988); HAROLD M. HYMAN & WILLIAM M. WIECEK, *EQUAL JUSTICE UNDER LAW: CONSTITUTIONAL DEVELOPMENT, 1835-1875*, chs. 8-11 (1982); DONALD G. NIEMAN, *PROMISES TO KEEP: AFRICAN-AMERICANS AND THE CONSTITUTIONAL ORDER, 1776 TO THE PRESENT*, chs. 3-4 (1991); DONALD G. NIEMAN, *TO SET THE LAW IN MOTION: THE FREEDMEN'S BUREAU AND THE LEGAL RIGHTS OF BLACKS, 1865-1868* (1979) [hereinafter *TO SET THE LAW IN MOTION*]; MICHAEL PERMAN, *REUNION WITHOUT COMPROMISE: THE SOUTH AND RECONSTRUCTION, 1865-1868* (1973).

2. Letter from J. S. Fullerton to Major General O. O. Howard (July 28, 1865) (in *Records of the Bureau of Refugees, Freedmen, and Abandoned Lands, National Archives of the United States* [hereinafter *BRFAL*], Washington Headquarters, Letters Received, file F-123 1865).

The terms of reconstruction prescribed by President Andrew Johnson assumed that former slaves would live under state and local laws made by white men. A firm believer in traditions of federalism, like most white Americans, Johnson announced in May 1865 his desire "to have the seceded States return back to their former condition as quickly as possible."³ To that end, he established a program of amnesty that enabled most former Confederates to regain their political rights upon swearing allegiance to the Union and pledging to abide by federal laws and proclamations respecting emancipation.⁴ Johnson also appointed a provisional governor in each of the former Confederate states that had not already formed a loyal government, with instructions to bring about such constitutional changes as would establish "a republican form of state government."⁵ The minimal conditions for readmission, it soon became clear, included the abolition of slavery, renunciation of secession, and repudiation of the Confederate debt. Once those requirements were met, the President indicated, a state could rejoin the Union, unimpaired in its right to enact its own criminal and civil statutes and to control admission to its polity.⁶ To reassure those who feared that federal action might disfranchise white men and enfranchise black men, Johnson announced that "the question of suffrage [is] to be left with the people of a State themselves."⁷

Under Johnson's plan, federal power would play a carefully delimited role in the postemancipation South, and white Northerners—except for the most radical of the Republicans—generally preferred it that way. Union troops would remain in the South only as long as necessary to maintain order, suppress rebellion, and protect former slaves and white unionists. The Freedmen's Bureau, a War Department agency charged with overseeing the transition from slavery to freedom, was likewise intended to be short-lived. Created by Con-

3. Interview of Andrew Johnson with John A. Logan et al. (May 31, 1865), in 8 THE PAPERS OF ANDREW JOHNSON 153 (Paul H. Bergeron et al. eds., 1989). On the prevalence of federalist assumptions in the debates over reconstruction, see Michael L. Benedict, *Preserving the Constitution: The Conservative Basis of Radical Reconstruction*, 61 J. AM. HIST. 65 (1974).

4. Proclamation of Amnesty, 13 Stat. 758 (1865). Johnson exempted fourteen classes of persons from the program of general amnesty, most notably high-ranking Confederate military officers and civil officials and persons whose property had been valued at \$20,000 or more in 1860; members of the exempted classes were eligible to apply for individual pardons, which Johnson granted freely.

5. Proclamation No. 38, 13 Stat. 760 (1865) (appointing the provisional governor of North Carolina, the first such appointment and a model for the others).

6. On Johnson's gradual elaboration of the conditions for readmission, see PERMAN, *supra* note 1, at 68-81.

7. Remarks to Alabama delegates (June 5, 1865), in 8 THE PAPERS OF ANDREW JOHNSON, *supra* note 3, at 184.

gress in March 1865, it was authorized for only one year beyond the end of the war.⁸ High-ranking officers in both the army and the Freedmen's Bureau directed their subordinates to avoid undue interference with state and local authorities and to intervene only when civil officials failed to protect black people's person and property, refused to admit their testimony in court, or engaged in blatantly discriminatory enforcement of laws.⁹

The civil officials elected or appointed during the first months after the end of the war were scarcely prepared to treat the former slaves as free men and women, much less as full-fledged citizens. Products of a slave society and often former slaveholders themselves, they assumed that the freedpeople would remain dependent and propertyless laborers, if no longer subject to the control of individual owners.¹⁰ State legislatures and county and municipal governing bodies across the South drafted measures that, while acknowledging the end of slavery, used the law to circumscribe the former slaves' liberty. The most systematic and highly publicized of such laws were the "black codes" enacted by state legislatures beginning in the fall of 1865. Less dramatic but equally significant were myriad revisions in state criminal codes, domestic relations laws, municipal licensing regulations, and tax policies—changes that, although often couched in racially neutral language, were intended to apply primarily or exclusively to former slaves.¹¹

The new laws had profound consequences for the lives of black Southerners. Statutes governing agricultural labor required former slaves to enter into contracts and defined the respective rights of em-

8. Act of Mar. 3, 1865, 13 Stat. 507 (establishing the Freedmen's Bureau). On the agency's operations, see GEORGE R. BENTLEY, *A HISTORY OF THE FREEDMEN'S BUREAU* (photo. reprint 1970) (1955); WILLIAM S. McFEELY, *YANKEE STEPFATHER: GENERAL O. O. HOWARD AND THE FREEDMEN* (1968); TO SET THE LAW IN MOTION, *supra* note 1.

9. BENTLEY, *supra* note 8, at 65-68, 155-59; TO SET THE LAW IN MOTION, *supra* note 1, ch. 1, 73-80; JAMES E. SEFTON, *THE UNITED STATES ARMY AND RECONSTRUCTION, 1865-1877*, at 44-45, 70-71, 89-91 (Greenwood Press 1980) (1967); Donald G. Nieman, *Andrew Johnson, the Freedmen's Bureau, and the Problem of Equal Rights, 1865-1866*, 44 J. S. HIST. 399 (1978); James Oakes, *A Failure of Vision: The Collapse of the Freedmen's Bureau Courts*, 25 CIV. WAR HIST. 66 (1979).

10. On the suppositions of Southern lawmakers (and white Southerners more generally) regarding freed black laborers, see CARTER, *supra* note 1, at 147-53; WILLIAM COHEN, *AT FREEDOM'S EDGE: BLACK MOBILITY AND THE SOUTHERN WHITE QUEST FOR RACIAL CONTROL, 1861-1915*, ch. 2 (1991); FONER, *supra* note 1, at 186-99; Thomas Wagstaff, *Call Your Old Master—"Master": Southern Political Leaders and Negro Labor during Presidential Reconstruction*, 10 LAB. HIST. 323 (1969).

11. On the black codes, see CARTER, *supra* note 1, at ch. 6; COHEN, *supra* note 10, at 28-36; TO SET THE LAW IN MOTION, *supra* note 1, at ch. 3; THEODORE B. WILSON, *THE BLACK CODES OF THE SOUTH* (1965).

ployers and employees, usually to the disadvantage of the latter. Apprenticeship laws allowed former owners to retain custody of black children against the wishes of their parents. Vagrancy laws limited the ability of former slaves to gain a livelihood through self-employment or day labor and pushed them into year-long contracts for agricultural work. Some state laws and local ordinances kept black people out of skilled occupations or even forbade them to walk about on public streets without a pass. Excluded from jury service and restricted in their right to testify in court, freedpeople found it difficult to obtain justice in civil and criminal cases. Civil law offered scanty recourse for former slaves seeking to recover wages from recalcitrant employers, while judges and juries discriminated against black criminal defendants with impunity.¹²

Freedpeople criticized both the laws themselves and the political process that had allowed them to be enacted. Why, they wondered pointedly, should white Southerners who had fought to destroy the Union be restored to full political rights, while steadfastly loyal black Southerners, who had filled more than 100 Union regiments, were denied a voice in electing the men who governed them and enacted the laws they had to obey? As the limitations of their new status became increasingly clear, freedpeople registered growing dissatisfaction with Presidential Reconstruction.¹³

Questioning the very legitimacy of state and local governments staffed by former slaveholders and ex-Confederates, freedpeople frequently looked to national authorities for justice. Sometimes they addressed President Johnson directly, hoping he would give their rights and aspirations as much consideration as those of amnestied traitors.¹⁴ Increasingly, however, the President seemed more an enemy than an

12. See COHEN, *supra* note 10, at 31-33 (on vagrancy legislation); Rebecca Scott, *The Battle over the Child: Child Apprenticeship and the Freedmen's Bureau in North Carolina*, 10 PROLOGUE 101 (1978) (discussing apprenticeship in one state). See generally FONER, *supra* note 1, at 198-210; LEON F. LITWACK, *BEEN IN THE STORM SO LONG: THE AFTERMATH OF SLAVERY* 364-71 (1979); *TO SET THE LAW IN MOTION*, *supra* note 1, at 43-44, 63.

13. See the proceedings of black conventions in the Southern states between 1865 and mid-1867, collected in 2 PROCEEDINGS OF THE BLACK STATE CONVENTIONS, 1840-1865, at 242-304 (Philip S. Foner & George E. Walker eds., 1980); 1 PROCEEDINGS OF THE BLACK NATIONAL AND STATE CONVENTIONS, 1865-1900, at 83-108, 115-29, 179-82, 189-98, 213-20, 232-36, 303-05 (Philip S. Foner & George E. Walker eds., 1986). See generally ERIC FONER, *NOTHING BUT FREEDOM: EMANCIPATION AND ITS LEGACY* 52 (1983) [hereinafter *NOTHING BUT FREEDOM*]; FONER, *supra* note 1, at 215-16.

14. See, e.g., Petition of North Carolina blacks (May 10, 1865), in 8 THE PAPERS OF ANDREW JOHNSON, *supra* note 3, at 57-58; Letter from Chas. A. Roxborough et al. to Andrew Johnson (June 9, 1865), in 8 THE PAPERS OF ANDREW JOHNSON, *supra* note 3, at 203-05; Letter from Fields Cook et al. to Andrew Johnson (June 10, 1865), in 8 THE PAPERS OF ANDREW JOHNSON, *supra* note 3, at 210.

ally. Officers in the Union army of occupation and the Freedmen's Bureau offered a more receptive ear. Not only did they provide valuable local assistance in the form of military protection, legal advocacy, and political leadership, they also joined with Radical Republicans in Congress to bring freedpeople's grievances before the public. The involvement of influential military and political officials proved indispensable in awakening Northerners to the abuses inflicted on black Southerners by barely reconstructed Confederates.¹⁵

Freedpeople came to understand, however, that their most dependable advocates emerged from their own ranks. Long before suffrage gave black men formal political voice, grassroots mobilization produced a cadre of black leaders—some of them educated and literate, others formally untutored but distinguished by property holding, workplace skill, religious standing, or rhetorical ability. In most of the former slave states, black delegates from far-flung localities gathered in conventions to debate matters of general interest, demand justice at the hands of civil authorities, and agitate for the suffrage. After 1867, when Radical Reconstruction transformed the political landscape by enfranchising black men, some grassroots leaders attained statewide and even national prominence by participating in constitutional conventions and holding elective offices.¹⁶ The participation of black Southerners in the struggle for equal rights and justice during Presidential Reconstruction prepared the ground for the flowering of African-American politics during Radical Reconstruction.

The documents printed below shed light on the efforts of former slaves to secure justice and legal equality after emancipation. Drawn from the holdings of the National Archives of the United States, the documents are among some 50,000 that have been collected by the

15. BENTLEY, *supra* note 8, at ch. 8; McFEELY, *supra* note 8, at chs. 10-11, 14; SEFTON, *supra* note 9, at 44-45, 70-76, 89-93. The role of army officers and Bureau agents in mediating between the former slaves and the Northern public is well-documented in *ADVICE AFTER APPOMATTOX: LETTERS TO ANDREW JOHNSON, 1865-1866* (Brooks D. Simpson et al. eds., 1987) and in U.S. CONGRESS, REPORT OF THE JOINT COMMITTEE ON RECONSTRUCTION (1866).

16. On black political leadership after emancipation, see ERIC FONER, *FREEDOM'S LAWMAKERS: A DIRECTORY OF BLACK OFFICEHOLDERS DURING RECONSTRUCTION* (1993) [hereinafter *FREEDOM'S LAWMAKERS*]; THOMAS HOLT, *BLACK OVER WHITE: NEGRO POLITICAL LEADERSHIP IN SOUTH CAROLINA DURING RECONSTRUCTION* (1977); SOUTHERN BLACK LEADERS OF THE RECONSTRUCTION ERA (Howard N. Rabinowitz ed., 1982); JULIE SAVILLE, *THE WORK OF RECONSTRUCTION: FROM SLAVE TO WAGE LABORER IN SOUTH CAROLINA, 1860-1870*, at 87-99, ch. 5 (1994); David C. Rankin, *The Origins of Black Leadership in New Orleans during Reconstruction*, 40 J. S. HIST. 417 (1974). The significance of black officeholders is an important theme of *NOTHING BUT FREEDOM*, *supra* note 13. On the participation of black leaders in postemancipation political conventions, see 2 *PROCEEDINGS OF THE BLACK STATE CONVENTIONS*, *supra* note 13; 1 *PROCEEDINGS OF THE BLACK NATIONAL AND STATE CONVENTIONS*, *supra* note 13.

Freedmen and Southern Society Project, a collaborative research project based in the History Department of the University of Maryland. The editors of the project are publishing selected documents in a multivolume series entitled *Freedom: A Documentary History of Emancipation, 1861-1867*.¹⁷

The texts of the documents that follow have been transcribed exactly as written, with no correction of spelling, punctuation, or syntax. Extra space marks the end of sentences that lack terminal punctuation. Inferential readings of illegible or mutilated passages appear in brackets and roman type; interventions by the editors, in brackets and italic type.¹⁸

Former slaves throughout the South realized that their freedom stood on a shaky foundation unless buttressed by legal rights. Black residents of Lincoln County, Tennessee, pointed out to the Freedmen's Bureau assistant commissioner for their state that without equal access to the courts, they were in some ways more vulnerable than they had been as slaves. Seeing federal authority as their ally against hostile state laws, an unsympathetic judiciary, and unscrupulous employers, the petitioners sought the appointment of a local Freedmen's Bureau agent who would protect their persons and advance their interests as free workers.

[*Lincoln County, Tenn.*] July 27th 1865

Gen^l We the colored People, of Lincoln County, State of Tennessee, would respectfully submit the following representation of our condition, and earnestly entreat that an Agent may be appointed who shall reside in Fayetteville, who may act as our Counsellor, and aid us in obtaining redress for wrongs to which we may be subjected.

By the new Constitution adopted by the loyal people, of the State, on the 22^d of February, 1865, we became formally and legally free, our prayers were answered, and the secret hopes of our hearts

17. Four volumes of FREEDOM have reached print: THE BLACK MILITARY EXPERIENCE (Ira Berlin et al. eds., 1982); THE DESTRUCTION OF SLAVERY (Ira Berlin et al. eds., 1985); THE WARTIME GENESIS OF FREE LABOR: THE LOWER SOUTH (Ira Berlin et al. eds., 1990); THE WARTIME GENESIS OF FREE LABOR: THE UPPER SOUTH (Ira Berlin et al. eds., 1993). An abridgment, FREE AT LAST: A DOCUMENTARY HISTORY OF SLAVERY, FREEDOM, AND THE CIVIL WAR (Ira Berlin et al. eds. 1992), is available in paperback. Five additional volumes of FREEDOM are projected, including one on law, justice, and race relations. See also a volume of essays by members of the project, IRA BERLIN ET AL., SLAVES NO MORE: THREE ESSAYS ON EMANCIPATION AND THE CIVIL WAR (1992).

18. For a full explication of the principles and procedures of transcription, see the essay on editorial method in any volume of FREEDOM, *supra* note 17.

were realized.¹⁹ When, however, the Legislature of the State subsequently met, they failed, as we think, to pass the necessary laws, to recognize our standing, and secure to us by law, our rights as freemen. In our former condition as slaves, we had the protection of our masters, and it was to their interest, at least, to consult for, and secure our physical welfare. As we are now, the old slave laws of the State remaining unrepealed, and the oath of the colored man not being received by our Courts, as against the whites, we have no where to look for protection, save to the United States Authority. In those authorities, we have the fullest confidence: but we want some way of easily bringing our cases before them. In the beginning of the year, when our freedom was secured by the Constitution, many of the colored people left their former masters, and made arrangements with others, to labor for a longer or shorter period of time: the employers agreeing to give them a certain fixed compensation for their labor. A great number, however, remained with their former masters, some of these agreeing to give them a certain amount for their services, others holding out the idea that what was right, should be done, and others making no promises to their former slaves: but still exacting their labor. Now, whilst we take for granted that employers will do the thing that is honest and just in many, perhaps, the majority of cases, yet, we think, we have just cause for fear, that the cupidity of others will defraud them of their wages, and turn them out of their places, when their services from the condition of the crops is no longer a matter of necessity. A few cases of the kind have already occurred in which colored persons, having labored until the harvest has been secured and the corn crops laid by, are now, as we think causelessly turned off to seek places for themselves and families, and compensation for their labor refused. Besides, in several instances recently, colored men, have been, without any process of law, and no crime proved against them, subjected to the lash, and as many as four or five hundred lashes having been inflicted upon them at the will of their masters. In view of such circumstances, as we cannot appeal to the laws and Courts of the State, for a redress, of grievances felt and feared, and as the only other recourse, besides God. who is the refuge of the oppressed, is the United States Authority, We would most respectfully pray you, as the

19. Because much of Tennessee was already under Union military occupation on January 1, 1863, when President Lincoln issued the Emancipation Proclamation, the state was not included in its provisions (which applied only to portions of the Confederacy still in rebellion). See Emancipation Proclamation, 12 Stat. 1268 (1863). Slavery remained legal in Tennessee until February 22, 1865, when unionist voters ratified an amendment to the state constitution. See *TENN. CONST.* of 1834, art. I, § 1 (amended 1865).

Representative of that authority, to take order in our behalf, and appoint some one, who may, for the time act as our Patron, by consulting and advising us, and when wronged, securing us redress.

It is scarcely needful for us to say, that during the late Rebellion we have been true and loyal to the United States, Government: and whilst our prayers have gone up for the union, cause, we have, also, to the extent of our power, given aid and comfort to the armies of the United States, and been in many ways helpful to its soldiers,—

During the continuance of the war, we have not been engaged in insurrection, or in any way been insubordinate to constituted authority: and in the future, as in the past, we propose to be a law abiding people. As in the past, we have by our labors enriched our masters, in many instances, besides supporting ourselves and our families. We now, simply ask that we may be secured as others, in the just fruits of our toil: protected from unjust, and illegal punishments and we are sure we will keep our families from want, and do our part as good citizens of the United States to add to the wealth and glory of the Country. We are recognized as men by the Constitution of the land: we only ask to be treated as such, and we will, in the future as in the past, be law abiding men,

and in conclusion we would with deference to your position and authority beg leave to recommend as agent in our behalf the name of William French as the man who has our unbounded confidence. appoint him, and we will as in duty bound Ever Pray

[10 signatures]

Signed in behalf of the Freedmen of the County of Lincoln State of Tennessee²⁰

Although most white Southerners opposed endowing freedpeople with the rights they themselves took for granted, emancipation necessitated—and the federal government demanded—fundamental revision of state laws. In November 1865, the Mississippi state legislature enacted a “black code” that confirmed the former slaves’ freedom but stopped far short of according them equal rights. This series of statutes gave freedpeople limited access to the courts, but denied them the right to serve on juries or to testify in cases to

20. Letter from Reverend Lewis Bright et al. to General [Clinton B.] Fisk (July 27, 1865) (in BRFAL, Tennessee Assistant Commissioner, Registered Letters Received, file B-36 1865). In response, the assistant commissioner appointed William French, a white unionist, to serve as Bureau agent. Special Order 36, Freedmen’s Bureau Assistant Commissioner for Tennessee (Sept. 2, 1865) (in BRFAL, Tennessee Assistant Commissioner, Special Orders & Circulars Issued, vol. 23, at 44-46).

which white people alone were party.²¹ It enabled them to hold personal property, but forbade them to rent land outside of cities and towns.²² It also featured discriminatory contract,²³ vagrancy,²⁴ and apprenticeship²⁵ provisions designed to confine ex-slaves to the status of dependent laborers. In a cautiously worded protest to the state governor, black Mississippians denounced the new legislation as an insult to their people and a travesty of justice. Emphasizing the value of their labor to the state and the interests they shared with their employers, the petitioners eschewed any discussion of political rights while calling for basic civil rights.

[*Claiborne County, Miss.*] Dec 3th 1865

To the govener of Mississippi We the Colored people of Mississippi petition To your honor for gistic Mississippi has abolished—Slavery does She mean it or is it a pollicy for The present we fear from the late acts of the Legeslature that she will not treate us as free, we are not To rent or lease lands not even a tenement but we can buye lands²⁶ the Legislature is well a ware that not one of us out of a thousand is not able to buye a quarter of an acre of land, and if they will allow us to rent in towns we hav to get a certificate from the Mayor, All freed-men Negroes and molattoes is specyfyed in the acts why [not?] colord vagrants that are a n[uisance] and will not worke for a living be compelde by a law to worke in fields Set a part for that purposes[?] our faults are dayley published by Editors, not a statement will you ever see in our favour thair is Shureley Some a mong us that is honest, trutheful, and indistrrious, and Some of us are working and making our superiours comferttable who finde so much fault of our freedom if evry one of us Colord people were removed from the state of Mississippi our superiors woulde soon finde out who were the supporterers we the labrors hav inriched them and it is as much imposible for them to live with out us as it is for we to be removed from them, your honor is it gust that wee all shoulde come under the stringent Laws the legeslature has past. we are to holde no contract

21. Act of Nov. 25, 1865, ch. 4, 1865 Miss. Laws 82, 83 (conferring civil rights on freedmen).

22. *Id.* at 82.

23. *Id.* at 83-84.

24. Act of Nov. 24, 1865, ch. 6, 1865 Miss. Laws 90 (amending the vagrant laws).

25. Act of Nov. 22, 1865, ch. 5, 1865 Miss. Laws 86 (regulating the relation of master and apprentice as it relates to black people).

26. The wording of the Act to confer Civil Rights on Freedmen made it unclear whether the legislature intended to permit or forbid black people to own land. The law expressly provided that black persons could acquire and dispose of "personal property and choses in action" in the same manner as white persons; it was silent about their right to hold real property, which some lawmakers and other observers interpreted as a denial of that right. See Act of Nov. 25, 1865, ch. 4, 1865 Miss. Laws 82, 82; WILLIAM C. HARRIS, *PRESIDENTIAL RECONSTRUCTION IN MISSISSIPPI* 129-32 (1967) (discussing the lawmakers' intent).

it is left intireley to our imployer he [hold?]s the writing and one of his white [neighb]ers holde the duplicate and if we shoulde leave from eny cruel treatement we are to be caught and brought by force to our employer and the niger-runner is to hav a fee of five dollars or ten cents a mill to be paide out of our wages,²⁷ we are to well acquainted with the yelping of blood-hounds and the tareing of our fellow servents To peices when we were slaves and now we are free we donot want to be hunted by negro-runners and thair hounds unless we are guilty of a crimnal crime we are willing to worke for our former Masters or eny Stranger that will treate us well and pay us what we earn all we ask is gjustice and to be treated like humane beings the men who has made these laws no meny of us has stood by our owners in thair troubles and thair is some of us who woulde die by them but the worde freedom is sweet to us all and greate will be the day when we [are] assured of our freedom, thair was kinde gust Masters in Mis-sissippi and such masters will make good and honest Employers but such is not the magority and those who forced good Masters to do means acts are now the ones to keep contentions if a good master new that one of us was not guilty of a charge that was brought against us he dare not say so for he woulde insult the magoirity and be put down as a negro-spoiler and of cours to save him self we had to take th punishment what ever it might be and we think if gust men were the magority in the legeslature we woulde get gust laws knowing we woulde fall short of what was granted us, we hope your honor will not lay us a side but take us in Concideration, we pray you do not believe the falshood our enimies has got up for some purpose that we intend an insurrection, we hav [no s]uch thought now we are free what [. . .]²⁸ we [live?] for we no that we hav good white friends and we depend on them by the help of god to see us righted and we do not want our rights by murdering we owe to much To meny of our white friends that has shown us mercy in bygon dayes To harm thair wicked neighbours Some of us wish Mr geff Davis to be Seet at liberty for we

27. The Act to confer Civil Rights on Freedmen required that labor contracts for longer than one month be written in duplicate and attested by a civil officer "or two disinterested white persons"; contrary to the petitioners' impression, it provided that "each party" to the agreement retain a copy. The law also provided that "every civil officer shall, and every person may" return to his or her employer any black laborer who quit the employer's service "without good cause" before fulfilling a contract; the prescribed fee for the return was actually \$5 *plus* ten cents per mile, to be "paid by the employer, and held as a set-off . . . against the wages of said deserting employee." See Act of Nov. 25, 1865, ch. 4, 1865 Miss. Laws 82, 83-84.

28. Manuscript torn; one or two words missing.

no worse masters Than he was²⁹ altho he tried hard to keep us all slaves we forgive him Some of us well know of meny kindenes he shown his slaves on his plantation to your honor govner of Mississippi

we the Colorde peple³⁰

With appeals to Southern officeholders unavailing, freedmen and freedwomen increasingly sought the means of redress within their own communities. They met on street corners and in churches and schools to air their grievances and plan courses of action. Breaching conventional notions that restricted the participation of women in public life, black women in Portsmouth, Virginia, gathered to denounce municipal taxation and licensing regulations that hampered their and their husbands' efforts to earn a living.³¹ With the assistance of George Teamoh, who had worked as a slave in a Portsmouth shipyard before escaping to the North in the 1850s,³² the women laid their case before General O. O. Howard, Commissioner of the Freedmen's Bureau.

Portsmouth Va. May 21st. 1866

General; At a meeting of the Hucksters (colored) held in this place, where I was invited to participate in their deliberations, the following ladies presided after choosing me as Sec.

President. Mrs. Sarah Nash
Vice pres " Nancy Hodges
Sec. Geo. Teamoh

The Chair stated the object of the meeting in these words

"My friends we meet here to consult each other and talk our troubles over. So much is being done against us in this city that I don't know where to begin, nor what to say. I know we are left all alone and no one to give us any advice. Our old rebel masters, (that use to be,) because they can't get our labor now, say our Freedom shan't do us any good. "Don't it seem like it"? By the house, "true; Yes; Yes; Yes"[!]

29. Jefferson Davis, the imprisoned Confederate president, had owned a plantation in Mississippi.

30. Petition of We the Colorde peple to [Benjamin G. Humphreys, Governor of Mississippi] (Dec. 3, 1865) (in BRFAL, Mississippi Assistant Commissioner, Registered Letters Received, file F-41 1865). A corner of each page of the manuscript is torn, necessitating most of the bracketed words. A clerk's notation on the document identifies the petitioners as "Freedmen of Claiborne County."

31. For the regulations, see *Adjourned Meeting of the Common Council of the City of Portsmouth*, NORFOLK VIRGINIAN, Jan. 17, 1866, at 3.

32. FREEDOM'S LAWMAKERS, *supra* note 16, at 209-10; GEORGE TEAMOH, GOD MADE MAN, MAN MADE THE SLAVE: THE AUTOBIOGRAPHY OF GEORGE TEAMOH (F. N. Boney et al. eds., 1990).

President continuing. "We don't know nothing about the laws, and they make us pay all the city. State and government taxes before the time has run out on what we have already paid. We can't sell nor buy unless we pay the Clerk of the market (\$25-00) twenty five dollars quarter Yearly and ten cents (10 cts) a day to sell, and all this on top of our quarter paid for in advance, which was (\$6.31 cts) Six dollars and thirty one cents. "Friends" she contnued "for the last 30 odd Years, when many of You were children I have been keeping a cook shop, and now I must stop because I ain't (have not) got (\$50.00) fifty dollars, to pay into the hands of the collector for one Year's taxes, and I don't make that much in two Years; and now let them break me up, put me in jail or do what they please with me, I say I am done serving them, by the help of God and the U.S. Army. Now You can all talk"

Mrs. Hodges stated that she "had good authority for saying, that this tax money was taken more to support the widows, orphans and invalids of the confederate army than any other purpose" which was the opinion of the whole meeting.

Mrs. Sarah Hudgins here brought to the table a bill which is a receipt from City Inspector, John H. Burroughs for Huckerstering privilege in market, which does not expire until June 30th '66, which see.³³ They all hold these bills, written in Inspector Burroughs' own hand and of same date (June 30th '66) They are licensed to that date. It has been said that they shall, per force comply with any, and all conditions laid upon them.

Since the late city election for Mayo[r] and common council men, all officers, favorably disposed to the colored people have been removed, and their places filled by those whose only claims on the public are, that they have suffered while fighting under Gen R. E. Lee for the independence of the South.

We would say to Your Honor, on behalf of Your petitioners, that these people upon whom these heavy duties must fall, have never been consulted in the first instance touching their obligations to a new levy, but are being forced on the moment, by obbitrary power, or suffer the consequences of fines and imprisonments.

Your petitioners would further say to Your Hon. that throughout all the trying scenes of a four Years' war, the government have ever found them true as steel to the country, its soldiers and sailors,

33. Enclosed is a receipt acknowledging Hudgins's payment of \$6.31 "for rent of Huckster stall No. 47 for the quarter ending June 30th 1866."

collectively and individually, and have often given their little alls to comfort a Union soldier distressed, with bleeding wounds and dying groans; and that for the delierance of our Republican government, they have laid their children, some their only child upon the altar of the country.

The civil authorities have turned their husbands and children from the public, or city works, and given all such labor to the enemies of the Union. Hackdrivers, and teamsters generally are not exceptions to these gross impositions. And the higher the duties, the less they are disposed to pay for marketables or milege.

These oppressed people are not allowed to purchase any article but what is restricted to their own family use. And the above grievances are partially forced upon good Union men (white) who dare not dissent from the prevailing opinion, but like the colored, must give up all business. Add to all this higher rents by 40 and 50 per cent than has ever been paid, until the present Year, together with more of persecutions than we can, by any possibility present in detail, and Your Hon. will no doubt conclude that something should be speedily done to lift this intolerable burden from their shoulders; especially when knowing, that their husbands, though called upon to pay a head tax of (\$4-00) four dollars, have no voice in making city, State or national government.

They pray Your Hon. that the measures thus forced upon them will be so modified that they may pursue their ligitimate calling, as they have done no violation to government, bringing the State in debt.

The undersigned, representing many hundreds here who huckster for a living, in great confidence through humble prayer look to You, as heretofore they have looked, and happy, amid their present troubles to say, they have never asked in vain.

They pray day and night that the Heavenly Father may so surround You by His providential care that You may be "blessed in Your basket and in Your Store," live the life of the righteous, and live long; and when this painful life endeth, have a Seat in God's Bureau in Heaven Yours Very Truly

[10 signatures]³⁴

As Southern state and local governments enacted measures to circumscribe the former slaves' liberty, black Americans and white

34. Letter from Nancy Hodges et al. to Major General O. O. Howard (May 21, 1866), enclosed in letter from Geo. Teamoh to Major General O. O. Howard, ([May 21?, 1866]) (in BRFAL, Washington Headquarters, Letters Received, file T-17 1866).

Radical Republicans argued that allowing black men to vote was the surest way to safeguard the rights of the freedpeople and the loyalty of the former slave states. Agitation for the suffrage intensified during 1866, with former slaves throughout the South forming Union Leagues and other political organizations.³⁵ To white observers schooled in slave society, black men and women convening in secret evoked the specter of servile insurrection. Planters in southwestern Georgia feared the worst from political meetings held on a plantation that had been rented by a group of freedpeople. Not only did the gatherings disrupt labor on nearby estates, the planters informed a local Freedmen's Bureau agent; they also emboldened ex-slaves to defy established social and political authority in other areas of daily life.

Dougherty County Georgia July 17th 1866—

The undersigned engaged in planting in Dougherty Co. State of Georgia in the vicinity of Albany would most respectfully represent that the free colored people hired by them under contract for this year, are not carrying out the terms of the contracts, as understood by both parties at the time of making them. That these violations consist, in the taking of whole days by the freed people upon the slightest causes, & without the consent of the undersigned, in losing much time each day by remaining out after hours specified for their being in the field, by working when in the field in such a manner as to make their work of not near its proper value, & by using insulting language to & by positively refusing to obey directions given by the undersigned or the Superintendents employed by them. That these grievances have been steadily increasing since the beginning of the year, but that within the past few weeks they have become almost unbearable. The reason of this the undersigned can only judge as being owing to the existence of a society among the blacks, the Hd Qtrs of which are upon a plantation about six miles from Albany & in our midst, which is held solely by Colored men, there being no white man upon it. How wide spread this society is the undersigned have no means of knowing—but that it must extend widely is shewn by the statements of negroes from a distance who are known to belong to it. Nor is any thing known of the proceedings except that the meetings are usually held upon SundayS—when a flag is raised, a man armed with a sword takes the lead, & that after various marchings the meeting is held.

35. On the development of Southern black political organizations during Presidential Reconstruction, see MICHAEL W. FITZGERALD, *THE UNION LEAGUE MOVEMENT IN THE DEEP SOUTH: POLITICS AND AGRICULTURAL CHANGE DURING RECONSTRUCTION* chs. 1-2 (1989); FONER, *supra* note 1, at 116-19; HOLT, *supra* note 16, at ch. 1; LITWACK, *supra* note 12, at ch. 10.

The ostensible objects of this society as stated by the officer at the head of the Bureau in Albany, are merely in some quiet way to take steps to secure the right of suffrage—, but it is also stated that but little is known about it— As the management of the Society seems to be in the hands of the Colored people, as no one is allowed to be a member with out paying an initiation fee, as an oath of secrecy & support of the society “even at the point of the bayonet” is taken by each member, & as no one is allowed to be present who does not belong, what is known of its objects has to be learned from such of the freed people as are alarmed at its character. Enough has been discovered however to shew that its teachings are far wide of this & that the most erroneous ideas are being spread among the blacks from positive ignorance or malicious design, which are wholly demoralizing them, & unfitting them for usefulness. Their rights as freed people are defined to them in such a manner as to compel the leaving of wrong doing uncomplained of—or else be subjected to insolence or disobedience of orders. It is found that those plantations are being worked the most quietly, & satisfactorily where the hands have nothing to do with the society. The ideas of freedom spread are, that they can “talk back” whenever they choose, that they can decide for themselves when & for what causes they can stay away from work, that all deductions for failure to work are of no account, that because physical violence cannot be resorted to they are at liberty to use what language they please, that the formation of the Society is from authority above the Bureau & therefore cannot be interfered with by it, that they are not to be accountable to the Freedmans Bureau, or any white men, but solely to their own President, or colored men of their own selection, that all contracts are to be subject to the approval of these officers, & that all violations of them are to be rectified by them in their own way—that they are to have lands of their own which they are to get even if they have to fight for them, that if they are interfered with they are to retaliate even if they “commence with the cradle”, that they are to be furnished with arms for the carrying out of any plan which may seem necessary to this President—& they are even led to suppose that the payment of one dollar per month called for by membership entitles them to ride upon all the rail roads of the country free. These ideas, puerile as they may seem are subversive of all discipline & control upon the plantations in the vicinity The undersigned would respectfully state that they Commenced the business of planting this year, under circumstances which were by necessity discouraging, that they have invested capital largely under assurance that the

US Authorities would see their rights respected, that they have hired the freedpeople under Contracts approved by the Bureau, & have endeavored to carry out their terms of the Contract in good faith, but that at present it seems almost hopeless to expect success nor can they look forward without dread to the future. The undersigned would therefore most respectfully petition that the above mentioned society may either be broken up—or that its legitimate objects may be so author[itally] stated to the freed people as to do away with the erroneous ideas now existing among them, & that such vigorous measures may be instituted as to put a stop to the present demoralization

[60 signatures]³⁶

The local Freedmen's Bureau agent referred the planters' petition to General Davis Tillson, head of the Bureau in Georgia, noting that the leader of the "Equal Rights Society" had already been cited twice by Bureau officers for "diffusing erroneous ideas among the freedmen." In response, Tillson ruled that "freedpeople have the same undoubted right with white persons to organize & carry on any Society, or Societies of any character whatever so long as such organization does not conflict with the existing laws of the State of which they are citizens."³⁷

By the close of 1866, growing dissatisfaction in Congress with Presidential Reconstruction and mounting agitation for black suffrage had led many white Southerners to conclude that the question was no longer whether black men would vote, but when and how. Worried that ex-slaves would wield the ballot to broaden their freedom and oust their oppressors, civil authorities employed a variety of defensive measures. A Freedmen's Bureau inspector notified a federal military commander that ingenious North Carolinians had found new use for longstanding state laws that made numerous offenses (including petty theft) punishable by whipping and also defined them as infamous crimes, upon conviction for which an offender forfeited his citizenship rights.³⁸ Generally reluctant to in-

36. Petition of Wm C. Watson et al. to Lieutenant H. C. Strong (July 17, 1866) (in BRFAL, Georgia Assistant Commissioner, Unregistered Letters Received, filed under D).

37. Endorsement by 1st Lieutenant H. C. Strong (July 21, 1866) on Petition of Wm C. Watson et al. to Lieutenant H. C. Strong, *supra* note 36; Letter from Lieutenant T. F. Forbes to Wm C. Watson et al. (July 28, [1866]) (in BRFAL, Georgia Assistant Commissioner, Press Copies of Letters Sent, vol. 14, at 408-09).

38. On corporal punishments for crime in antebellum North Carolina, see REVISED CODE OF N.C. ch. 34 (1855); GUION G. JOHNSON, ANTE-BELLUM NORTH CAROLINA: A SOCIAL HISTORY 647-54, 666-67 (1937). A North Carolinian convicted of an infamous crime could be restored to citizenship only after a legal procedure that culminated in a hearing before the superior court at which five "respectable witnesses" testified to the applicant's good behavior; the process could not begin until four years after the conviction. REVISED CODE OF N.C. ch. 58 (1855).

flict such punishments on white men, local authorities saw them as a means to disfranchise black men who had yet to be enfranchised.

Raleigh, N.C., Dec. 17th, 1866.

General: In compliance with your request to furnish you any information that would throw additional light on the condition of the freedmen in this district, I have the honor to call your attention to the course of the civil authorities, in various parts of North Carolina, in whipping negroes, ostensibly as a punishment for petty crimes, but in fact with the purpose of disqualifying them in advance from ever exercising the elective franchise under the laws of North Carolina; should that right be hereafter extended by the law of the whole land to people of color. As Inspector of the Freedmens Bureau for the district of North Carolina, I have, from time to time, within the last two months, learned in various ways, that this plan of anticipating the action of Congress had been devised and in many counties put into active operation.

This information came chiefly from citizens well known as Union men. About two weeks ago, however, I witnessed a conversation at the State House in Raleigh, between half a dozen persons whom I had seen acting as members of the Senate or House of Commons, in which this subject was freely discussed and the method approved by them all—the object being plainly stated to be to head off Congress from making the negroes voters—one member stating: “We are licking them in our part of the State and if we keep on we can lick them all by next year, and none of them can vote.”

On the evening of the same day I was informed by a gentleman in whose statement I place the utmost confidence, that an active and prominent rebel had told him that in his county they were busily whipping the negroes, had whipped over sixty at the last term of the County Court, and by next spring they would have disqualified about all of them.

Owing to the social condition of this part of the country, officers occupying a position like my own, are seldom approached with frankness by the violent partisans of the rebellion who now control the politics of North Carolina, and information of their intentions is necessarily received at second hand: but the assurance comes to me in so many forms, and so frequently on this subject that I cannot resist the conviction that there is a deliberate and a general purpose to seize negroes, procure convictions for petty offenses punishable at the whipping post, and thus disqualify them forever from voting in North

Carolina, whatever may be the future action of the nation. I am General with high respect Your obedient servant

Rob't. Avery³⁹

The Reconstruction Acts of March 1867 marked a watershed in the relationship of black Southerners to the law. Passed by Congress over the veto of President Johnson, the acts dissolved the governments of the former Confederate states (except Tennessee, which had been readmitted to the Union in 1866) and authorized black men to participate in creating new governments.⁴⁰ The new reconstruction measures did not apply, however, to the former slave states that had not seceded. In petitioning Congress for the franchise, 170 black Kentuckians who had fought in the Union army detailed the suffering ex-slaves endured because they lacked legal means to defend themselves. Dismissing their opponents' assertion that illiteracy and poverty disqualified them for the highest privilege of citizenship, the petitioners pledged to be as loyal to the Union in peace as they had been in war.

[Kentucky July 1867]

MEMORIAL.

To the Honorable Senate and House of Representatives, of the United States of America, in Congress Assembled—Come Greeting:

The undersigned, citizens (colored) of the United States of America, respectfully present this our petition, to humbly ask your Honorable Assembly to grant us the right of Suffrage.

Your petitioners beg leave to say that they are residents in the State of Kentucky, by whose laws they are denied the right to testify in Court, &c. And they would further say, that many crimes have

39. Letter from Major Rob't. Avery to Brevet Major General Jno. C. Robinson (Dec. 17, 1866) (in Records of U.S. Army Continental Commands, National Archives of the United States, Department of the South, Letters Received, file A-99 1866). In October 1866, the Union general in command of North Carolina had prohibited public whippings, sparking protests from white citizens who demanded that President Johnson sustain the authority of civil law by revoking the military order. At Johnson's direction, the prohibition was rescinded on December 22, 1866. See General Order 15, Department of the South (Oct. 1, 1866); Clipping from WILMINGTON DAILY DISPATCH, Dec. 11, 1866, enclosed in Letter from Brevet Major General R. O. Tyler to the Acting Assistant Adjutant General, Department of the South (Dec. 14, 1866); Letter from E. D. Townsend to Brevet Major General D. E. Sickles (Dec. 18, 1866); and General Order 39, Department of the South (Dec. 22, 1865), enclosed in Letter from Brevet Major General Jno. C. Robinson to the Adjutant General, U.S. Army (Dec. 22, 1866) (all in Records of the Adjutant General's Office, National Archives of the United States, Letters Received, file P-715 1866). Whipping remained a legal punishment under North Carolina law until Radical Reconstruction, when it was prohibited by the Constitution of 1868, the work of an interracial convention dominated by Republicans. See N.C. CONST. OF 1868, art. XI, § 1.

40. First Reconstruction Act, 14 Stat. 428 (1867); Second Reconstruction Act, 15 Stat. 2 (1867).

been committed upon them during the last year, for which they have failed to obtain redress. Colored men have been frequently murdered in cold blood by white citizens, and as we have not the right to testify against them, the criminals go unpunished.

They further beg to say that they are now and always have been loyal to the United States, and this *unquestioned* Loyalty subjects them to the malevolence of the friends of the "Lost Cause." It is objected by the opposers of Republicanism that we Negroes are too ignorant to prudently exercise the great boon of freedom. Gov. Clark, in his message to the Legislature of Kentucky in 1837, said that one-third of the adult white population were unable to write their names; ignorance was not considered a bar to the ballot in their case. It is believed that men vote their political convictions, not their intellectual acquirements. We are poor, but not paupers. In addition to all other tax, we pay tax on the following property, much of which has been acquired since freedom came to us: Fayette County, \$91,800; Bourbon, \$17,275; Boyle, \$35,450; Jessamine, \$8,500; Franklin, \$53,730; and so in proportion through the entire State.

It is feared by friends and boastfully claimed by opponents, that if enfranchised, the negro would vote against the party that saved the Government. It is answered that many of your petitioners were *Soldiers*; they think they fought on the right side; *they* see no reason to change sides and vote against the *Liberty* for which they *fought*. It is believed by your petitioners that their enfranchisement will arrest the cruel spirit of robbery, arson and murder in Kentucky, as it most evidently has done in more Southern States.

Hoping that this our humble petition may be kindly received, and our prayer granted, we will ever pray, &c.

[170 signatures]⁴¹

Black Kentuckians would not win the right to vote until the ratification of the Fifteenth Amendment nearly three years later.⁴²

41. Petition of William Major et al. to the Honorable Senate and House of Representatives ([July 1867]) (in Records of the House of Representatives, National Archives of the United States, 40th Cong., Committee on the Judiciary, Petitions & Memorials, file HR40A-H10.3).

42. U.S. CONST. amend. XV.

