The Freedmen’s Bureau: Catalyst for Freedom?

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INCLUDING THE COMPLETE FIRST LESSON

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THE FREEDMEN’S BUREAU: CATALYST FOR FREEDOM?

A Unit of Study for Grades 8–12

by

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NATIONAL CENTER FOR HISTORY IN THE SCHOOLS
University of California, Los Angeles
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INTRODUCTION

I. APPROACH AND RATIONALE

The National Center for History in the Schools (NCHS) has developed the following collection of lessons for teaching with primary sources. This adds to more than sixty teaching units that are the fruit of a collaboration between history professors and experienced teachers of United States and World history. They represent specific episodes in history from which you and your students can pause to delve into the deeper meanings of these selected landmark events and explore their wider context in the great historical narrative.

By studying a crucial episode in history the student becomes aware that choices had to be made by real human beings, that those decisions were the result of specific factors, and that they set in motion a series of historical consequences. We have selected dramatic moments that bring alive that decision-making process. We hope that through this approach, your students will realize that history is an ongoing, open-ended process, and that the decisions they make today create the conditions of tomorrow’s history.

NCHS teaching units are based on primary sources, taken from documents, artifacts, journals, diaries, newspapers and literature from the period under study. What we hope to achieve using primary source documents in these lessons is to remove the distance that students feel from historical events and to connect them more intimately with the past. In this way we hope to recreate for your students a sense of “being there,” a feeling of seeing history through the eyes of the very people who were making decisions. This will help your students develop historical empathy, to realize that history is not an impersonal process divorced from real people like themselves. At the same time, by analyzing primary sources, students will actually practice the historian’s craft, discovering for themselves how to analyze evidence, establish a valid interpretation and construct a coherent narrative in which all the relevant factors play a part.

II. CONTENT AND ORGANIZATION

Within this unit, you will find: 1) Unit Objectives, 2) Correlation to the National History Standards, 3) Teacher Background Materials, 4) Lesson Plans, and 5) Student Resources. This unit, as we have said above, focuses on certain key moments in time and should be used as a supplement to your customary course materials. Although these lessons are recommended for grades 8–12, the readings will need to be adapted for effective use by eighth grade students.

The teacher background section should provide you with a good overview of the entire unit and with the historical information and context necessary to link the specific “dramatic moment” to the larger historical narrative. You may consult it for your own use, and you may choose to share it with students if they are of a sufficient grade level to understand the materials.
Introduction

The lesson plans include a variety of ideas and approaches for the teacher which can be elaborated upon or cut as you see the need. These lesson plans contain student resources which accompany each lesson. The resources consist of primary source documents, any handouts or student background materials, and a bibliography.

In our series of teaching units, each collection can be taught in several ways. You can teach all of the lessons offered on any given topic, or you can select and adapt the ones that best support your particular course needs. We have not attempted to be comprehensive or prescriptive in our offerings, but rather to give you an array of enticing possibilities for in-depth study, at varying grade levels. We hope that you will find the lesson plans exciting and stimulating for your classes. We also hope that your students will never again see history as a boring sweep of inevitable facts and meaningless dates but rather as an endless treasure of real life stories, and an exercise in analysis and reconstruction.

The First Vote

Freedmen were guaranteed their right to vote under the Fifteenth Amendment.

Library of Congress LC-USZ62-19234 (5-21)

(Alfred R. Waud, Harper’s Weekly, November 16, 1867)
I. UNIT OVERVIEW

The Thirteenth Amendment to the United States Constitution, abolishing slavery, freed four million slaves, but did nothing to insure their status as citizens. The Civil War and the South’s defeat had economic and social leveling effects upon the entire southern population. Following battlefield victories, Union armies occupied vast regions of southern terrain. Upon the Appomattox surrender, Confederate and state political control collapsed for the most part, leaving the Union military commanders in charge. What was to become of the newly freed slaves was the question forming in the minds of many northerners and Washington politicians.

By studying the nature of political, economic, and social developments immediately after the Civil War, students can gain an understanding of contemporary life. While the Fourteenth Amendment assured citizenship and the Fifteenth Amendment insured voting privileges for the freedmen in the 1870s, African Americans were relegated to second-class citizenship by the turn of the twentieth century through infamous Jim Crow legislation. Rebuilding the South provided many economic opportunities for northerners while most southerners continued laboring at tilling the soil. Inclusion of citizens’ rights into the law did not guarantee them for freed slaves.

How involved should the federal government become in laying the groundwork for the transition from slavery to freedom for four million African Americans? Was there a federal moral obligation to help African Americans? The debate over the depth of government involvement in the lives of freed persons existed throughout most of the war, heating up after President Abraham Lincoln issued the Emancipation Proclamation. Within a month prior to the Appomattox surrender, congressional Republicans created the Bureau of Refugees, Freedmen and Abandoned Lands, later shortened to simply Freedmen’s Bureau. These politicians obviously felt that the federal government should shoulder a broad responsibility to remodel southern society and instigate a new racial order. Implicit in the full title of the Freedmen’s Bureau was a promise that abandoned lands would be rented or sold cheaply for settlement of refugees.

This paternalistic role assumed by the first federal welfare agency generally gets a page or less in most textbooks. Rarely, if ever, are the voices of freed persons heard; nor is the Bureau fully examined within the context of the Congressional Radical Reconstruction laws. The use of primary source material can illuminate the impact and significance of the Bureau within the broader context of Reconstruction and American history by helping students to understand the attitudes of diverse people in the postbellum South.
II. UNIT CONTEXT

These lessons, while largely focusing on Virginia, provide insight into the political, economic and social development throughout the postbellum South. Through an analysis of these documents, students should be able to empathize with the personal experiences resulting from Reconstruction legislation, thereby allowing them a greater understanding of later crucial developments. This unit should be used after a study of the Civil War.

III. CORRELATION TO NATIONAL HISTORY STANDARDS

The Freedmen’s Bureau: Catalyst for Freedom? offers teachers opportunities to use primary sources in examining political, economic, and social aspects of Reconstruction. The unit provides teaching materials that specifically address Standard 3 of Era 5, Civil War and Reconstruction, National Standards for United States History, Basic Edition (Los Angeles, National Center for History in the Schools, 1996). Students investigate federal policies regarding abandoned lands, the conflict between the executive and legislative branches, varying activities of the Freedmen’s Bureau, and conclude with an evaluation of the goals and accomplishments of the agency.

The unit requires students to engage in historical thinking; to raise questions and to marshal evidence in support of their answers; to go beyond the facts presented in textbooks and examine the historical record for themselves. Students analyze cause-and-effect relationships, interrogate historical data by uncovering the social and political context in which it was created, and compare and contrast different sets of ideas and values. The documents presented in this unit help students to better appreciate historical perspectives by describing the past on its own terms through the eyes and experiences of those who were there. The unit challenges students to compare competing historical narratives and to hold interpretations of history as tentative, subject to change as new information is uncovered and new voices heard.

IV. UNIT OBJECTIVES

1. To identify the essential points of the law which created the Freedmen’s Bureau.

2. To analyze documents in order to identify conflicting viewpoints about limited government, the sanctity of private property, white supremacy, and the expectation of self-help for freed persons.

3. To explain changes in attitude among former slaveholders, slaves, and military personnel.
4. To examine the changing role of the military in command of the Freedmen’s Bureau in carrying out the laws of Presidential and Congressional Reconstruction.

5. To compare and contrast realities with ideals through the study of different types of documents.

6. To evaluate the effectiveness and success of the Freedmen’s Bureau in transforming postbellum southern society.

V. Lesson Plans

1. Establishing the Freedmen’s Bureau

2. From Slavery to Free Labor

3. Education for All

4. Evaluating the Bureau

“A sketch, by Mr. J.R. Hamilton, for the Freedmen's Bureau at Richmond, as seen from the intersection of Broad and Tenth streets . . .”

Harper's Weekly, December 23, 1865
INTRODUCTION TO THE FREEDMEN’S BUREAU

From the day President Abraham Lincoln issued the Emancipation Proclamation, it was clear that a massive effort would be required for four million black Americans to make a successful transition to freedom. The surrender of the Confederacy at Appomattox on April 9, 1865 ensured their legal freedom, but it by no means guaranteed equality, economic opportunity, or even physical security. Like earlier slaveholding nations abolishing chattel bondage, the United States faced an immense task, especially because southern whites were determined, even in defeat, to regain control of both their land and their labor force.

With the awesome obstacles that might block a true emancipation of slaves, the War Department in 1863 appointed Samuel Gridley Howe, James McKay and Robert Dale Owen to become the American Freedmen’s Inquiry Commission. They were to study the circumstances of newly emancipated slaves and suggest ways to deal with issues. The three members of the commission set out on a fact-finding mission visiting parts of the South under Union occupation. Upon their return they recommended the creation of a temporary bureau to provide a benevolent guardianship for freed persons to help them become self-reliant. The commission stressed civil and political equality, but only McKay urged land redistribution. In March 1865, after two years of congressional bickering, both houses agreed to establish the Bureau of Refugees, Freedmen and Abandoned Lands for one year. The Freedmen’s Bureau was mandated to distribute clothing, food and fuel to all destitute southern black and white people while overseeing their direst conditions. The Bureau was entirely dependent upon the War Department for leadership, personnel and funding.

Initially, the Bureau was authorized to divide abandoned and confiscated land into forty-acre plots for rental to freed persons and loyal refugees with the expectation of eventual sale.1 As more and more land came under Union control, multitudes of slaves left plantations and flocked to Union encampments. In order to rid himself of impoverished blacks following his army through Georgia and South Carolina, General William T. Sherman, in January, 1865, issued a special order setting aside certain abandoned lands there for temporary occupation. Once General Godfrey Weitzel occupied the Confederate capital of Richmond, similar expectations arose in Virginia. Concurrently, President Lincoln vacillated on proposing a coherent program for southern reconstruction. Only a few radical politicians seemed ready to define what freedom really meant for former slaves. Most politicians recognized the war’s conclusion left the black question unresolved. Upon Lincoln’s assassination, his successor, Andrew Johnson, stepped into this unresolved situation.

Meanwhile, based upon a positive exposure to Major-General Oliver Otis Howard several months earlier as they toured the South Carolina Sea Islands, Secretary of War

Edwin M. Stanton recommended that the 34-year-old Howard be commissioned to head the Freedmen’s Bureau. Howard, a known evangelical Christian humanitarian, showed a sincere concern about the welfare of freed persons. A West Point graduate, he possessed sufficient administrative field experience to direct the Bureau. As a Maine native, he personally knew many leaders of the New England benevolent societies involved in southern relief work. Howard’s loss of an arm in combat and his calming personality befitted one who would serve as intermediary seeking cooperation between compassionate volunteers and army officers. Congress agreed and, upon presidential request, made the appointment.

Before Howard was able to get his organization into total operation, President Johnson countermanded the Bureau’s power to rent confiscated lands with numerous presidential pardons of former Confederates. Included in the pardons was the promise of property restoration. Howard’s attempt to circumvent land restoration was rescinded by a White House policy spelled out in Circular #15. All land had to be returned to pardoned owners unless already sold through court decree. This reversal of the land policy immediately placed Howard and the Bureau in a precarious position. Johnson later vetoed the 1866 congressional bill to extend the Bureau’s longevity. Despite the veto, Congress mustered the votes to override it. With the passage of Black Codes throughout the South, Congress passed the Civil Rights Bill of 1866 to thwart southern lawmakers attempts to restrict freed persons’ activities. Again, Congress had to override a presidential veto. These two battles laid the foundation for the ensuing struggle between the executive and legislative bodies of government over the control of reconstruction.

The new Bureau bill redefined its administrative structure, geographical jurisdiction, and functions relating to relief, abandoned lands, asylums, civil rights and schools. The Bureau was to be a temporary agency designed to assist freed persons develop self-reliance, learn how to operate within the state legal system, and then pull out. Even the Bureau’s strongest supporters considered an abbreviated life necessary. This was no small order given military downsizing and the limited funds allotted through the War Department’s miserly budget. Nevertheless, where cases of obvious discrimination occurred during its tenure, the Bureau was empowered to protect freed persons’s civil rights in a military court consisting of Bureau officers and agents and held the power to impose punishment by fine, imprisonment or both.

President Johnson’s confrontations with Congress set the stage for Congressional Republicans to split from Executive Reconstruction. Johnson was adamant that southern representatives be included in establishing plans for their states especially for their reentry into the union while key congressmen were unwilling to sit down with former combatants to plan what they felt would become legal ensnarement of freed persons. Immediately the Joint Committee on Reconstruction began to brainstorm a new constitutional amendment to insure that equity of civil rights for all Americans would be protected from presidential veto or political whim.
The issue of population apportionment was intertwined with these discussions. With an eye on the November 1866 mid-term elections, the Joint Committee somehow wished to control population figures in the South, insure a Republican congressional majority and protect freed persons’s civil rights. Thus, over much of spring, the Committee hammered out the details of what became the Fourteenth Amendment. Approval of this amendment became a prerequisite for southern states to reenter the union. Due to the amendment’s section disavowing all suffrage for former Confederate officers, only the state of Tennessee willingly agreed to accept it and was readmitted. The other ten, in refusing to invalidate their former military’s suffrage while insuring suffrage for freedmen, set themselves up for the ultimate passage of the Reconstruction Acts of 1867.

Over the summer, Republican congressional candidates ran in opposition to President Johnson over the rudimental issue of freedmen’s suffrage. Johnson’s opposition and individual differences among Republican candidates regarding the suffrage issue made for flammable political rhetoric. In July, the president acting through a friend, sought to have Frederick Douglass appointed as head of the Freedmen’s Bureau possibly as a political ploy to temper congressional opposition to the administration. Douglass, critical of the president’s stance on black suffrage and reconstruction policies in general, refused. Many northerners concluded, as did Douglass, that former southern military commanders deserved to lose their franchise while black men should become entitled. The November election was a Republican landslide resulting in a seemingly personal disclaimer for Johnson. Shortly thereafter when the second session of the Thirty-Ninth Congress convened, the Republican leadership crowed about their preponderance of public support.

General Howard, meanwhile, continued to plod along attempting to provide a semblance of stability for southerners through the actions of his Bureau agents in spite of the perilous middleman position in which the Congress and Johnson had placed him. As numerous incidents illustrating disregard for freed persons’s rights filtered back to Washington, Congress began to hold public hearings involving many subpoenaed Bureau military commanders. Glaring violations of freed persons’s civil rights seemed to be occurring regularly. The discovery of questionable legitimacy of local governments coupled with the arrogance of politicians in the ten states refusing approval of the Fourteenth Amendment moved many moderates in Congress to embrace more radical ideas for reconstruction.

The immediate need of a stronger, consistent reconstruction policy drove the Joint Committee to work feverishly to complete a bill by March 1867. While the Joint Committee sought military control to establish law and order, radicals pushed for stricter readmission conditions including black suffrage. They both got what they wanted in the Reconstruction Act of 1867. Overriding Johnson’s veto, the legislation became effective March 3. The remaining ten former Confederate states were divided into five military districts under major generals empowered to keep the peace. Specific steps were spelled out for state reentry. New state governments had to write constitutions to include manhood suffrage
and ratification of the Fourteenth Amendment. A majority of registered voters had to approve these constitutions through statewide referendums. Upon congressional adoption of the Fifteenth Amendment assuring manhood suffrage, it too had to be ratified and written into state constitutions.

Congress naively assumed that once the black population received equity at the polls, could hold public office and obtained the protection of state governments and courts through the new Reconstruction policy, the work of the federal government would be complete. Additionally, the assumption that the white population would automatically accept blacks as equals proved preposterous. Instead, many whites organized highly effective intimidation efforts which often became violent leading to counter-violence. White recalcitrance and countercommands from congressional leaders and President Johnson throughout 1866, raised the frustration level of agents as they reached their nadir of influence in 1867. When the Bureau was basically phased out of existence on January 1, 1869, the total naivete of faulty congressional assumptions finally surfaced to the detriment of all southerners.

Token agents remained in the five military districts to oversee the progression of their educational work and the payment of black veterans’ bounties until the final days of Congressional Reconstruction. Once the results of the controversial 1876 election were finalized, this weakest phase of Freedmen’s Bureau action was concluded. The promise of total freedom for all southerners, therefore, lay down the long road into the future awaiting establishment by other generations.
Dramatic Moment

I Will Indeed be Your Moses

During the 1864 campaign Andrew Johnson, military governor of Tennessee and vice presidential candidate, faced constant attacks as an “advocate of racial equality.” On October 24, a large number of freed men marched in a torchlight parade to the capitol in Nashville to show their support for Governor Johnson. Johnson’s remarks to the crowd were interrupted by enthusiastic shouts of support.

Governor Johnson: “Looking at this vast crowd of colored people and reflecting through what a storm of persecution and obloquy they are compelled to pass, I am almost induced to wish that, as in the days of old, a Moses might arise who should lead them safely to their promised land of freedom and happiness.”

“You are our Moses,” shouted several voices and the exclamation was caught up and cheered . . .

Johnson: “God no doubt has prepared somewhere an instrument for the great work He designs to perform in behalf of the outraged people, and in due time your leader will come forth, your Moses will be revealed to you.”

“We want no Moses but you!” again shouted the crowd. Johnson: “Well, then, humble and unworthy as I am, if no other better shall be found, I will indeed be your Moses, and lead you through the Red Sea of war and bondage to a fairer future of liberty and peace. I speak now as one who feels the world his country, and all who love equal rights his friend. . . .”

On July 31, 1867, Frederick Douglass received a letter embossed with the letterhead “Executive Mansion” from William Slade, a personal friend of the president, offering to secure his appointment as head of the Freedmen’s Bureau. In his response, Douglass declined but stated:

. . . Should President Johnson place a colored man at the head of the Bureau, it would more than all other acts of his demonstrate his purpose of being the Moses of the colored man in the United States.

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LESSON ONE: ESTABLISHING THE FREEDMEN’S BUREAU

A. OBJECTIVES

♦ To understand congressional legislation establishing the Freedmen’s Bureau and the rationale behind its adoption.

♦ To examine the limits placed on freed persons in the post-war South.

♦ To comprehend the difficulties Bureau agents encountered attempting to uphold laws.

♦ To examine the meaning of citizenship

B. LESSON ACTIVITIES (These activities will take 3-4 days)

Within the context of the Civil War’s conclusion, set the stage for the establishment of the Freedmen’s Bureau. Post the time line of selected events during Reconstruction (pp. 14–16) in the classroom or distribute copies for students to use throughout the unit. Have all students read “An Act to Establish a Bureau for the Relief of Freedmen and Refugees” (Document A). Use the following questions as a guide:

1. Who is in charge of the Bureau?
2. Under whose auspices does it fall?
3. What specific details does it address?
4. What is to happen to abandoned land?

Distribute copies of the “Bureau Circular” (Document B) and explain the function and responsibility of members of the agency. Ask students to examine the general tone of Captain Brown’s circular. Use the following questions as a discussion guide:

1. What are the responsibilities of Bureau officials?
2. What guidance is given to freed persons in making work contracts?
3. What punishments may be handed out for failure to work?
4. What restrictions are placed on freed persons?

After a discussion of the legislation establishing the Freedmen’s Bureau and the circular explaining how the Bureau is to proceed, have students read excerpts from Carl Schurz’s report on the conditions of freed persons in the South (Document C). Based on the report, what action would you advise President Johnson to take regarding reconstruction? Read an account of Johnson’s reconstruction policy in your U.S. history textbook. To what extent did his position encourage the Republican Congress to adopt a policy calling for the division of the South into military districts?
Lesson One

Explain to students that such examples of violence against freed persons as described in Schurz’s report grew as whites tried to maintain their control. Have students read “An Act to protect all Persons in the United States in their Civil Rights . . .” (Document D). Conduct a general discussion focusing on the following questions:

1. Who are American citizens?
2. What are the rights and obligations of citizens?
3. Who has jurisdiction over offenses and violations of this law?
4. What role might the Freedmen’s Bureau play in upholding this law?

Following this discussion, arrange the classroom as a military hearing room. Explain to students that they will roleplay an actual military hearing to illustrate the tenuousness of the Bureau’s enforcement powers. Provide all students with copies of “The Watson Case” (Document E). Ask them to read and determine the facts after assigning the following roles:

Dr. James L. Watson (accused)
Robert J. Echols (neighbor)
Lewis P. Loudon (Echols’ stepson)
Philip Carter (eyewitness)
David Carter (nearby witness)
Captain Garrick Mallery (Bureau Inspector)
Nancy Jane Childress (seamstress)
Fanny Watson (wife)
Sarah Watson (daughter)
Adam Hickman (houseowner near accident)
Oler Cole (Watson driver)
Edward Peck (witness to Watson’s nearsightedness)
James Lyons (Watson’s attorney)
Major General J.M. Schofield (Military Commander)
Brevet Major C. Rodney Layton (Judge Advocate)
Williams (recorder of trial)

Commissioners to hear charges:
1. Brevet Brigadier General R.S. Granger
2. Brevet Brigadier General Thomas H. Neill
3. Colonel O.B. Wilcox
5. Brevet Lt. Colonel George II. Higbee
6. Brevet Major Thomas S. Dunn
7. Brevet Major W. G. Edgerton
8. Brevet Major H. R. Putnam
10. Brevet Captain Richard Robins
11. Brevet Captain E. S. Huntington
12. 1st Lieutenant E. B. Knox
13. 1st Lieutenant W. N. Sage

After allowing time to read the document tell students to align themselves into groups as commissioners, defendant and U.S. Government authorities to organize a military hearing. (NOTE: The number of commissioners should fit class size. Allow students improvisation rights to carry out role assignments.)
Upon conclusion of arguments and testimony from both sides, permit commissioners to deliberate and pronounce their decision. Then explain what actually happened. Four days after the Milligan opinion was delivered by the Supreme Court and on the advice of his Attorney General, President Andrew Johnson directed that Dr. Watson be discharged. (Note: See a summary of the Milligan case in the box below.) Acting Assistant Adjutant General Orlando Brown of the Freedmen’s Bureau carried out this order.

**Ex Parte Milligan** (1866): In late 1864, United States army officials in Indiana arrested Lambdin Milligan and several other prominent antiwar Democrats. They were accused of conspiracy to seize munitions at federal arsenals and of planning to free Confederate prisoners-of-war held in northern prison camps. Since Indiana was not in a war zone the defendants could have been tried in federal court for treason. However, army officials suspicious of Indiana juries, brought the defendants before a military commission. The military tribunal found Milligan and two others guilty and sentenced them to death. Milligan challenged the conviction in the United States Circuit Court in Indianapolis and eventually the case was brought before the United States Supreme Court. In 1866 the Court ruled that the military tribunal lacked jurisdiction and ordered the release of Milligan and the other two prisoners.

Ask students: What message can you deduce was sent by the President’s action to the Freedmen’s Bureau? to Southerners? to Congress?

Have all students read “An Act to provide for more efficient Government in the Rebel States” and “Supplementary Act . . .” (Documents F and G). Ask students:

1. What are the specific provisions of each law?
2. Relating these acts to the Watson case, how were these acts trying to protect the civil rights of African Americans?
3. How do these acts reinforce the Fourteenth Amendment?
   (NOTE: It may be necessary to review the Fourteenth Amendment in the United States Constitution.)
4. What part(s) of these acts would white southerners find most objectionable?

When students finish reading, have them list the laws’ provisions and put them on the chalkboard. Then hold a general discussion revolving around citizenship and civil rights. Stimulate students to analyze the role these laws were suppose to take in protecting the rights of freed persons.
Lesson One

RECONSTRUCTION TIME LINE OF SELECTED EVENTS

1863
- Emancipation Proclamation goes into effect
- Freedmen’s Inquiry Commission investigates conditions of southern blacks and makes recommendations.
- President Abraham Lincoln issues Proclamation of Amnesty and Reconstruction (establishing process to readmit states if Confederates accept emancipation and take oath of allegiance)

1864
- Senate approves a constitutional amendment to prohibit slavery; House rejects the proposed amendment
- Lincoln reelects president on the Union Party Ticket with Andrew Johnson, Tennessee Democrat, as vice president

1865
- House approval of constitutional amendment abolishing slavery and the Thirteenth Amendment is submitted to the states for ratification
- General William T. Sherman issues Order No. 15 setting aside land for freed slaves in coastal South Carolina, Georgia, and Florida
- Bureau of Refugees, Freedmen and Abandoned Lands established.
- General Oliver Otis Howard commissioned to head the Freedmen’s Bureau by act of Congress
- General Robert E. Lee surrenders at Appomattox.
- President Lincoln assassinated
- General Howard’s Circular No. 13 orders abandoned lands to be under agents’ control
- General Howard’s Circular rescinded under orders from President Andrew Johnson
- Thirteenth Amendment to the United States Constitution ratified
- General Carl Schurz’s Report on the Condition of the South submitted to the 39th Congress’ Joint Committee on Reconstruction

1866
- Passage of second Freedmen’s Bureau Act and a Civil Rights Act over President Johnson’s vetoes (Supreme Court declared the Civil Rights unconstitutional in 1883)
- Fourteenth Amendment passes Congress and submitted to the states for approval
- Tennessee ratifies the Fourteenth Amendment and is readmitted to the Union
1867
- Congressional/Military Reconstruction begins, dividing the former Confederacy, except Tennessee, into five military districts

1868
- Constitutional conventions organized in the Southern states as a prerequisite for readmission into the Union
- President Johnson impeached by the House of Representatives; Senate fails to remove the president from office (35 for, 19 against—one vote short of the two-thirds needed for removal)
- Seven former Confederate states readmitted by Congress (Arkansas, Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina; military rule restored in Georgia after Blacks are expelled from the state legislature)
- Fourteenth Amendment ratified
- Ulysses S. Grant elected President
- Supreme Court issues *Ex Parte Milligan* decision

1869
- Freedmen’s Bureau officially closed except for skeleton operations (schools and military bounties)
- Fifteenth Amendment passed by Congress and submitted to the states for approval

1870
- Fifteenth Amendment ratified
- Mississippi, Texas, Virginia, and Georgia readmitted

1872
- Amnesty Act passed (disabilities for all but the most prominent Confederates removed)
- Grant reelected president

1873
- A nationwide depression begins weakening Republican commitment to Reconstruction

1875
- Civil Rights Act passed, guaranteed equal rights in public places and forbade exclusion of Blacks from juries
Lesson One

1876

- Presidential election pits Rutherford B. Hayes, Republican, against Samuel J. Tilden, Democrat; outcome of the election in dispute

1877

- Special Electoral Commission (Committee of Fifteen) established to determine the outcome of the election; Hayes declared the victor in the disputed states
- Southern Democrats support the findings of the Electoral Commission after concessions are promised (Compromise of 1877)
- The last federal troops leave the South officially concluding Congressional/Military Reconstruction.

“Tilden or Blood”

A truce—not a compromise, but a chance for high-toned gentlemen to retire gracefully from their very civil declarations of war

Library of Congress, LCPP003B-39847
(Thomas Nast, Harper’s Weekly, 1877 Feb. 17, p. 132)
AN ACT TO ESTABLISH A BUREAU FOR THE RELIEF OF FREEDMEN AND REFUGEES
March 3, 1865

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established in the War Department, to continue during the present war of rebellion, and for one year thereafter, a Bureau of Refugees, Freedmen, and Abandoned Lands, to which shall be committed . . . the supervision and management of all abandoned lands, and the control of all subjects relating to refugees and freedmen from rebel states . . . under such rules and regulations as may be prescribed by the head of the bureau and approved by the President. The said bureau shall be under the management and control of a commissioner to be appointed by the President . . .

Sec. 2 And be it further enacted, That the Secretary of War may direct such issues of provisions, clothing, and fuel, as he may deem needful for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen and their wives and children, under such rules and regulations as he may direct.

Sec. 3 And be it further enacted, That the President may, by and with the advice and consent of the Senate, appoint an assistant commissioner for each of the states declared to be in insurrection, not exceeding ten in number, who shall, under the direction of the commissioner, aid in the execution of the provisions of this act; . . . And any military officer may be detailed and assigned to duty under this act without increase of pay or allowances. The commissioner shall, before the commencement of each regular session of congress, make full report of his proceedings with exhibits of the state of his accounts to the President, who shall communicate the same to Congress. . . .

Sec. 4 And be it further enacted, That the commissioner, under the direction of the President, shall have authority 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, and to every male citizen, whether refugee or freedman, as aforesaid, there shall be assigned not more than forty acres of such land, and the person to whom it was so assigned shall be protected in the use and enjoyment of the land for the term of three years at an annual rent not exceeding six per centum upon the value of such land, as it was appraised by the state authorities in the year eighteen hundred and sixty, for the purpose of taxation, and in case no such appraisal can be found, then the rental shall be based upon the estimated value of the land in said year, to be ascertained in such manner as the commissioner may
by regulation prescribe. At the end of said term, or any time during said term, the occupants of any parcel so assigned may purchase the land and receive such title thereto as the United States can convey upon paying therefore the value of the land as ascertained and fixed for the purpose of determining the annual rent aforesaid. . . .

—APPROVED, March 3, 1865

Statutes at Large, 1863-65, Vol. 13, Card 7, Reel 4122, National Archives and Records Administration (NARA).

The establishment of a Bureau of Freedmen was debated for months before the final version was finally passed in March, 1865. This speech by Charles Sumner was in support of a Senate version.

(1864) Ohio Historical Center Archives Library
Bureau Circular

Bureau of Refugees, Freedmen, and Abandoned Lands
Headquarters Ass’t Commissioner
State of Virginia, Richmond, Va.
June 15, 1865

Captain:

Having been ordered to report to this bureau for duty, you, are hereby appointed superintendent of freedmen for the first district. . . . You will at once divide your district into a suitable number of sub-districts, and appoint an officer as assistant superintendent over each. You will as soon as possible take a census of all colored people within your district. . . . Your duties will be, to protect the negroes in their rights as freemen; to see that in their present state of helplessness they are not oppressed or injured by their former masters. You will aid them by your advice in making contracts for their services, if such contracts are liable to be injurious to their interests. . . . You will also let them understand that when their contracts for services are made with the whites, they are under obligations to and must fulfill the same. . . . Cultivate . . . among them a friendly spirit towards the citizens and their former masters. . . . You will not issue rations to any person able to work for whom employment can be found. . . . Keep a register of all colored persons able to work, and without employment in his sub-district and to aid such persons in finding places to work. . . . Look after the vagrants, and if, after being admonished, they do not provide themselves with honest labor, turn them over to work under some military guard, without payment, until they are ready to work for themselves. . . . You will consider them under the same common laws that govern free laborers throughout the north. . . .

You will instruct them that their rights in what they may possess will now be protected, and that neither laws nor proclamations can make them really free until by frugality and economy they place themselves in a position where their dependence on government or charity for support shall cease.

. . . Beyond the changes necessary for uniting families, you will discourage their wandering propensities, except so far as changes may be necessary for labor to find its best market. All orphan children and helpless and infirm persons that have no one to care for them will be removed at once to a comfortable home, now being provided. . . .

—O. Brown
Captain and A.G.M., and Ass’t Commissioner

Records of the Assistant Commissioner of Virginia, Bureau of Refugees, Freedmen and Abandoned Lands, 1865–69, RG 105, National Archives.
After the war, President Johnson sent Major General Carl Schurz on a fact-finding trip through the Southern states to assess the situation. Schurz was convinced that Southerners had not changed their attitudes toward blacks and warned of dire consequences if federal troops were withdrawn before providing freedmen with the power to protect themselves. The president was cool to report; however, Congress used Schurz’s scathing report as one body of evidence against presidential reconstruction.

...In [Alabama] the efforts made to hold the negro in a state of subjection appear to have been of a particularly atrocious nature. Rumors to that effect which reached Montgomery induced me to make inquiries at the post hospital. The records of that institution showed a number of rather startling cases which had occurred immediately after the close of the war, and some of a more recent date; all of which proved that negroes leaving the plantations, and found on the roads, were exposed to the savagest treatment. ... In a report to General Swayne, assistant commissioner of the Freedmen’s Bureau, in Alabama, communicated to me by the general, Captain Poillon, agent of the bureau at Mobile, says of the condition of things in the southwestern part of the State, July 29: “There are regular patrols posted on the rivers, who board some of the boats; after the boats leave they hang, shoot, or drown the victims they may find on them, and all those found on the roads or coming down the rivers are almost invariably murdered. ... The bewildered and terrified freedmen know not what to do—to leave is death; to remain is to suffer the increased burden imposed upon them by the cruel taskmaster, whose only interest is their labor, wrung from them by every device an inhuman ingenuity can devise; hence the lash and murder is resorted to to intimidate ... .

... So far, the spirit of persecution has shown itself so strong as to make the protection of the freedman by the military arm of the government in many localities necessary—in almost all, desirable. It must not be forgotten that in a community a majority of whose members is peaceably disposed, but not willing or not able to enforce peace and order, a comparatively small number of bold and lawless men can determine the character of the whole....

...[T]angible evidence of good intentions would seem to have been furnished by the admission of negro testimony in the courts of justice, which has been conceded in some of the southern States, at least in point of form. This being a matter of vital interest to the colored man, I inquired into the feelings of people concerning it with particular care. At first I found hardly any southern man that favored it. Even
persons of some liberality of mind saw seemingly insurmountable objections. The appearance of a general order issued by General Swayne in Alabama, which made it optional for the civil authorities either to admit negro testimony in the State courts or to have all cases in which colored people were concerned tried by officers of the bureau or military commissions, seemed to be the signal for a change of position on the part of the politicians. A great many of them, seeing a chance for getting rid of the jurisdiction of the Freedmen’s Bureau, dropped their opposition somewhat suddenly. . . .

But I may state that even by prominent southern men, who were anxious to have the jurisdiction of the State courts extended over the freedmen, the admission was made to me that the testimony of a negro would have but little weight with a southern jury. . . .

It is probably that the laws excusing negro testimony from the courts will be repealed in all the States lately in rebellion if it is believed that a satisfactory arrangement of this matter may in any way facilitate the “readmission” of the States, but I apprehend such arrangements will hardly be sufficient to secure to the colored man impartial justice as long as the feelings of the whites are against him and they think that his rights are less entitled to respect than their own. . . .

The facility with which southern politicians acquiesce in the admission of negro testimony is not surprising when we consider that the practical management of the matter will rest with their own people. . . .


Carl Schurz
National Archives, NWDNS-111-B-5173
ca.1860-ca.1865
AN ACT TO PROTECT ALL PERSONS IN THE UNITED STATES IN THEIR CIVIL RIGHTS, AND FURNISH THE MEANS OF THEIR VINDICATION

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

Sec. 2 . . . Any person who . . . shall subject . . . any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act . . . shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

Sec. 3 . . . The jurisdiction in civil and criminal matters . . . conferred on the district and circuit courts of the United States shall be exercised and enforced in conformity with the laws of the United States. . . .

Sec. 4 . . . That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, the officers and agents of the Freedmen’s Bureau, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court. . . .
THE WATSON CASE

The following official communiqués document the Freedmen Bureau’s role in a case involving the shooting death of William Medley, a freedman, by Dr. James Watson, white man, in Virginia in 1866.

Communiqué to General Howard from General Schofield

Bureau of Refugees, Freedmen and Abandoned Lands
Headquarters Ass’t Com., Dep’t of the Potomac,
Richmond, Virginia, December 8, 1866

GENERAL: I desire to give you the facts, so far as they are now known, of an important case now before me, and which may very likely be brought before the president. A freedman, named William Medley, was shot and killed by Dr. James L. Watson, a prominent citizen of Rockbridge county, Virginia, under circumstances detailed in the accompanying extract from the report of Brevet Colonel Carse, and which does not differ materially from the statement voluntarily made to me by Dr. Watson himself after his arrest. Upon finding that the wound he had inflicted upon the colored man was mortal, Dr. Watson surrendered himself to a magistrate, and was recognized in a nominal sum to appear before an examining court, which court, after hearing the case, discharged the prisoner. Two of the magistrates, as I was informed, were in favor of bringing the case before a jury, while three voted for the discharge. This seemed a fair type of the numerous cases reported by officers of the bureau in which the civil courts fail, in the opinion of those officers, to give substantial justice and protection to the freedmen. I therefore determined to bring the case before a military court, not so much on account of its individual merits, as for the purpose of testing in the best practical way the important general questions involved.

I have caused Dr. Watson to be arrested and brought to Richmond, and have taken his parole and bond, with ample security, to appear for trial on the 19th of this month. My purpose is to bring the case for trial before a military commission to be appointed under the act of Congress of July 16, 1866, and to consist of a full number of officers of rank.

I am, general, very respectfully, your obedient servant.

J. M./ Schofield
Brevet Major General U.S.A., Ass’t Commissioner.

[To] Major General O. O. Howard
Commissioner Bureau Refugees, etc., Washington, D.C.
Communiqué to General Brown from Captain Mallery

Department of the Potomac, Headquarters
Bureau of Refugees, Freedmen and Abandoned Lands
Richmond, Virginia, December 26, 1866.

In obedience to your instructions I have the honor to make the following report upon the testimony of the witnesses examined by me in the case of Dr. J. L. Watson, of Rockbridge county, and the merits of the whole case as it appeared to me after investigation at the scene and in the neighborhood of the homicide.

Mr. Robert J. Echols stated as follows: I am near neighbor of Dr. Watson, residing about a mile from him. On Wednesday, November 14, about 3 p.m., Dr. Watson called on me at my house, and said that he had an account to settle with William Medley, a freedman in my employ. I, thinking that it was a bill for professional services, stated that I had money enough in my hands due to Medley to satisfy any claim the doctor might have against him. The latter replied that it was not a pecuniary matter, but that Medley had offered an insult to his family by attempting to pass them on their way to church, the Sunday previous, while driving my carriage containing a portion of my family, and had endangered the lives of Mrs. Watson and daughter, who were in the doctor’s carriage, and also the lives of that portion of my family, consisting of my young daughter and step-daughter, in the charge of my seamstress, which was in my carriage, and that Medley’s conduct was such that he would not submit to it from any man, white or black. He said, “I have come to give William a caning,” having a stick a little thicker than my thumb. I replied, “William is the best boy I ever knew.” The doctor concurred, saying, “Yes; he is one of the best boys I ever knew,” but repeated his intention to cane him. I suggested that, as no harm had actually happened to the two families, and but a small damage to the doctor’s carriage, it would be better to have the latter repaired at William’s expense. But the doctor repeated much as before, and inquired the whereabouts of William. I told him he was in the field at work. He started in that direction. A short time after I heard the firing of a pistol, and in a few moments William came and fell down near my house. I went to him, and found him wounded. I ordered my horse saddled, to go for Dr. Chandler. I had the boy carried in a blanket to his quarters. Dr. Watson came and examined him, and gave him some stimulus, at first saying that it was only a flesh wound, but afterwards agreed with me that Dr. Chandler should be sent for, which was done. William lived about thirty hours after the shooting. I was with him all the time until he died. He had been in my employ seventeen months. He was recommended to me by Dr. Watson when I came on the farm. He had been raised about there, and Dr. Watson knew him well, and told me by all means to get him, as he was the best boy he knew. Some time after
that, Dr. Watson made it a personal favor for me to let William go to him, under some trouble for help in his family, but I declined, because I myself could not spare him. I considered him the best boy I ever knew in my life. He was married. His wife was in the field when he was shot, but not in a position to see the shooting. She came with him to my house after the shooting. He evidently came to me for protection.

Mr. Lewis P. Loudon, a step-son of Mr. Echols, states as follows: About 3½ p.m., on Wednesday, the 14th November, I was in the field adjoining Mr. Echols’s house, when Dr. Watson rode by me, giving some indistinct salutation, without stopping, and went on directly to where William Medley was engaged in preparing to harrow. He was at the moment hitching his horse to the harrow, and was about fifteen or twenty paces distant from me. Dr. Watson immediately dismounted, and began to strike William on the head with his stick, at the same time asking him “why he broke his carriage.” He struck William both before and after thus speaking. William said he had not done so, and jumped behind his horse to avoid the doctor, who followed him. William then began to run towards the centre of the field. The doctor called on him to stop. He seemed to halt for a moment; but on the doctor approaching, evidently with the intention of again assaulting him, with the stick still in his hand, he ran again. The doctor then drew a pistol and called on William to stop, at the same time pulling the trigger. The cap snapped, but the pistol was not discharged. Medley was still running, and had got between fifty and sixty feet off, when the doctor fired the pistol, the ball from which entered Medley’s back.

Philip Carter, a young colored man, stated: I was in the field on the afternoon in question; I was going along the path near the fence when the doctor rode by, and went past Mr. Loudon, and then crossed over to where William was, with the harrow. I was not near enough at first to hear if there was any talk, but I could see plainly; I was going in the same direction with the doctor, but slower than he went. He got off his horse beside William and began striking him on the head. I did then hear him ask William why he had broken his carriage, and William answered that he had not. The doctor had struck him before I heard this. William ran behind the horse with which he was going to harrow, and the doctor followed. William then ran off into the field, and I heard the doctor shout to him to stop. He snapped a pistol, and William seemed to slacken up a minute, and then ran on. The doctor fired the pistol then. William ran toward the farm buildings near where his wife was, and then went toward Mr. Echols’s house.

David Carter, colored, was not in a position, from a rise in the ground where he was at work, to see Dr. Watson approach, or to observe the first part of the assault, but saw the last part, the firing of the pistol, and that William, at the shot, clapped his hand on the part wounded. He corroborated the two last-named witnesses.
Dr. Samuel T. Chandler testified to being called to attend to the deceased, described the wound, and that he died in about thirty hours from the effects of it.

These are the witnesses in chief for the prosecution whom I summoned. They all say that they gave the same evidence before the examining court, and it is to be remarked that Dr. Watson, who has, though under caution from myself, as well as other also, on the subjects of the whole affair, and stated that he took pride in being perfectly candid regarding it, gives the above as his own version with the single and unimportant exception that he asked the question, “Why did you break my carriage,” before he struck any blow, and did not commence by a blow, then asking the question. He clearly stated that the above evidence, all of which he had heard at the examining court, was correct, with that trivial exception.

Immediately after the shooting Dr. Watson went to a neighboring justice of Rockbridge county, and surrendered himself. The coroner’s inquest found that William Medley came to his death by a pistol-shot fired by J. L. Watson; whereupon the magistrate who acted as coroner required Dr. Watson to enter into a recognizance in the sum of $1,000, to appear at a “called court,” or examining court, to be convened at Lexington, on Thursday the 22d November. This court was composed of William White, Henry M. Hatcher, James G. Updike, Samuel Cowan, and John W. Mackey, “gentlemen justices,” Henry M. Hatcher being chosen to preside. The court was occupied in the case until the 24th of the same month. Dr. Watson being charged before it with “feloniously and unlawfully killing William Medley,” and on the last named day the following order was made: “On consideration, the court is of the opinion that the said James L. Watson be not further tried for the said offence [sic.], and he is ordered to be discharged from custody.”

The evidence for the defence [sic.] before the examining court, and also that proposed to be offered by Dr. Watson before the military commission, to sustain which I summoned the witnesses designated by him, was confined to the following points:

First. General good character.

Second. Provocation, by the statement of particulars of the carriage collision; and,

Third. His nearness of vision, which was said to prevent his taking accurate aim at the distance at which the shot was fired.
First. The good moral character of Dr. Watson, in the community seems to have been well established. There was the evidence of colored as well as white witnesses to that point.

Second. I went with Dr. Watson, at his request, over the ground at which the collision occurred, and heard his full explanation of it; also examined witnesses on the subject. While in some doubt how far evidence on that point would be admitted by any intelligent court as defence on a charge of murder, yet it might be considered with reference to motive, and under my instructions to be liberal in allowing the accused the benefit of all testimony which could possibly affect his case favorably, I summoned all the witnesses he desired. I give the substance of this matter of defence as it was presented to the examining court, and as was developed by my investigation.

On Sunday, the 11th November, the wife and daughter of Dr. Watson proceeded to church, driven by a colored boy named Oler Cole, the carriage being drawn by mules. They were followed by the carriage of Mr. Echols, driven for the same destination by the deceased, William Medley, and containing the young daughter and step-daughter of Mr. Echols, under the charge of his seamstress, Miss Nancy Jane Childres. This carriage was drawn by horses, being a faster team than that of Dr. Watson’s ahead of it. For a considerable distance the road is such that no vehicle can pass another travelling [sic.] in the same direction. At a point in the road near the house of Mr. Adam Hickman, Miss Childres suggested to the driver of Mr. Echols’s carriage, the deceased William Medley, that he could probably pass the slower team there, and he turned to the left to do so. At that precise point where the turn was made, it seems that, with the co-operation of the slower team in front, Mr. Echols’s carriage could have passed in safety. Miss Childres states that the ladies in Dr. Watson’s carriage called to their driver not to let the other carriage pass and that, thereupon the driver of the front carriage also turned slightly to the left. This is denied by Mrs. and Miss Watson. The result, however, was, that in a bad and narrow part of the road, somewhat beyond where the first attempt to turn out was made, the carriage came into collision, and the wheels were for a short time locked. The hub of Mr. Echols’s carriage broke one of the spokes of Dr. Watson’s. This was not with great violence, for the spoke was only pushed out of place and snapped, the two pieces still remaining attached to the hub and felloe when I saw the carriage a month afterward, and the adjacent spokes being apparently not touched. The carriages were soon separated, and that of Mr. Echols resumed its place in the rear until a more favorable place in the road allowed it to pass. Dr. Watson was absent from home at the time this occurred, and did not know of it until the succeeding night. He heard that Mr. Echols was absent on Wednesday morning, and not wishing to chastise one of his men in his
absence, waited until the afternoon. He asserts that it was not only his right to beat the freedman Medley for what he considered a wanton and malicious insult and injury, but that he was bound in honor to do so. This is his defence, or rather exculpation. The cost of repairing his broken spoke would be about fifty cents.

Third. I must explain that I summoned the witnesses called for by Dr. Watson to prove his nearness of vision only in deference to your orders to be exceptionally liberal in giving him full benefit in that respect. I remonstrated with him against involving the government in that expense, because it would be obvious that myopia would be no defence before an intelligent court, however it might avail with ignorant justices or juries, explaining that he himself, or any one acquainted with optics, could well understand that a myope, though defective in distinguishing the features of a man at the distance at which the shot was fired, or in aiming at any particular button of his clothes, could perfectly well see and aim at the object. I was aware that persons fully as near-sighted as himself were good line shots without the aid of glasses, but, though unable to controvert me, he insisted upon the witnesses being summoned, which I finally concluded to do, for the reason above given, and also because the same evidence having been given at the examining court, it might be well to have it within the reach of the commission.

This explanation is made in justice to myself, as it seems futile to introduce evidence of defence on such a ground, especially when the object actually was his with fatal accuracy.

—Garrick Mallery,
Captain 43d United States Infantry, Inspector.

[To] Brevet Brigadier General O. Brown
Acting Assistant Adjutant General.
Communiqué from General Schofield to the Richmond Circuit Court

Headquarters Department of the Potomac,
Bureau of Refugees, Freedmen and Abandoned Lands,
Richmond, Va., December 19, 1866.

To the honorable Circuit Court of the city of Richmond, in session, Va.:

I have the honor to acknowledge the receipt, through the hands of James Lyon, esq., of the writ of your honorable court, dated at the city of Richmond this 19th of December, 1866, commanding me to have the body of James L. Watson, now under my custody, before the judge of your honorable court to-day at 2 o’clock p.m., together with the cause of his being taken and detained. To which I have the honor to respectfully answer as follows, to wit:

James L. Watson was arrested by my order on the 4th day of December instant, and is now held for trial by military commission, under the authority of the act of Congress of July 16, 1866, which act directs and requires the President, through the Commissioner and officers of the Freedmen’s Bureau, to exercise military jurisdiction over all cases and questions concerning the free enjoyment of the right to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, etc., by all citizens, without respect to race or color, or previous condition of slavery of the States whose constitutional relations to the government of the United States have been discontinued by the rebellion, and have not been restored.

The above named act of Congress has been officially published to the army by the President through the War Department for the information and government of all concerned.

As an officer of the United States army, commanding the military department which includes the State of Virginia, and assistant commissioner of the Freedmen’s Bureau for the same department, my duty requires me to decline compliance with the writ of your honorable court, and I do therefore respectfully decline to produce the body of the said James L. Watson.

I have the honor to be, very respectfully, your obedient servant.
J. M. Schofield
Assistant Commissioner.
Virginia Circuit Court petition to General Schofield

To Major General Schofield, commanding district of Richmond, and assistant commissioner of the Freedmen’s Bureau.

The petition of _____ Watson, doctor of medicine, of the county of Rockbridge, in the state of Virginia, respectfully showeth that, on the ___ day of ____ in this year, he was arrested upon his voluntary surrender upon the charge of feloniously killing one _______ ______, a freedman, and committed for examination before an examining court in his county; that on the ___ day of ____ he was regularly examined by the said court and acquitted, and discharged from further prosecution, as will appear by the record of the said court, a copy of which is herewith exhibited.

That the said court was a regularly constituted court, having jurisdiction, by the laws of Virginia, to hear and examine such cases, and to acquit and discharge the prisoner, or to send him on for further trial; and its judgment of acquittal is final, so that the accused cannot “thereafter be questioned or tried for the same offence.”

—(See the Code of Virginia, chap. 205, p. 765, sec. 2.)

That on the ___ day of this month he was arrested for the same offence by an officer and detachment of men of the army of the United States, said to be acting under orders from you, and brought a prisoner to Richmond, for the purpose of being again tried for the same offence by a court-martial or military commission, as he had been informed.

Upon these facts your petitioner asks that you will order his immediate discharge from custody, for the following reasons, to wit:

First. By the termination of the war, and the proclamation of the President of the United States, peace prevails in Virginia, and martial law has ceased to exist, (2 Blackstone’s Comm., 413, 414; 2 H.R. Repts., 98; 17 Repts., 403; Hallam’s Const. History, 323, 330, 331.) and the execution of any man under such circumstances, by a military tribunal is, by the authorities aforesaid, murder.

Second. By the Constitution of the United States, art. 3, sec. 2, par. 3, it is declared that “the trial of all crimes, except in the cases of impeachment, shall be by jury.”

Third. By the Constitution, art. 1, sec. 8, par. 10, the power of Congress over crimes, except treason, is to “define and punish piracies and felonies committed on the high seas, and offences against the law of nations,” and therefore it and its courts have no jurisdiction to try felonies committed on the land.
Fourth. By the fifth article of the amendments to the Constitution, it is declared that “no person shall be held to answer for a capital or otherwise infamous offence, unless on presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger, nor shall any person be subject, for the same offence, to be trice put in jeopardy of life or limb.”

Fifth. By the sixth article of the amendments to the Constitution it is declared that “in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed.”

Sixth. That the consequence of these principles and constitutional provisions is, that the courts of the United States cannot try a felony committed on the land in time of peace, and therefore no military court can, unless the offender be in the land or naval forces, or in the militia in actual service; and such trials can take place only in State courts, and by a jury.

—(See Milligan’s case in the Supreme Court of the United States.)

Seventh. That the Freedmen’s Bureau bill and the civil rights bill do not, nor does either of them, change the rights of the accused or the power of the government in criminal cases: first, because Congress had no power to change them, having no right to alter or violate the Constitution; secondly, because they do not profess to effect such change, but relate entirely to civil proceedings and rights of living freedmen, or criminal cases in which live freedmen have been denied justice and a fair trial, and do not profess to govern the trial of white men for the benefit of dead freedmen; thirdly, because, at the most, the jurisdiction conferred by one or both of them is concurrent, and not exclusive, and the settled rule in such cases in the courts of the United States is, that the court first taking jurisdiction shall hold it to the conclusion of the case.

Eighth. Because the authority of the State court which acquitted your petitioner was as complete as that of any court can be, and if it may be reviewed by a military commission, so may the decision of any other court, in this State or any other State, and “chaos has come again,” and the State governments are overthrown, for there can be no civil government without a judiciary.

Your petitioner therefore asks that he may be forthwith discharged.

________ Watson
By his counsel,
James Lyons, Ould & Carrington.
General Schofield’s Response to the Circuit Court

Headquarters Department of the Potomac,
Bureau of Refugees, Freedmen and Abandoned Lands,
Richmond, Virginia, December 14, 1866.

Gentlemen: After fully considering your petition for the discharge of Dr. Watson, and maturely weighing the able arguments presented in support of that petition, I feel compelled to decline granting your request.

A military commission will be appointed to meet in the city of Richmond, at 10 o’clock a.m. on Wednesday, the 19th instant, for the trial of Dr. Watson.

All questions of law, as well as of facts, involved in the case may be presented for the consideration of that commission.

I am, gentlemen, very respectfully, your obedient servant.

J. M. Schofield,
Brevet Major General, U.S.A., Assistant Commissioner

AN ACT TO PROVIDE FOR THE MORE EFFICIENT
GOVERNMENT OF THE REBEL STATES
March 2, 1867

Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia (et.al.) . . . and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: Therefore, . . . said rebel States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed, and for that purpose Virginia shall constitute the first district. . . .

Sec. 2 . . . that it shall be the duty of the President to assign to the command of each of said districts an officer of the army, not below the rank of brigadier-general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

Sec. 3 . . . That it shall be the duty of each officer assigned as aforesaid, to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals; and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of State authority with the exercise of military authority under this act, shall be null and void.

Sec. 4 . . . That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted. . . . Provided That no sentence of death under the provisions of this act shall be carried into effect without the approval of the President.

Sec. 5 . . . That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, . . . and when such constitution shall provide that the elective franchise shall be enjoyed by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said constitution shall have adopted the amendment to the
Constitution of the United States, ... known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: Provided, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

Sec. 6 ... That, until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote, under the provisions of the fifth section of this act and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third article of said constitutional amendment.

SUPPLEMENTARY ACT
March 23, 1867

An Act supplementary to an Act entitled “An Act to provide for the more efficient Government of the Rebel States,” passed March second, eighteen hundred and sixty-seven, and to facilitate Restoration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That before the first day of September, eighteen hundred and sixty-seven, the commanding general in each district defined by an act entitled “An act to provide for the more efficient government of the rebel States,” passed March second, eighteen hundred and sixty-seven, shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards resident in each county or parish in the State or States included in his district, which registration shall include only those persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation: “I, _____, do solemnly swear (or affirm), in the presence of Almighty God, that I am a citizen of the State of _____; that I have resided in said States for _____ months next preceding this day, and now reside in the county of _____, or the parish of _____, in said State (as the case may be); that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any state or of the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do, so help me God”; which oath or affirmation may be administered by any registering officer.

Sec. 2. And be it further enacted, That after the completion of the registration hereby provided for in any State . . . an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such State loyal to the Union, said convention in each State, except Virginia, to consist of the same number of members as the most numerous branch of the State legislature of such State in the year eighteen hundred and sixty, to be apportioned.
among the several districts, counties, or parishes of such State by the commanding
general, giving to each representation in the ratio of voters registered as aforesaid as
nearly as may be. The convention in Virginia shall consist of the same number of
members as represented the territory now constituting Virginia in the most
numerous branch of the legislature of said State in the year eighteen hundred and
sixty, to be apportioned as aforesaid.

Sec. 3. And be it further enacted, That at said election the registered voters of each
State shall vote for or against a convention to form a constitution. . . . The persons
appointed to superintend said election, and to make return of the votes given
thereat, as herein provided, shall count and make return of the votes given for and
against a convention; and the commanding general to whom the same shall have
been returned shall ascertain and declare the total vote in each State for and against
a convention. If a majority of the votes given on that question shall be for a
convention, then such convention shall be held as hereinafter provided; but if a
majority of said votes shall be against a convention, then no such convention shall
be held under this act. . . .

Sec. 4. And be it further enacted, That the commanding general of each district
shall appoint as many boards of registration as may be necessary, consisting of three
loyal officers or persons, to make and complete the registration, superintend the
election, and make return to him of the votes, list of voters, and of the persons
elected as delegates by a plurality of the votes cast at said election; . . . and if a
majority of the votes given on that question shall be for a convention, the
commanding general, within sixty days from the date of election, shall notify the
delegates to assemble in said convention, when organized, shall proceed to frame a
constitution and civil government . . . ; and when the same shall have been so
framed, said constitution shall be submitted by the convention for ratification to be
conducted by the officers or persons appointed or to be appointed by the
commanding general. . . .

Sec. 5. And be it further enacted, That if, according to said returns, the constitution
shall be ratified by a majority of the votes of the registered electors . . . , the president
of the convention shall transmit a copy of the same, duly certified, to the president
of the United States, who shall forthwith transmit the same to Congress . . . ; and if
it shall moreover appear to Congress that the election was one at which all the
registered and qualified electors in the State had an opportunity to vote freely and
without restraint, fear, or the influence of fraud, and if the Congress shall be
satisfied that such constitution meets the approval of a majority of all the qualified
electors in the state, and if the said constitution shall be declared by Congress to be
in conformity with the provisions of the act to which this is supplementary, and the
other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the State shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.
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