

Broken Promises—Big Problems: The Failure of Land Reform During Reconstruction

Michael W. Gore

American Military University

ABSTRACT

Union victory in the Civil War resolved the issue of slavery but raised a host of unanswered questions. Chief among them was how the illiterate, powerless, impoverished, and landless freedmen would survive to enjoy the benefits of freedom. The freedmen and Radical Reconstructionists believed land redistribution was the answer. Wartime acts and legislation tended to confirm them in that belief. But as Reconstruction began, land reform foundered on legal and constitutional concerns, a lack of consensus in Congress, presidential opposition, popular disinterest, and racial animus, so those promises were at best only minimally kept.

Keywords: Reconstruction, Land Reform, Confiscation Acts, Freedmen's Bureau Acts, Lyman Trumbull, Special Field Order No. 15, Davis Bend, Andrew Johnson, Oliver O. Howard, racism, white supremacy

Promesas incumplidas—Grandes problemas: el fracaso de la reforma agraria durante la reconstrucción

RESUMEN

La victoria de la Unión en la Guerra Civil de Estados Unidos resolvió el problema de la esclavitud, pero planteó una serie de preguntas sin respuesta. El principal de ellos era cómo sobrevivirían los libertos analfabetos, impotentes, empobrecidos y sin tierras para disfrutar de los beneficios de la libertad. Los libertos y los reconstruccionistas radicales creían que la redistribución de la tierra era la respuesta. Los actos y la legislación de tiempos de guerra tendían a confirmarlos en esa creencia. Pero cuando comenzó la Reconstrucción, la reforma agraria fracasó por preocupaciones legales y constitucionales, la falta de consenso en el Congreso, la oposición presidencial, el desinterés popular y la animosidad racial, por lo que esas promesas se cumplieron, en el mejor de los casos, mínimamente.

Palabras clave: Reconstrucción, Reforma Agraria, Leyes de Confiscación, Leyes de la Oficina de Libertos, Lyman Trumbull, Orden de Campo Especial No. 15, Davis Bend, Andrew Johnson, Oliver O. Howard, racismo, supremacía blanca

破碎的承诺——大问题：重建时期土地改革的失败

摘要

美利坚合众国在内战中的胜利解决了奴隶制问题，但提出了许多悬而未决的问题。其中最主要的问题则是，文盲、无能为力、贫困和无地的自由民将如何生存以享受自由的益处。自由民和激进的重建主义者认为，土地的重新分配是这一问题的答案。战时法案和立法倾向于证实他们的这种信念。但随着重建时期开始，土地改革因法律和宪法问题、国会缺乏共识、总统反对、民众不感兴趣和种族敌意而失败，因此这些承诺充其量只是以最低限度兑现。

关键词：重建时期，土地改革，《没收法案》，《自由民局法案》，莱曼·特朗布尔，第15号特别战地命令，戴维斯·本德，安德鲁·约翰逊，奥利弗·奥·霍华德，种族主义，白人至上

Union victory in the Civil War resolved the issue of slavery but raised a host of unanswered questions. Chief among those questions was how the illiterate, powerless, impoverished, and landless freedmen would survive to enjoy the benefits of freedom. The freedmen and Radical Republicans believed land redistribution was the answer. Wartime acts and legislation tended to confirm their belief. Unfortunately for the freedmen, land reform foundered on the shoals of various objections and never came to full realization. Absent any other programs of economic reform beneficial to the freedmen, they and their descendants

sank into conditions similar to slavery as the years wore on. Was the federal government responsible for this? Did it promise to distribute land to the freedmen? If so, why did it fail to keep that promise, and what happened to the freedmen as a consequence? Finally, is a lingering debt owed the offspring of former slaves and all others who shared their race and fate? This paper explores the promise of land reform, the failure of land reform, and, very briefly, the consequences of that failure.

The first question to be addressed is this: Did the federal government promise to distribute land to the freedmen? The freedmen certainly believed

that the government had made such a promise. In December 1866, Bayley Wyatt, a freedman living in the vicinity of Yorktown, Virginia, addressed officers of the United States Army and representatives of the Freedmen's Bureau at a gathering of fellow freedmen. That gathering came a day after the freedmen were told their camps would be abolished and they should return to their former homes in the surrounding counties. Jacob H. Vining, Superintendent of the Friends' Freedmen's Schools, heard the speech and afterward asked Wyatt to repeat it so Vining could record it exactly as it was given. Speaking for all those present at the meeting, and expressing sentiments that were commonly held by many, if not all, former slaves, Wyatt said:

I may state to all our friends, and to all our enemies, that we has a right to the land where we are located. For why? I tell you. Our wives, our children, our husbands, has been sold over and over again to purchase the lands we now locates upon; for that reason we have a divine right to the land. Den again, the United States, by deir officers, told us if we would leave the Rebs and come to de Yankees and help de Government, we should have de land where dey put us as long as we live...we left all depending on de promises of de Yankees. Dey told us dese lands was 'fiscated from the Rebs, who was fightin' de United States to keep us in slavery and to destroy the Government.¹

Wyat clearly believed the federal government had promised his people "de land" on which they had settled. Of course, Wyatt could have been wrong in believing the government had promised land redistribution. But legislative and military actions were so promising in this regard that one can see how Wyatt believed that promises had been made. In his speech, Wyatt referred to lands confiscated from the Rebels and given to the freedmen. In doing so, he referenced part of the legislative record upon which he believed those promises rested. A brief survey of that legislation will confirm that promises, both implicit and explicit, are found there. Such a survey will also reveal nuances within that legislation that led to the enfeeblement of those promises.

Taken in chronological order, on August 6, 1861, Congress passed "An Act to Confiscate Property Used for Insurrectionary Purposes," commonly known as the First Confiscation Act. That act authorized the president to seize, confiscate, and condemn any property intended for or actually used to aid, abet, or promote the insurrection. The act of condemnation was to be executed by those courts having jurisdiction over the seized property, and the proceeds received from the sale or use of that property were to be for the benefit of the United States.² Though the act did not specify how the condemned property was to be utilized, it did establish the precedent that Confederate property could be seized and condemned by the federal government. The act was a promising start toward establishing a legal basis for land redis-

tribution through the mechanisms of condemnation and confiscation. Nevertheless, questions regarding the processes of seizure, condemnation, and utilization of those properties remained unresolved, so Congress readdressed the issue the following year.

On July 17, 1862, Congress passed the broader and more detailed “Act to Suppress Insurrection, to Punish Treason and Rebellion, to Seize and Confiscate the Property of Rebels, and for Other Purposes,” customarily referred to as the Second Confiscation Act.³ The congressional debates surrounding that act disclosed deep-seated differences in Congress over the extent to which various congressmen believed the federal government could legally confiscate and redistribute the private property of those then in rebellion, but whose return to the Union was someday expected.

The radicals’ case for the sweeping confiscation of Rebel property was made by Illinois Senator Lyman Trumbull. Drawing on international and domestic law, Trumbull argued that the Rebel insurrection had grown to become a war between combatant nations. As such, the ordinary rules of war applied under international law. Under those rules, the confiscation of enemy property was permitted, and the power to execute confiscation rested not in the judiciary but in the nation’s legislature, as recognized by the Supreme Court in the 1814 case of *Brown v. United States*. Where domestic courts operated, confiscation was a judicial act according to Trumbull. But where those courts

were in abeyance, the legislature could, through a single act of legislative fiat, declare enemy property forfeit to the federal government.⁴

Trumbull’s argument, resting on international and domestic jurisprudence, was sound but not definitive. It left room for opposing views. So, congressional conservatives opposed Trumbull on constitutional grounds. According to them, the Constitution prohibits bills of attainder that work corruption of blood. “Bills of attainder are declarations by a legislature that a named individual or group is guilty of treason, normally punishable by death, the forfeiture of all property to the state, and the corruption of blood,” which prevents their heirs from ever inheriting their property or titles.⁵ Since Article 1, section 9 of the Constitution prohibits Congress from passing bills of attainder, and Article 3, section 3 prohibits the federal government from making “corruption of blood” a punishment for treason, then, according to the conservatives, Congress could not declare an entire group of people guilty of treason and confiscate their property *en masse*. Instead, each individual would have to stand trial separately for the crime of treason. Only if convicted could their property then be confiscated. Even then, the government could only hold and use that property for the lifetime of the guilty party, whereupon it would pass back to their heirs or legal designees.⁶

Since both the radical and the conservative arguments rested on solid legal grounds, Congress could have



Hon. Lyman [sic] Trumbull of Illinois, ca. 1860-1875, Library of Congress Manuscript Division, Brady-Handy Collection, <https://www.loc.gov/item/2017893594>.

gone either way in crafting the final bill. Instead, it went both ways and then some. For between these extreme positions of opinion there stood a large group of moderate congressmen who had ideas of their own and who found elements of the other arguments also

appealing. As a result, the final act “was a mishmash of radical, moderate, and conservative provisions.”⁷ Ultimately, the act required individual trials for treason and similar crimes—a lengthy and complex process. Nevertheless, it still authorized the president to seize

the property of those actively engaged in, aiding, or abetting the rebellion. However, before any property could be sold and the proceeds transferred to the Treasury, condemnation by court action had to be taken in each individual case, again making the process lengthy and complex. To worsen matters, President Lincoln insisted before signing the law into effect that Congress pass a joint resolution specifying that no “punishment or proceeding under” the act “be so construed as to work a forfeiture of the real estate of the offender beyond his natural life.”⁸ Of course that proviso greatly limited the value of any land seized under the act since the land could only be used by the purchaser during the lifetime of the convicted party, after which it reverted to the heirs or designees of the original owner. The final outcome of this legislative maneuvering was a law so fraught with complexity and difficulty as to make it nearly unenforceable.

Clearly, the promise of land reform dimmed drastically under the provisions of the Second Confiscation Act, but it began to shine more brightly on March 3, 1865, with passage of the First Freedmen’s Bureau Act, or “An Act to Establish a Bureau for the Relief of Freedmen and Refugees.” That act created a bureau to manage all abandoned lands and control all matters relating to loyal refugees and freedmen. That bureau was to continue for one year after the conclusion of hostilities. Section four of that act was quite specific regarding land redistribution; it authorized the bureau’s commissioner, under the direction of the president, “to set

apart, for the use of loyal refugees and freedmen, such tracts of land within the insurrectionary states as shall have been abandoned, or to which the United States shall have acquired title by confiscation or sale, or otherwise.” It further authorized the commissioner to “assign not more than forty acres of such land” to every male refugee or freedman for their “use and enjoyment” for a period of three years at an annual rental rate of six percent of the appraised value of the land in question. Finally, at the end of those three years, or any time before then, the occupants could purchase the land for its appraised value “and receive such title ... as the United States [could] convey.”⁹

At last, the promise of land redistribution was stated clearly for all to see. But that promise was hedged about with debilitating nuances. First, under the law, land reallocation required presidential concurrence and direction. As previously noted, Abraham Lincoln had grave concerns about the constitutionality of the Second Confiscation Act. Consequently, he never tried seriously to enforce it.¹⁰ And as will be shown, Andrew Johnson was vehemently opposed to any reallocation of land from white landholders to black freedmen.

But presidential support was not the only debilitating nuance in the law. It further stated that anyone purchasing abandoned or confiscated property would only “receive such title ... as the United States [could] convey.” Given the constitutional prohibition against imposing any punishment that worked corruption of blood, there was consid-

erable doubt that the federal government could convey permanent title to any property confiscated or otherwise taken from Southern landowners. Nevertheless, Congress continued to believe permanent forfeiture of property was permissible under the Constitution and that it would withstand judicial scrutiny. Consequently, a drive to nullify the joint resolution insisted on by Lincoln limiting the forfeiture of property to the lifetime of the owner won approval in both houses of Congress. Furthermore, there “is evidence to suggest that Lincoln, whose objections had been responsible for the limiting resolution, was [also]...willing to approve its repeal.” In July 1864, Lincoln told Congressman George Julian, Chairman of the House Committee on Public Lands, that he was amenable to its removal. Unfortunately, though both the House and Senate agreed on removing the resolution, they couldn’t agree on the language needed to nullify it, so it remained in effect.¹¹ In any event, with the elevation of Johnson to the presidency, the entire issue became moot.

Despite the requirement for presidential support and lingering questions regarding the constitutionality of any permanent confiscation of property, it is clear in the First Freedmen’s Bureau Act that many in Congress desired land re-form for the South and had established mechanisms, however imperfect, to implement that reform. But the First Freedmen’s Bureau Act only continued in force for one year following the cessation of hostilities. So, in early 1866, Congress prepared another bill extending the life of the bureau, only to have it vetoed by

President Johnson. Though Congress narrowly failed to override Johnson’s veto, it succeeded on July 16, 1866, in passing into law a Second Freedmen’s Bureau Act extending the life of the bureau for two additional years.¹²

This second act was passed to enable the freedmen “to become self-supporting citizens of the United States and to aid them in making the freedom conferred ... available to them and beneficial to the republic.”¹³ Much longer than the first, the second act specifically “confirmed and established” the previous sale of land to negroes in South Carolina, as directed either by President Lincoln in September, 1863, or permitted under provisions established by General Sherman’s Special Field Order No. 15 of January 16, 1865. That order had set aside certain islands and coastal lands in South Carolina, Georgia, and Florida for the freedmen’s occupancy and use. The second act also instructed federal tax commissioners in the region to sell additional twenty-acre parcels in the set-aside areas to negroes at the price of one dollar and fifty cents per acre. Finally, the act went so far as to require the return of lands to any negro occupants who had been dispossessed of them by former owners so those negroes could purchase the lands for themselves. Other details pertaining to negro ownership are contained in the act, and it is clear Congress was moving forward to enact land reform in the specified areas despite President Johnson’s stubborn opposition to land reallocation.¹⁴ Indeed, the trajectory of legislative action, from the First Confiscation Act of 1861 through the Second



Alfred R. Waud, *The Freedmen's Bureau*, 1868, Library of Congress Prints and Photographs Division, <https://www.loc.gov/item/92514996>.

Freedmen's Bureau Act of 1866, trended steadily toward land redistribution for the benefit of the freedmen.

Not only had legislation trended in that direction, but military action also held out the promise of land reform for the freed people. As previously noted, on January 16, 1865, General William Tecumseh Sherman issued Special Field Order No. 15. That order specified that the "islands from Charleston [South Carolina] south, the abandoned rice-fields along the rivers for thirty miles back from the sea, and the country bordering the Saint John's River" in Florida were "reserved and set apart for the settlement of the negroes now made free." Except for certain cities designated within those areas, only blacks were allowed to reside there, and they alone were given management of their affairs

with the help of army officers detailed to their assistance. Finally, whenever three or more heads of households banded together to form a community on the designated lands, then forty-acre plots were assigned to each of them, and "possessory titles" were issued for their holdings.¹⁵

Those "possessory titles" became the focus of presidential scrutiny in the opening months of 1866. On February 1, 1866, President Johnson pressed Sherman to clarify their meaning and intent. Sherman's response appeared in the newspapers on February 3rd. Sherman wrote the president, saying, "I knew of course we could not convey title to land, and merely provided 'possessory titles' to be good so long as war and our military power lasted. I merely aimed to make provision for the

negroes who were absolutely dependent on us, leaving the value of their possessions to be determined by after events or legislation.”¹⁶ Some historians suggest that the First and Second Freedmen’s Bureau Acts were meant, in part, to regularize Sherman’s action and the freedmen’s claims, as the first act was passed shortly after Sherman issued his famous order, and the second act was issued not long after Sherman proffered his explanation.¹⁷

Sherman’s action was not the only military action suggesting land reform for the freedmen, though perhaps it was the last. Earlier, General Grant appointed his chaplain, John Eaton, Jr., to serve as General Superintendent of Contrabands and he ordered him to organize and provide for the freedmen in his district. Eaton selected the land of Jefferson Davis and his family on which to establish Davis Bend, a model agricultural enterprise run entirely by former slaves under the leadership of a talented freedman named Benjamin Thornton Montgomery. Working in small farming cooperatives on upwards of five thousand acres of land, the freedmen of Davis Bend produced 1,736 bales of cotton and several thousand bushels of corn netting \$159,200 of income in 1865. Furthermore, Davis Bend was not the only freedmen’s agricultural community established by Eaton. Other enterprises were organized at Camp Desoto, Camp Hawley, and Corinth, Mississippi, and all produced similar successful results.¹⁸

On the whole, these and other military actions settling freedmen

on captured lands lent credence to the freedmen’s general expectation that land reform was on its way. Add to these activities the legislative record of Congress on the matter, and one can see how the freedmen came to believe that land reform was at the very least promising, and at the most, a definite promise made by the federal government on the freedmen’s behalf. That belief was further reinforced by Confederate fears and Northern actions in the waning days of the war, and beyond. As Confederate fortunes flagged on the battlefield, the threat of land confiscation was used throughout the South to rally the people to “fresh exertions.” The slaves could not help but hear this. And then, as Northern armies advanced and won the war, the “speeches of [the Radical Republican, Thaddeus] Stevens and other radical leaders, in pamphlet form, along with Bureau laws and regulations ... and the Confiscation Acts, were sown thickly over the South; and the Bureau agents, the missionaries and the teachers, taking the cue from these, encouraged the belief” among the freedmen that they would receive “forty acres and a mule.”¹⁹

So, was land reform just a promising idea, or did the federal government make definite promises to take land from Confederates and their sympathizers and then distribute it to the freedmen on favorable terms? It was both. From the First Confiscation Act to the Second Freedmen’s Bureau Act, land reform was a promising idea struggling to find some satisfactory legal and constitutional footing. But it was more than just a promising idea. Definite

promises were given in the First and Second Freedmen's Bureau Acts to set aside tracts of abandoned or confiscated Southern lands for the freedmen's use and final purchase on favorable terms. Irrespective of the legal difficulties involved in keeping those promises, specific promises had been made.

What happened to those promises? Unfortunately for the freedmen, land reform foundered on the shoals of various objections and was never fully realized. As already noted, there were legal and constitutional concerns surrounding the confiscation of property—an essential prerequisite for the redistribution or sale of land to the freedmen. Bills of attainder that work corruption of blood are specifically forbidden by the Constitution, hence the joint resolution limiting confiscation to the lifetime of the original owner was insisted on by Lincoln before he would sign the Second Confiscation Act. But as was shown, both the House and the Senate were working to overturn that resolution. They believed its nullification would withstand judicial scrutiny, and Lincoln apparently agreed. But even if their efforts ultimately failed to pass legal muster, Congress and the nation did pass and ratify three constitutional amendments sustaining freedmen rights during Reconstruction. Clearly, the Constitution can be changed and could have been amended to support land reform for the freedmen had there been the will to do so.

Unfortunately for the freedmen, the will was lacking in Congress, in the Executive, and in the people at large.

The desire to go further in establishing land reform for the freedmen was lacking in Congress because Congress was deeply divided on the issue, as was demonstrated in the confiscation debates that produced a Second Confiscation Act with an admixture of conservative, moderate, and radical elements. That lack of congressional consensus was not solely the product of partisan politics. It was instead rooted in deeply held philosophical differences regarding the limits of federal power over private property and the separation of powers between the three branches of government. In the end, those believing in the sacrosanct nature of private property, judicial (rather than legislative) authority over matters pertaining to its confiscation, and the requirement for just compensation to the original owners triumphed over those who supported broadening federal power to seize and redistribute private property through legislative fiat.²⁰ It could have been otherwise, but it was not.

But even if Congress had been united in its desire to enact sweeping land reform, President Johnson was adamantly opposed to land confiscation and redistribution. As a Southerner and former slave owner, Johnson was a white supremacist who had little sympathy for negro concerns. He preferred to reconcile with the white South and court Southern elites to create a political coalition that would assure the success of his 1868 presidential bid than work to address the economic needs of the freedmen. Consequently, on May 29, 1865, Johnson issued a general amnesty and pardoned vast numbers of

former Confederates, restoring all their property except for their slaves. In his amnesty proclamation, Johnson also held forth the promise of granting similar pardons individually to members of certain excepted classes of the Southern elite, including the planter class, to gain their political allegiance.²¹

Initially, General O. O. Howard, the commissioner in charge of the of the Freedmen's Bureau, didn't believe the presidential pardons altered the status of lands already seized by the government, so he issued a circular to the bureau clarifying the situation. In that circular, Howard stated that the "pardon of the President [would] not be understood to extend to the surrender of abandoned or confiscated property, which by law [had] been set apart for Refugees and Freedmen." In other words, Howard believed the government would retain possession of lands already seized by the government for use by loyal refugees and the freedmen. But when Johnson learned of this, he forced Howard to rescind the circular and issue another one specifying that "[a]bandoned lands held by [the] Bureau may be restored to owners pardoned by the President," upon an application from the owners supplying both their proof of title and proof of pardon. Except for those cases where lands had been transferred already legally to new owners, Johnson's presidential pardons made any further attempts to redistribute land to the freedmen exceedingly difficult, if not impossible.²²

Finally, not only was Congress lukewarm to land reform and the presi-

dent opposed to land redistribution, but the people at large were lukewarm or opposed as well. In fact, the congressional and presidential positions reflected those held by many people in the North. Northern businessmen, eager to capitalize on a resumption of the lucrative cotton trade, believed restoring land to Southern planters empowered to oversee and control the freedmen workforce would best speed the recovery of old king cotton. They also opposed land confiscation in the South because they feared any support for it might encourage the restless Northern working class to press for property confiscation in the North. And much of the Northern working class was less than enthusiastic in their support for negro concerns, as well. Northern unions not only excluded negroes, but they generally favored leniency toward the South to facilitate the speedy recovery of the cotton trade upon which so many Northern textile and other industries depended.²³ Such leniency meant no land reform for the freedmen.

Of course, behind this lack of presidential, congressional, and popular support for land reform lay the specter of white privilege and racial prejudice. Undoubtedly, Andrew Johnson was a white supremacist. In his third annual message to Congress, of December 3, 1867, Johnson said, "It is the glory of white men to know that they have had" those qualities necessary to manage the affairs of a great state. But "[n]egroes have shown less capacity for government than any other race of people. No independent government of any form has ever been successful in

THE FREEDMAN'S BUREAU!

AN AGENCY TO KEEP THE **NEGRO** IN IDLENESS AT THE **EXPENSE** OF THE **WHITE MAN**.
 TWICE VETOED BY THE **PRESIDENT**, AND MADE A LAW BY **CONGRESS**.
SUPPORT CONGRESS & YOU SUPPORT THE NEGRO. SUSTAIN THE PRESIDENT & YOU PROTECT THE WHITE MAN

IN THE SWEAT OF THY FACE SHALT THOU EAT THY BREAD

Freedman's Bureau! Negro Estimate of Freedom!

NEGRO TROOPS \$300 Each as a Bounty

WHITE VETERANS \$100 Each as a Bounty

THE NEGRO WERE LEFT, IN WANT \$50,000,000 IN VALUE OF THE WHITE TROOPS WERE THREE TIMES AS MUCH AS THE NEGRO WERE WORTH.

APPROPRIATED BY CONGRESS, 1862, AND BY THE FREEDMAN'S BUREAU \$8,944,500

Contingents	\$100,000
Costs for Negroes	\$200,000
Money for Negroes	\$5,000,000
Money and Work for Negroes	\$2,000,000
Costing for Negroes	\$1,000,000
Food for Negroes	\$1,000,000
Shelter for Negroes	\$500,000
Education for Negroes	\$500,000
Medical and Surgical	\$500,000
Other for Negroes	\$500,000
TOTAL	\$8,944,500

APPROPRIATED BY CONGRESS, FOR THE WHITE MAN, HEAVY TAXES, HARD LABOR.

For 1864 and 1865, the FREEDMAN'S BUREAU cost the Tax-payers of the Nation, at least Pennsylvania will be about ONE "TON OF DOLLARS GEAR" TWENTY-FIVE MILLIONS OF DOLLARS. For 1866, THE SHARE of the Tax-payers of is FOR the Freedman's Bureau. **CLYMER** is OPPOSED to it.

Northern Racism, *The Freedman's Bureau!* An agency to keep the Negro in idleness at the expense of the white man, Pennsylvania, 1866, Library of Congress Rare Book and Special Collections Division, <https://www.loc.gov/item/2008661698>.

their hands. On the contrary, wherever they have been left to their own devices they have shown a constant tendency to relapse into barbarism.”²⁴ Similar race-based arguments were often expressed in Congress. For example, during the congressional debates surrounding the Freedmen’s Bureau, a “group of Congressmen, which included but was never limited to slaveowners from the Border States, openly argued that the United States had always been a country by and for white people.”²⁵

One should not be surprised that racism occupied the White House and

infected Congress during Reconstruction. The occupants of those offices represented the people who elected them, and racism was endemic in the nation at that time. This fact is seen in the outcome of the 1868 presidential election. During that election, the Democratic party turned from Andrew Johnson to nominate the ticket of Horatio Seymour and Francis P. Blair, Jr. Blair was a passionate and outspoken racist. On one occasion, Blair “excoriated Republicans for placing the South under the rule of ‘a semi-barbarous race of blacks who [were] worshippers of fetishes and

polygamists,' and longed to 'subject the white women to their unbridled lusts.'" Fortunately, Grant won the election, but the margin was sufficiently narrow that a majority of whites likely voted for Seymour and Blair.²⁶

Other factors undoubtedly contributed to the failure of land reform during the period of Reconstruction. War-weariness probably played a part, as did Southern resistance. And the sheer complexity of the task undoubtedly drained enthusiasm for it. But racial animus certainly contributed to the nation's failure to provide land to the freedmen on favorable terms. And that failure, coupled with the failure to provide any other economic alternative to land reform, prevented the freedmen from becoming self-sufficient or potentially prosperous. Without land for subsistence or collective farming, the freedmen were forced into the peonage of sharecropping, which perpetuated their impoverishment and further added to their political and social marginalization. Furthermore, without property to pass to their offspring, each successive generation was locked in the same debilitating conditions of poverty and vulnerability.

Given two and a half centuries of enslavement before the Civil War, followed by a Reconstruction that failed to provide the freedmen with either land or some other means to attain economic self-sufficiency, followed by another

century of legalized discrimination, it comes as no surprise that African Americans are, to this day, among the poorest citizens in America. As recently as 2019, white households held nearly 87 percent of American wealth while accounting for only 68 percent of American households. Blacks, on the other hand, held less than 3 percent of America's wealth while accounting for nearly 16 percent of the nation's population.²⁷

Reconstruction was a time of great promise for the freedmen. The former slaves gained their freedom and stood on the cusp of a new age of self-sufficiency and independence. Land reform was one means of ensuring they wouldn't again sink into poverty and dependence. The federal government promised to provide the freedmen with Southern land on favorable terms. Unfortunately, legal and constitutional concerns, a lack of consensus in Congress, presidential opposition, popular disinterest, and racial animus combined, so those promises were at best only minimally kept, and no other plan for economic empowerment was enacted on the freedmen's behalf, leaving them nearly as helpless in the end as they had been when they were slaves. Broken promises left big problems in their wake—problems of white privilege and black poverty—problems that are nearly as nettlesome today as they were more than a century-and-a-half ago.

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Endnotes

- 1 "Report of a Speech by a Virginia Freedman," Freedmen and Southern Society Project, University of Maryland, last revised February 4, 2022, <http://www.freedmen.umd.edu/Wyat.html#:~:text=Report%20of%20a%20Speech%20by%20a%20Virginia%20Freedman,501%20Cherry%20Street%2C%20Philadelphia.%5D%201%20A%20FREEDMAN%27S%20SPEECH>. Original enclosed in General Samuel C. Armstrong to Bvt. Brig. Gen. O. Brown, 26 Jan. 1867, A-78 1867, Registered Letters Received, series 3798, VA Assistant Commissioner, Bureau of Refugees, Freedmen, & Abandoned Lands, Record Group 105, National Archives.
- 2 Chap. LX, §§ 1-3, *Statutes at Large of the United States of America, 1789–1873*, vol. 12 (1863): 319, Hathi Trust.
- 3 Chap. CXC, *Statutes at Large*, vol. 12 (1863): 589-592, Hathi Trust.
- 4 Daniel W. Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy During the Civil War* (Chicago: University of Chicago Press, 2007), 33-36, ProQuest Ebook Central. However, according to the international laws of war recognized during the nineteenth century, the confiscation, use, and/or the destruction of private property was temporary. "Title to the property did not transfer from its owner, and the authority of the military to seize property ended with the restoration of peace." This presented a legal obstacle to those like Trumbull who built their theories of confiscation on the recognized laws of war. *Ibid.*, 12.

- 5 Ibid., 9.
- 6 Ibid., 46-48.
- 7 Ibid., 74.
- 8 *Congressional Globe*, 37th Congress, 2d sess., 1862, pt. 4: 3373-3374. Clearly this proviso expressed Lincoln's insistence that the act not violate the constitutional prohibition against punishments "working corruption of blood." See loc. cit., 3406, for the veto message Lincoln drafted regarding his objections should the joint resolution fail to pass.
- 9 Chap. XC, *Statutes at Large*, vol. 13 (1866): 507-509, Hathi Trust.
- 10 Hamilton, 3.
- 11 LaWanda Cox, "The Promise of Land for the Freedmen," *The Mississippi Valley Historical Review* 45, no. 3 (December 1958): 432-433, <https://www.jstor.org/stable/1889319>.
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- 13 Ibid., § 2.
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- 15 United States War Department, *The War of the Rebellion: Official Records of the Union and Confederate Armies*, 128 vols. (Washington, D.C.: Government Printing Office, 1881-1901), vol. 47, pt. 2, 60, <https://hdl.handle.net/2027/coo.31924085376618>.
- 16 "Sherman's Famous Field Order," *Philadelphia Evening Telegraph*, February 3, 1866, Fourth edition, <https://chroniclingamerica.loc.gov/lccn/sn83025925/1866-02-03/ed-1/seq-8>.
- 17 Cox, 429-430; Walter L. Fleming, "Forty Acres and a Mule," *The North American Review*, 182, no. 594 (May, 1906): 729, <https://www.jstor.org/stable/25105565>.
- 18 Steven Joseph Ross, "Freed Soil, Freed Labor, Freed Men: John Eaton and the Davis Bend Experiment," *The Journal of Southern History*, 44, No. 2 (May, 1978): 215, 218, 222-224, 230, note 82.
- 19 Fleming, 722-723, 730.
- 20 Hamilton, 3, 9, 54-55.
- 21 Eric Foner, *Reconstruction: America's Unfinished Revolution – 1863–1877*, Updated ed. (New York, NY: HarperCollins, 2014), 180-184; Andrew Johnson, "Prest. Johnson's Amnesty Proclamation," (May 29, 1865): <https://www.loc.gov/item/rbpe.23502500>. President Johnson issued additional amnesty and pardon proclamations culminating in the Christmas pardon of December 25, 1868. See *Statutes at Large*, vol. 15 (1869): 711-712, Hathi Trust.
- 22 War Department, Bureau Refugees, Freedmen and Abandoned Lands, *Circular No.*

- 13, § 4 (Washington, D.C., July 28, 1865), https://cwrqm.org/item/mdah_771-955-07-27; *Ibid.*, *Circular No. 15*, § 7, (Washington, D.C., September 12, 1865), https://transcription.si.edu/view/35954/NMAAHC-007677421_00307; Foner, 159; John M. Bickers, “The Power to Do What Manifestly Must Be Done: Congress, the Freedmen’s Bureau, and Constitutional Imagination,” *Roger Williams University Law Review* 12, no. 1 (Fall 2006): 96, note 144, http://docs.rwu.edu/rwu_LR/vol12/iss1/2.
- 23 Foner, 220-221, 309, 479-480.
- 24 Andrew Johnson, “Third Annual Message to Congress, December 3, 1867,” in James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents* (New York: Bureau of National Literature, 1897), 3762-3763, Hathi Trust.
- 25 Bickers, 99. See also Bickers 99-102 where he quotes numerous racist comments from the *Congressional Globe* to demonstrate the prevalence of racism in Congress during this period.
- 26 Foner, 340-343.
- 27 Aditya Aladangady and Akila Forde, “Wealth Inequality and the Racial Wealth Gap,” *FEDS Notes*, October 22, 2021, <https://doi.Org/10.17016/2380-7172.2861>.

About the Author

Michael is a retired naval officer and a distinguished graduate of the Naval War College in Newport, Rhode Island. As a small boy, Michael discovered his father’s World War Two navy uniform tucked neatly away in a dresser drawer. That discovery sparked a lifelong interest in military history that continues to this day as Michael nears the completion of a master’s in military history with a concentration on the Civil War. His father’s uniform now hangs beside his writing desk as a reminder of his father and all those who have worn the cloth of our country.