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The Freedmen's Bureau in Maryland: An Early Experiment in Legal Aid

Under Union occupation, a narrow majority of white men in Maryland voted to adopt a new constitution abolishing slavery on November 1, 1864.¹ On the eve of the Thirteenth Amendment's approval by Congress, Maryland's new constitution promised freedom to the state's 87,000 enslaved men and women, nearly 50,000 of whom were 20 years old or younger.² But no sooner had the constitution gone into effect than Maryland's slaveholding class turned to the state's apprenticeship law—which allowed state courts to order any black child “bound as an apprentice to some white person to learn to labor” until adulthood—as a means of re-enslaving newly freed young people.³ John Dennis was one of hundreds of freedpeople who petitioned officers of the Freedmen's Bureau to help recover children who were “set free by the New Constitution” and immediately “bound out to their former owner” by court order.⁴ Like many who appealed to the Bureau, Dennis had no further recourse. He first went directly to the boys' former owner, who told Dennis “he meant to keep them and do by them as he ha[d] done by his slaves in the past.”⁵ Hoping to contest the indentures in court, Dennis then sought out a local lawyer, who proposed to charge “ten dollars a case” for each of Dennis's three children, a sum

¹ The 1864 constitution was approved by a mere 263 votes out of approximately 60,000 votes cast. William Starr Myers, *The Maryland Constitution of 1864* (Baltimore: The John Hopkins Press, 1901), 97.

² Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 39; Wilma King, *Stolen Childhood: Slave Youth in Nineteenth-Century America* (Bloomington: Indiana University Press, 1995), 135.

³ *The Maryland Code: Public General Laws and Public Local Laws* (Baltimore: John Murphy & Co., 1860), 38.

⁴ Statement of John, in *Communication from Major General Lew Wallace in Relation to the Freedman's Bureau to the General Assembly of Maryland* (Annapolis, MD: Richard P. Bayly, 1865), 17; John Dennis to Gen. Wallace, December 6, 1864, in *ibid.*, 18. As John Dennis explained, his children, like many enslaved young people torn from their families through sale or war, had been separated from their mother by their enslaver in 1859, and then parted from their father when he sought to enlist in the Union army, which offered a means of emancipation.

⁵ *Ibid.*

likely equal to several months' wages.⁶ Dennis then turned to the Freedmen's Bureau, the federal officers charged with enforcing his rights, to see "if [they] could not do anything for [him]."⁷ The strategic alliance between freedpeople and Bureau officers that arose out of scores of similar petitions proved decisive in defeating forced apprenticeship in Maryland. Critical to the success of this alliance—though little studied by historians—was a novel, federally funded program of legal assistance instituted by the Freedmen's Bureau to address the problem Dennis and many other parents faced: the prohibitive expense of hiring a lawyer to recover individual children, much less mount an attack on the entire apprenticeship system. Records of the Bureau's operations in Maryland show that the Bureau began funding habeas actions to recover indentured children, like Dennis's, in 1865, and ultimately staffed a successful constitutional challenge to the apprenticeship law in 1867. The campaign against apprenticeship in Maryland, then, should not be understood merely as a singular response to a local crisis, but as an important test of the federal government's commitment to enforcing freedpeople's rights and its capacity to meet citizens' needs, including the demand for legal assistance.

While historians have noted the Bureau's role in challenging apprenticeship in Maryland, they have not typically recognized its role in staffing legal aid lawyers and funding test litigation, and therefore have overlooked the Bureau's significance as the nation's first, albeit short-lived, experiment in federally funded legal aid.⁸ The Freedmen's Bureau not only set up its own courts

⁶ *Ibid.* For reference, wage scales established by the Freedmen's Bureau in Georgia in 1866 ranged from \$12-15 a month for male farm hands. Sara Rapport, "The Freedmen's Bureau as a Legal Agent for Black Men and Women in Georgia: 1865-1868," *The Georgia Historical Quarterly* 73, no. 1 (1989), 32.

⁷ Statement of John Dennis, in *Communication from Major General Lew Wallace*, 18.

⁸ Historians have offered valuable studies of apprenticeship and Bureau activities in Maryland, but have not closely examined the mechanics of the Bureau's legal aid function, nor connected the Maryland campaign to the Bureau's legal aid efforts elsewhere. See, for example, Barbara Jeanne Fields, *Slavery and Freedom on the Middle Ground: Maryland During the Nineteenth Century* (New Haven: Yale University Press, 1985), chap. 6; Richard Paul Fuke, *Imperfect Equality: African Americans and the Confines of White Racial Attitudes in Post-Emancipation Maryland* (New York: Fordham University Press, 1999), chap. 4; Fuke, "Planters, Apprenticeship, and Forced Labor: The Black Family Under Pressure in Post-Emancipation Maryland," *Agricultural History* 62, no. 4 (1988): 57-74; Fuke,

to adjudicate cases involving freedpeople, but also hired lawyers to represent freedpeople in civil and criminal cases before state courts. In Maryland, freedpeople and the Bureau lawyers who represented them produced one of the most significant legal victories of the Reconstruction era: the ruling by Chief Justice Chase, in *In re Turner*, that Maryland's system of forcibly indenturing black youth violated the Thirteenth Amendment and the 1866 Civil Rights Act.⁹ Notwithstanding its importance, however, the Freedmen Bureau's legal aid program has occupied a somewhat marginal place both in scholarship on the Bureau and in histories of government-funded legal assistance.¹⁰ Thus, a study of the Bureau's legal aid program in Maryland may offer new insights for several strands of scholarship, too often considered in isolation: the role of the Freedmen's Bureau in fulfilling, or failing to fulfill, the promise of Reconstruction; the role of black communities in shaping civil rights enforcement; and the rise of organized legal aid for the poor before the creation of a modern welfare state.

Examining the federal government's approach to funding legal aid after the Civil War provides one means by which to measure its commitment to protecting civil rights and the legal process—and thus, a means by which to assess the Bureau's role in the Reconstruction project. This history cautions against overstating or idealizing the role of Bureau lawyers, or the adversarial process generally, in delivering some semblance of justice to newly emancipated men, women, and children. Nevertheless, the Bureau's legal aid program merits attention

"A Reform Mentality: Federal Policy Toward Black Marylanders, 1864-1868," *Civil War History* 22, no. 3 (1976): 214-35; and W. A. Low, "The Freedmen's Bureau in the Border States," in *Radicalism, Racism, and Party Realignment: The Border States During Reconstruction*, ed. Richard O. Curry (Baltimore, MD: John Hopkins Press, 1969).

⁹ *In re Turner*, 24 Fed. Cas. 337, 339 (C.C. Md. 1867).

¹⁰ For one very valuable study of the Bureau's legal aid efforts in the District of Columbia, see Howard C. Westwood, "Getting Justice for the Freedman," *Howard Law Journal* 16 (1971): 492-537. On the Bureau's legal activities generally, see Donald G. Nieman, *To Set the Law in Motion: The Freedmen's Bureau and the Legal Rights of Blacks, 1865-1868* (Millwood, NY: KTO Press, 1979).

because it partly confirms and partly complicates some of the standard historical assessments of the Bureau.¹¹

Early scholarly studies of Reconstruction by white historians of the Dunning School derided the Freedmen's Bureau as an agent of Republican "carpetbaggers" and "negro rule," an assessment intended to legitimize the dismantling of interracial democracy under Jim Crow.¹² More positive, revisionist histories of Reconstruction, pioneered by W.E.B. Du Bois's *Black Reconstruction in America* (1935) and exemplified by historians writing during the Civil Rights Movement, partly redeemed what John and Lawanda Cox called the "misrepresented bureau."¹³ However, since historians began delving further into the records of the Freedmen's Bureau in the 1970s and 80s, scholarship on Bureau has often reflected a more negative assessment of "how essentially nonrevolutionary and conservative Reconstruction really was," as C. Vann Woodward observed.¹⁴ Post-revisionist scholarship recognized the deeply racist and paternalistic assumptions that were harbored by many Bureau personnel and embedded in the Bureau's mission to secure black labor for white landowners and curtail freedpeople's "dependency."¹⁵ However, echoing Du Bois, more recent scholarship on the Bureau has shown that, despite the material and ideological constraints that hampered its ability to deliver more radical change, the

¹¹ For a discussion of historiography on the Bureau, see Robert Harrison, "New Representations of a 'Misrepresented Bureau': Reflections on Recent Scholarship on the Freedmen's Bureau," *American Nineteenth Century History* 8, no. 2 (2007): 205-29.

¹² For a summary of the work of William Dunning and his students, and its influence on Reconstruction historiography, see Foner, *Reconstruction*, xvii-xix.

¹³ John and LaWanda Cox, "General O. O. Howard and the 'Misrepresented Bureau,'" *Journal of Southern History* 19 (1953): 427-56; see also Harrison, "New Representations of a 'Misrepresented Bureau,'" 205-06 (discussing revisionist historiography).

¹⁴ C. Vann Woodward, review of *The Confederate Nation*, *New Republic*, March 17, 1979, quoted in Foner, *Reconstruction*, xxi.

¹⁵ For a classic critical assessment of Bureau Commissioner O. O. Howard's failure to deliver the radical promise of Reconstruction, see William S. McFeely, *Yankee Stepfather: General O. O. Howard and the Freedmen* (1968). For a general discussion of post-revisionist scholarship of the 1970s and 80s, see Harrison, "New Representations of a 'Misrepresented Bureau,'" 206-08. On the Bureau's "war on dependency," see Mary Farmer-Kaiser, *Freedwomen and the Freedmen's Bureau: Race, Gender, and Public Policy in the Age of Emancipation* (New York: Fordham University Press, 2010), 37; and Foner, *Reconstruction*, 152.

Bureau made an important difference in the lives of formerly enslaved people, not least by providing access to legal resources that freedpeople themselves harnessed to serve their own needs and aspirations.¹⁶

The history of the Bureau's legal aid program in Maryland goes to the heart of the debate about the Bureau's efficacy and the role of freedpeople in influencing its agenda. This history illustrates the racism and conservatism inherent in the Bureau's mission, as well as the Bureau's significant achievements and novel strategies to overcome political obstruction and resource constraints. Moreover, as this paper's case study shows, local communities—that is, free people of color, as well as the nearly all-white bar and bench—had an important hand in shaping the Bureau's legal aid and law reform functions. The Bureau's use of its fairly limited funds to provide legal representation to freedpeople showed that the Bureau, at least in some areas of operation, saw legal aid as a priority, and as a practical, though partial, remedy against Southern efforts to preserve conditions of slavery. Moreover, freedpeople's recourse to Bureau lawyers revealed a new, potentially transformative relationship between citizens and the federal government. The Bureau's legal aid program thus provided a mechanism for freedpeople's own efforts to fulfill the promise of emancipation. Indeed, the history of the Bureau's legal campaign in Maryland helps illuminate how the legal demands of black communities, at the local level, shaped federal civil rights enforcement during Reconstruction and laid the groundwork for

¹⁶ For more positive assessments of the Bureau, focusing especially on political and economic constraints, and how freedpeople made use of Bureau resources, see, for example, Paul A. Cimbala and Randall M. Miller, eds., *The Freedmen's Bureau and Reconstruction: Reconsiderations* (New York: Fordham University Press, 1999); Foner, *Reconstruction*; Nieman, *To Set the Law in Motion*; Rapport, "The Freedmen's Bureau as a Legal Agent"; and John David Smith, "'The Work It Did Not Do Because It Could Not': Georgia and the 'New' Freedmen's Bureau Historiography," *The Georgia Historical Quarterly* 82, no. 2 (1998): 331–49

twentieth-century racial justice strategies, namely, civil rights test case litigation coupled with grassroots organizing.¹⁷

In addition, the story of the Bureau's legal aid program alters traditional narratives about government-funded legal assistance in the United States: it points to an earlier genesis, and suggests a vision of legal aid as not simply a program for the poor, but a tool of racial justice. Most existing histories of legal aid overlook that the Freedmen's Bureau was the first, admittedly limited, venture in federally funded legal aid, which appeared about a decade before the first private legal aid societies formed to serve largely white immigrant communities in the urban North, and well before the creation of public defender offices and federal guarantees for indigent defense under *Gideon v. Wainwright* and the Criminal Justice Act.¹⁸ Recently, however, some historians have begun to revise the neglected history of legal aid. Felice Batlan, notably, has highlighted the role of women lawyers and clients in pioneering private legal services organizations in the late nineteenth century before professional male lawyers redirected the work of legal aid.¹⁹ Recognizing the exclusion of African Americans and other racial minorities from the purview of white legal aid reformers in the Progressive Era, Shaun Ossei-Owusu has emphasized the importance of race in the history of legal aid, from nineteenth-century abolitionist societies and the Freedmen's Bureau, to the modern-day public defenders who operate "as an often-unacknowledged component of the welfare state and an underappreciated

¹⁷ For analysis of the roots of twentieth-century civil rights organizing in late nineteenth-century legal campaigns and organizing by black women's clubs, see, for example, Susan D. Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880-1915* (New York: Oxford University Press, 2015).

¹⁸ The Freedmen's Bureau program has sometimes been briefly noted in histories of legal aid as an early example of state or private charitable ventures to provide legal assistance to the poor. See, for example, Susan E. Lawrence, *The Poor in Court: The Legal Services Program and Supreme Court Decision Making* (Princeton, NJ: Princeton University Press, 1990), 18. For a discussion of the limits of legal aid historiography, see Felice Batlan, *Women and Justice for the Poor: A History of Legal Aid, 1863-1945* (New York: Cambridge University Press, 2015), 3-14.

¹⁹ See Batlan, *Women and Justice for the Poor*.

component of the penal state.”²⁰ The Bureau’s legal aid program in Maryland, staffed with white lawyers, and dependent on the initiative of black plaintiffs, illustrates important themes in these newer histories of legal aid: the implication of legal aid programs in a system of class, gender, racial subordination, as well as the agency of legal aid clients and lawyers in challenging those systems of subordination.

Part One of this paper provides an overview of the Bureau’s formation and operation, including its efforts to fund legal representation for freedpeople. These efforts, I argue, were central to the agency’s function and long-term impact. This account of the Bureau’s legal aid activities tests familiar arguments about the Bureau, both critical and positive. Next, Part Two presents a case study of the Bureau’s legal aid program as it operated in Maryland, explaining how the model of legal service and law reform took shape to address injustices in the postwar South. This study underscores the resource constraints and other obstacles to which the Bureau’s failings are often attributed. It also highlights the transformative impact of the Bureau’s legal aid program—most notably, in challenging Maryland’s apprenticeship system—and the Bureau’s dependence on the initiative of formerly enslaved men and women to achieve legal reform.

I. The Freedmen’s Bureau and the Function of Legal Aid

Congress established the Bureau of Refugees, Freedmen, and Abandoned Lands by statute on March 3, 1865, placing it under the direction of General Oliver Otis Howard as

²⁰ Shaun Ossei-Owusu, “A People’s History of Legal Aid: A Brief Sketch,” in Stephen Haymes et al., eds., *The Routledge Handbook of Poverty in the United States* (New York: Routledge, 2015), 383. For further analysis of race in the provision of legal aid, focusing mostly on the twentieth century, see Shaun Ossei-Owusu, “Law’s Underbelly: Legal Aid from Slavery to Mass Incarceration” (PhD diss., University of California, Berkeley, 2014); Kris Shepard, *Rationing Justice: Poverty Lawyers and Poor People in the Deep South* (Baton Rouge: Louisiana University Press, 2007); Carle, *Defining the Struggle*; and Kenneth W. Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Cambridge, MA: Harvard University Press, 2012).

Commissioner.²¹ Though formed in the final months of the Civil War, the Bureau was long in the making. Congressional discussion began in the immediate aftermath of Emancipation, as Union contraband camps swelled with men and women fleeing slavery and freedmen's aid associations pressed Congress and the president to act.²² The House and Senate failed to agree on legislation proposed early in 1863, but ultimately heeded the recommendations of the American Freedmen's Inquiry Commission, which Secretary of War Edwin Stanton established in March 1863 to study conditions in the occupied South.²³ "For a time," the Commission's 1864 report urged, "we need a freedmen's bureau."²⁴ Following the Commission's call for "temporary aid" only, the First Freedmen's Bureau Act placed the Bureau within the War Department and gave it limited life "during the present war of rebellion, and for one year thereafter."²⁵ The 1865 act charged the Bureau with "the supervision and management of all abandoned lands, and the control of all subjects relating to refugees and freedmen from rebel states" and occupied territory, with little further specification.²⁶ The Second Freedmen's Bureau Act, enacted in July 1866 over President Johnson's veto, extended the Bureau's life for two years while broadening and clarifying its mandate.²⁷ Of particular note, the Second Freedmen's Bureau Act, like the landmark Civil Rights Act passed in the same session, authorized federal jurisdiction over cases concerning the

²¹ An Act to establish a Bureau for the Relief of Freedmen and Refugees, ch. 90, §1, 13 Stat. 507 (1865) [hereinafter "First Freedmen's Bureau Act"].

²² On the Bureau's legislative history, see Herman Belz, *A New Birth of Freedom: The Republican Party and Freedmen's Rights, 1861 to 1866* (Westport, CT: Greenwood Press, 1976), 69-112; and Paul Skeels Peirce, *The Freedmen's Bureau: A Chapter in the History of Reconstruction* (Iowa City: State University of Iowa, 1904), 34-45.

²³ For a discussion of the American Freedmen's Inquiry Commission, see Amalia D. Kessler, "The Freedmen's Bureau Exception: The Triumph of Due (Adversarial) Process and the Dawn of Jim Crow," in *Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800-1877* (New Haven: Yale University Press, 2015), 266-75.

²⁴ Robert Dale Owen, James McKaye, & Samuel Gridley Howe, Final Report of the American Freedmen's Inquiry Commission to the Secretary of War, May 15, 1864, available at <http://www.civilwarhome.com/commissionreport.html>.

²⁵ *Ibid.*; First Freedmen's Bureau Act, §1, 13 Stat. 507.

²⁶ First Freedmen's Bureau Act, §1, 13 Stat. 507.

²⁷ An Act to continue in force and to amend "An Act to establish a Bureau . . .," ch. 200, §1, 14 Stat. 173 (1866) [hereinafter "Second Freedmen's Bureau Act"].

protection of freedpeople's civil rights.²⁸ Until its dissolution in 1868,²⁹ the Bureau pursued a set of expansive, largely unprecedented administrative projects: providing freedpeople and white refugees with food, clothing, transportation, and medical care; managing the sale or lease of abandoned and confiscated lands; overseeing freedpeople's entry into labor contracts and marriages; setting up schools for black children and adults; and protecting freedpeople's civil rights in court.³⁰

Tasked with assisting over four million freedpeople and managing 858,000 acres of land, the Bureau found itself chronically short on funds and manpower.³¹ Congress made no appropriation for the Bureau's operations until July 1866, after President Johnson's policy of restoring Confederates' land extinguished the possibility of funding the Bureau through rents on abandoned lands—as well as hopes for widespread black land ownership.³² Congress

²⁸ An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication, ch. 31, §§ 3, 4, 14 Stat. 27, 28 (1866) [hereinafter “Civil Rights Act”] (giving U.S. district courts jurisdiction over offenses under the Act, and empowering district attorneys and Freedmen's Bureau officers to prosecute violators of the Act); Second Freedmen's Bureau Act, §14, 14 Stat. 176-77 (echoing the Civil Rights Act's enumeration of the rights “enjoyed by all ... citizens ... without respect to race or color,” and giving Bureau and military authorities “jurisdiction over all cases and questions concerning the free enjoyment of such immunities and rights”).

²⁹ In July 1868 Congress provided that General Howard would wind up and withdraw the Bureau in January 1869, except for the Bureau's educational department and management of black veterans' claims. Act of July 25, 1868, ch. 244, 15 Stat. 193-94. The Bureau's remaining operations were discontinued through a June 1872 appropriations act. Act of June 10, 1872, ch. 415, 17 Stat. 347, 366. On the role of the Southern Claims Commission in handling freedpeople's property claims after the Bureau's withdrawal, see Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003), chaps. 4-6.

³⁰ Between July 1865 and August 1868, the Bureau distributed approximately 20 million rations, provided transportation for about 27,000 freedpeople and 3,000 refugees, provided medical treatment to almost 500,000 freedpeople through 1870, and established schools attended by tens of thousands throughout the South. Robert C. Lieberman, “The Freedmen's Bureau and the Politics of Institutional Structure,” *Social Science History* 18, no. 3 (1994): 417. For the argument that the Bureau marked “the first broad effort in American history to build the operations of a modern administrative state,” see John D. Schmidt, *Free to Work: Labor Law, Emancipation, and Reconstruction, 1815–1880* (Athens: University of Georgia Press, 1998), 6.

³¹ While the government held 858,000 acres of Southern land in mid-1865, 394,000 acres were returned to former owners by early 1866, and less than 140,000 acres remained by August 1868. Claude F. Oubre, *Forty Acres and a Mule: The Freedmen's Bureau and Black Land Ownership* (Baton Rouge: Louisiana State University Press, 1978), 37.

³² Foner, *Reconstruction*, 161 (“By mid-1866, half the land in Bureau hands had been restored to its former owners, and more was returned in subsequent years. ... Johnson had in effect abrogated the Confiscation Act and unilaterally amended the law creating the Bureau.”).

appropriated \$6,940,650 for the Bureau in July 1866 and \$3,828,300 the following year.³³ For comparison, from 1865 to 1870, the U.S. government spent over \$4 million identifying and re-interring the bodies of Union soldiers.³⁴ With \$147,500 of the Bureau's funds appropriated each year for salaries, at its peak the Bureau could field only about 550 agents across thirteen states.³⁵ As historian Paul Cimbala has observed, the architects of the Bureau seemed almost to have "designed a blueprint for institutional failure."³⁶ But as historians have noted, the Bureau's failings were not simply the result of resource constraints; they also stemmed from the Bureau's ideological commitment to "laissez-faire liberalism," the racial prejudice harbored by many Bureau agents, and the racist assumptions underlying the project to end freedpeople's "dependency" on government support.³⁷

The Bureau devoted much of its energies to overseeing the administration of justice, though its record in securing the "immunities and rights" of freedpeople was in many ways a failure.³⁸ The Bureau's enforcement of exploitative labor contracts and its failure to convict perpetrators of violence against blacks, as historians have shown, abetted former slave-owners' efforts to restore conditions of slavery and exposed the limits of the Bureau's mission to make

³³ Act of July 13, 1866, ch. 176, §3, 14 Stat. 90, 92; Act of March 2, 1867, ch. 170, § 1, 14 Stat. 485, 486.

³⁴ Drew Gilpin Faust, *This Republic of Suffering: Death and the American Civil War* (New York: Vintage Books, 2008), 238.

³⁵ Act of July 13, 1866, ch. 176, §3, 14 Stat. 90, 92; Act of March 2, 1867, ch. 170, § 1, 14 Stat. 485, 486; Harrison, "New Representations of a 'Misrepresented Bureau,'" 214; Nieman, *To Set the Law in Motion*, 133. On different estimates of the Bureau's peak manpower (depending partly on whether clerks are counted), see Westwood, "Getting Justice for the Freedman," 497-98 n. 16.

³⁶ Paul A. Cimbala, *Under the Guardianship of the Nation: The Freedmen's Bureau and the Reconstruction of Georgia, 1865-1870* (Athens: University of Georgia Press, 1997), 223; see also Harrison, "New Representations of a 'Misrepresented Bureau,'" 213-15 (highlighting problems that arose because of the Bureau's inadequate funding, short lifespan, and the institutional constraints of the military).

³⁷ On the Bureau's commitment to "laissez faire liberalism," see James Oakes, "A Failure of Vision: The Collapse of the Freedmen's Bureau Courts," *Civil War History* 25 (1979): 76. For a similar critique of the Bureau's embrace of legal formalism rather than substantive justice, see Laura F. Edwards, *A Legal History of the Civil War and Reconstruction: A Nation of Rights* (Cambridge, UK: Cambridge University Press, 2015). On the Bureau's "war on dependency," see Mary Farmer-Kaiser, *Freedwomen and the Freedmen's Bureau: Race, Gender, and Public Policy in the Age of Emancipation* (New York: Fordham University Press, 2010), 37; and Foner, *Reconstruction*, 152.

³⁸ Second Freedmen's Bureau Act, §14, 14 Stat. 177.

freedpeople “self-supporting citizens.”³⁹ Nevertheless, as historians have also recognized, the Bureau provided a vehicle for freedpeople’s own efforts to fulfill the transformative potential of emancipation.⁴⁰ Perhaps the chief evidence of the Bureau’s significance in this regard lies in the sheer number of freedpeople who turned to Bureau officials to seek redress—over 100,000 complaints per year, by Howard’s estimate—and who protested the Bureau’s withdrawal.⁴¹ The Bureau’s operations in Maryland, as this paper will discuss, illustrated the complexity of the alliance between freedpeople and the Bureau.

The Bureau’s legal activities were varied: Bureau officials acted as next friend to freedpeople in civil and military courts, reported injustices in the civil courts for possible federal intervention, served as judges in specialized Bureau or provost courts, and as arbiters for disputes outside the courts.⁴² Commissioner Howard’s May 1865 circular allowed Bureau officials to adjudicate disputes involving freedpeople outside the civil courts on the grounds that Southern states “disregard[ed] the negro’s right to justice before the laws, in not allowing him to give testimony.”⁴³ However, the Second Freedmen’s Bureau Act, enacted in the wake of *Ex parte Milligan*, specified that the Bureau’s jurisdiction did “not exist in any State where the ordinary course of judicial proceedings ha[d] not been interrupted by the rebellion,” or where such

³⁹ Second Freedmen’s Bureau Act, §2, 14 Stat. 174. For a classic study of how the Bureau “ultimately facilitated the restoration of black labor to the control of those who had previously owned them,” see Leon F. Litwack, *Been in the Storm so Long: The Aftermath of Slavery* (New York: Knopf, 1979), 386. For an overview of critical “post-revisionist” scholarship on the Bureau, see Harrison, “New Representations of a ‘Misrepresented Bureau,’” 206-07.

⁴⁰ See sources cited *supra* note 16.

⁴¹ O. O. Howard, *Autobiography of Oliver Otis Howard, Major General United States Army* (New York: The Baker & Taylor Company, 1908), 2: 370 (extrapolating the total number based on assistant commissioners’ quarterly reports of cases adjudicated).

⁴² For an overview of the Bureau’s legal activities, see Nieman, *To Set the Law in Motion*. For analysis of the Bureau courts’ design, operation, and dissolution, see Kessler, “The Freedmen’s Bureau Exception;” and Oakes, “A Failure of Vision.”

⁴³ Circular No. 5, May 30, 1865, 39th Cong., 1st sess., House Exec. Doc. No. 70 (instructing Bureau officials to adjudicate cases involving freedpeople where the civil law had been interrupted or where local courts, “by reason of old codes, in violation of the freedom guaranteed by the proclamation of the President and the laws of Congress,” barred testimony by blacks).

proceedings had been restored.⁴⁴ Thus, judicial power remained with civil authorities in jurisdictions—like Maryland and the District of Columbia—where civilian courts remained in continuous operation.⁴⁵ Even where Bureau or military courts operated, they soon ceded authority to civil courts once Southern states removed *de jure* prohibitions on black testimony and achieved readmission under the Reconstruction Acts.⁴⁶

Thus, while the short-lived Bureau courts figure prominently in most historical analysis of the Bureau’s legal activities, the Bureau’s interventions in the civil courts were perhaps even more central to the agency’s function and long-term impact. Legal historians like Amalia Kessler have argued that the Bureau courts—characterized by a commitment to judicial discretion and substantive justice over procedural formality—reflected a “nascent . . . recognition of the limits of the then-dominant adversarial model.”⁴⁷ However, the Bureau courts were not the federal government’s only response to injustice in Southern courts and the expense of “lawyer-driven adversarial procedure.”⁴⁸ While the Bureau courts marked a brief foray into an alternative “conciliation court” model of due process,⁴⁹ the Bureau pursued another experiment within the existing adversarial model of the civil courts: a novel program of federally supported legal aid. The Bureau’s funding of legal counsel for freedpeople, though similarly short-lived, prefigured the creation of private legal aid societies and state public defender offices in the coming decades.⁵⁰ If the collapse of the Bureau courts highlighted a “reasserted commitment to adversarialism,”⁵¹ the Bureau’s legal aid program suggested a brief yet prescient recognition of

⁴⁴ Second Freedmen’s Bureau Act, §14, 14 Stat. 177; see also *Ex parte Milligan*, 71 U.S. 2 (1866) (holding that trying civilians in military courts is unconstitutional where civilian courts are operating).

⁴⁵ Report of Charles H. Howard, October 22, 1866, 39th Cong., 2d sess., Senate Exec. Doc. No. 6, p. 34.

⁴⁶ Oakes, “A Failure of Vision,” 70.

⁴⁷ Kessler, “The Freedmen’s Bureau Exception,” 301.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ See Ossei-Owusu, “A People’s History of Legal Aid.”

⁵¹ Kessler, “The Freedmen’s Bureau Exception,” 265.

the government's obligation to fund the expensive, lawyer-driven model of adjudication to which it had committed itself.

First, the scope of the Bureau's legal aid function, though difficult to determine with certainty, challenges the notion that lawyers had little part in the Bureau's approach to administering justice. Certainly, as historians like Kessler and James Oakes have observed, Bureau courts were often staffed by officials who lacked legal training and frequently resolved disputes without the involvement of legal counsel.⁵² Furthermore, Bureau records do not always make plain whether parties were represented by legal counsel or accompanied by non-lawyer agents.⁵³ Bureau agents who acted as next friend were not typically attorneys. However, Commissioner Howard grasped the significance of staffing lay Bureau officers to appear in support of black defendants and plaintiffs, when the Bureau was unable to staff lawyers: "When nothing else could be done, it was something for an accused negro to have at least the counsel of a Bureau officer as a friend present in court."⁵⁴ Moreover, the Bureau's practice of hiring or appointing lawyers from the private bar to represent freedpeople—under-recognized in histories of the Bureau—suggested that Bureau leaders recognized a "duty," as the American Freedmen's Inquiry Commission put it, "to employ legal counsel," at least "in important cases."⁵⁵ Furthermore, Bureau leaders' invocation of the 1866 Civil Rights Act as authority for hiring legal aid lawyers suggested that they understood government-funded legal assistance to be, if not a constitutional right, then at least a necessary component of civil rights enforcement.

⁵² The Bureau courts' procedures varied by state, however. In Virginia, for instance, the Bureau set up panels of three judges: a Bureau agent and two local men, one selected by whites and the other selected by blacks. Otherwise, Bureau courts were headed by a single judge—a Bureau official or a state magistrate who agreed to admit black testimony. See Kessler, "The Freedmen's Bureau Exception"; Oakes, "A Failure of Vision."

⁵³ See Westwood, "Getting Justice for the Freedman," 505.

⁵⁴ Howard, *Autobiography*, 2: 283.

⁵⁵ Robert Dale Owen, James McKaye, & Samuel Gridley Howe, Preliminary Report of the American Freedmen's Inquiry Commission to the Secretary of War, June 30, 1863, available at <http://www.civilwarhome.com/prelimcommissionreport.html>.

As Howard Westwood has shown, the Bureau employed a series of lawyers to serve as Bureau solicitors, salaried and housed in offices paid for by the Bureau, in D.C. and Maryland.⁵⁶ The D.C. Bureau solicitor, A. K. Browne, reported handling hundreds of civil and criminal cases in little over a year.⁵⁷ Lawyers hired or appointed by the Bureau in Maryland, as this paper will discuss, mounted challenges to the state's apprenticeship law, in addition to providing criminal defense and assistance in wage disputes and other civil cases. Bureau records also offer evidence of federally funded legal aid initiatives in Mississippi, Florida, Louisiana, and the Carolinas.⁵⁸ The Assistant Commissioner for Mississippi, for example, instructed Bureau agents in October 1865 to "engage an attorney to defend the Freedmen before the civil authorities," and the next month retained an attorney "to appear before the Courts of the State of Mississippi for the defense of Freedmen, where it may be necessary that this Bureau should furnish counsel."⁵⁹ The Assistant Commissioner for Florida instructed his agents in October 1866 that it was "the right and duty of ... the Court to appoint ... counsel" for freedmen, and that Bureau agents were "under the Civil Rights Bill authorized to employ competent counsel to defend the rights of injured parties."⁶⁰

⁵⁶ Westwood focuses primarily on the Bureau's legal aid program in D.C., but notes that the program "reached also into Maryland," as this paper will discuss, and certain other states. Westwood, "Getting Justice for the Freedman," 529.

⁵⁷ A. K. Browne to C. H. Howard, October 10, 1868, Records of the Assistant Commissioner for the District of Columbia, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1869, Record Group 105, National Archives and Records Administration [hereinafter "BRFAL"]. Many of the sources cited in this paper are contained in the collection of Bureau records entitled "Records of the Assistant Commissioner for the District of Columbia, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1869." However, this collection includes a large share of the records of the Bureau's operations in the district of Maryland, which was separately administered from the D.C. district, but which came under the jurisdiction of the Assistant Commissioner for the District of Columbia, along with West Virginia and parts of Virginia.

⁵⁸ See Westwood, "Getting Justice for the Freedman," 529-32.

⁵⁹ S. Eldridge to R. S. Donaldson, October 2, 1865, Records of the Assistant Commissioner for the State of Mississippi, BRFAL; Special Orders No. 53, November 24, 1865, Records of the Assistant Commissioner for the State of Mississippi, BRFAL.

⁶⁰ J. G. Foster to M. L. Stearns, October 6, 1866, Records of the Assistant Commissioner and Subordinate Field Offices for the State of Florida, BRFAL; Letter to J. E. Quentin, June 12, 1866, Records of the Assistant Commissioner and Subordinate Field Offices for the State of Florida, BRFAL.

Second, given limited appropriations, the Bureau's retainer of lawyers to represent freedpeople suggests that Bureau leaders, at least in some areas, saw legal assistance as a priority. Notably, given annual appropriations of \$147,500 for salaries, and a \$1,200 yearly salary cap for civilian agents,⁶¹ Assistant Commissioner Charles H. Howard hired a number of attorneys to represent freedpeople in Maryland at salaries of \$100 per month.⁶² Bureau solicitors for the D.C. office received the same salary.⁶³ Records indicate that the Bureau also subsidized solicitors' office rent and the expense of traveling to take depositions, visit clients confined in jail, and attend courts in different counties. For example, Assistant Commissioner Howard assured the Bureau's Maryland solicitor, Henry Stockbridge, that the Bureau would pay Stockbridge's Baltimore office rent and would reimburse "[a]ll traveling expenses or business of this Bureau," in addition to his \$100 monthly salary, according to Army regulations.⁶⁴

However, lawyers who worked for the Bureau on a fee basis, without an appointed position, sometimes had to petition for compensation—an indication of the pressure to control costs. For example, the Maryland lawyer H. P. Jordan requested compensation from the Bureau

⁶¹ Second Freedmen's Bureau Act, §3, 14 Stat. 174 (allowing civilian agents of the Bureau to receive salaries between \$500 and \$1,200); Act of July 13, 1866, ch. 176, §3, 14 Stat. 90, 92 (appropriating \$147,500 for the salaries of Bureau commissioners and assistants); Act of March 2, 1867, ch. 170, § 1, 14 Stat. 485, 486 (same).

⁶² Special Order No. 28, February 26, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL (appointing W. H. Owen as solicitor for the D.C. headquarters, at \$100/month, to handle cases "of illegal and unjust apprenticeship of children of freed people and for such other cases as may be referred to him" from Maryland counties within the D.C. Assistant Commissioner's jurisdiction); Special Order No. 97, June 15, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL (appointing Henry Stockbridge to the same duties and salary previously specified for Owen); Annual Report of Charles H. Howard, October 10, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL (reporting the appointment of "J.S. Dalrymple, Esq., of Calvert county, [as] Special Agent of this Bureau," to help with handling Maryland apprenticeship cases); W. L. Van Derlip to S. N. Clark, November 12, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL (enclosing Dalrymple's voucher for one month's service, at \$100).

⁶³ Special Order No. 36, May 23, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL (appointing James C. Carlisle as D.C. solicitor at \$100/month); Special Order No. 58, August 9, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL (revoking Carlisle's appointment and appointing A.K. Browne as D.C. solicitor at \$100/month); Special Order No. 59, August 11, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL (appointing E. J. Smithers, Browne's partner, as D.C. solicitor, also at \$100/month).

⁶⁴ C. H. Howard to H. Stockbridge, September 30, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

for his services in brining suits to recover apprenticed children, and in defending freedmen in several significant criminal cases.⁶⁵ Jordan explained that he had “given [his] services in so many cases free, and paid [his] own expenses too,” and therefore “a little compensation if it could be had in justice to all, would not be objectional [*sic*].”⁶⁶ Local Bureau superintendent William Van Derlip backed Jordan’s claim, writing, “Mr. Jordan has been a friend to the freedpeople and conducted many cases in Court for them without fee,” as “[t]he parties are very poor.”⁶⁷ After hiring a new lawyer as Bureau solicitor on a salaried basis, the Bureau approved \$75 in payment to Jordan for his past services in apprenticeship cases.⁶⁸

Mostly, though, lawyers’ and agents’ letters seeking compensation from the Bureau highlighted the dire need for the Bureau to help pay the prohibitive expenses incurred by freedpeople who came to state courts as plaintiffs or criminal defendants. For example, in a November 1867 letter, D.C. Bureau solicitor A. K. Browne complained that local police officers and magistrates “seem[ed] anxious only for [the] fees” that they could extract from black defendants and plaintiffs.⁶⁹ The typical black defendant, he reported, “without an opportunity of being heard either by himself or by counsel [would be] either fined or committed to the workhouse or jail” because of “his ignorance to plead properly” or “his inability to pay if

⁶⁵ For examples of Jordan’s criminal defense work, see sources cited *infra* notes 68-72.

⁶⁶ H.P. Jordan to E. M. Gregory, October 1, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

⁶⁷ W. L. Van Derlip to W. W. Rogers, September 28, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Likewise, Assistant Commissioner Charles Howard, writing to Henry Stockbridge about taking up some of Jordan’s cases, noted that “Mr. Jordan has served the freedpeople considerably, sometimes gratuitously and sometimes bearing his expenses or a small amount in the way of salary from this Bureau.” C. H. Howard to H. Stockbridge, April 20, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

⁶⁸ W. W. Rogers to W. L. Van Derlip, October 1, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

⁶⁹ For example, Browne reported, police court magistrates charged black plaintiffs fees to issue warrants that were never executed. A. K. Browne to S. N. Clark, November 5, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

fined.”⁷⁰ The D.C. solicitor’s office encountered huge demand for legal services: from July 1867 to October 1868 Browne and his partner reported handling 592 civil cases—largely claims for money, as well as paternity and child support suits—and 291 criminal cases, “mainly ... the prosecution of persons for outrages committed upon freedmen, and in the defense of the latter.”⁷¹

Maryland presented a particularly urgent case for Bureau-funded legal aid, based on the state’s demographics, legal climate, and the nature of the emancipation process in Maryland. The Bureau’s legal aid efforts in Maryland—specifically, its legal campaign against involuntary apprenticeship—offer a case study of the Bureau’s successes, constraints, and failures in responding to the needs of newly freed people. It is a study, too, in how freedpeople themselves capitalized on a new, direct relationship with federal authorities—that is, how freedpeople sought to enforce the Bureau’s commitments, shape its priorities, and overcome its failings. Although it is difficult to assess with certainty what institutional or ideological legacy the Bureau’s legal aid program bore, during its existence the program marked a novel and important test of the federal government’s commitment to protecting civil rights, including the right to legal process. While historians have studied the Bureau’s activities in Maryland and the legal campaign against apprenticeship, scholars have not examined in detail the Bureau’s role in funding and staffing

⁷⁰ *Ibid.*

⁷¹ Browne estimated that his D.C. office received an average of 25 calls per day from freedpeople, and sometimes as many as 63 in one day. Browne reported making 683 calls at the jail to see freedpeople who “were confined in jail and unable to employ counsel to defend them.” A. K. Browne to C. H. Howard, October 10, 1868, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Browne’s report also illustrated the blinkered outlook of many of the white lawyers who represented freedpeople: Browne condemned Southern courts’ racial prejudice—that is, ex-slaveholders’ “great indisposition ... to recognize fully the immunities with which the Civil Rights Bill clothe[d] their aforesaid chattels”—while subscribing to racist stereotypes about his clients, for example, calling for more punitive child support legislation in order to correct “the licentious taint contracted in [blacks’] previous condition.” *Ibid.*

legal aid and test litigation, nor have they connected the Maryland campaign to the Bureau's broader legal aid efforts, in D.C. and across the South.⁷²

II. Maryland: A Case Study of Legal Service and Law Reform

Maryland—a state, in Eric Foner's words, “as divided internally as any in the South”—held nearly 84,000 free blacks and over 87,000 enslaved men and women on the eve of the Civil War.⁷³ While the many slaves in Maryland who fled to Union armies early in the war helped propel President Lincoln's plan for emancipation, the Union border state's enslaved population remained exempt from the Emancipation Proclamation.⁷⁴ After four years of Union occupation, Maryland abolished slavery on November 1, 1864 under the state's newly adopted constitution.⁷⁵ While the Unionists who came to power in the 1863 elections secured formal abolition and repealed much of the state's racially discriminatory legislation, a recalcitrant slaveholder class and a resurgent Democratic Party, bolstered by pervasive anti-black racism and violence, worked quickly to recreate conditions approximating slavery.⁷⁶ Galvanized by the black community and

⁷² As noted earlier, Westwood is among few scholars who have pointed to the Maryland campaign as an example of the Bureau's legal aid efforts; however, Westwood does not discuss it in detail, as his study centers on D.C. See Westwood, “Getting Justice for the Freedman,” 515-16, 535. For more thorough analysis of apprenticeship and Bureau activities in Maryland, see sources cited *supra* note 8.

⁷³ Foner, *Reconstruction*, 39. The 1860 census reported a total enslaved population of 87,189, mostly concentrated in the tobacco-growing counties of the Western Shore, like Anne Arundel, Calvert, and Prince George's counties. The free black population of 83,942 was concentrated mainly in Baltimore. “Black Marylanders 1860: African American Population by County, Status & Gender,” *Maryland State Archives*, <http://slavery.msa.maryland.gov/html/research/census1860.html>.

⁷⁴ On fugitive slaves in Maryland, see Fields, *Slavery and Freedom on the Middle Ground*, 100-01.

⁷⁵ Article 24 of the 1864 constitution declared, “hereafter, in this State, there shall be neither slavery nor involuntary servitude, except in punishment of a crime, whereof the party shall have been duly convicted; and all persons held to service or labor as slaves, are hereby declared free.” *The Constitution of the State of Maryland*, ed. Edward Otis Hinkley (Baltimore: John Murphy & Co., 1864), 18. The Fifteenth Amendment of the U.S. Constitution, not the 1864 nor the 1867 state constitution, secured black male suffrage in Maryland.

⁷⁶ For a detailed political history of Maryland's reconstruction, see William Starr Myers, *The Self-Reconstruction of Maryland, 1864-1867* (Baltimore: Johns Hopkins Press, 1909). On the Bureau's oversight of adult labor contracts in Maryland, which is beyond the scope of this paper, see Fuke, “A Reform Mentality;” and Fields, *Slavery and Freedom on the Middle Ground*, chap. 7. Bureau agent William Van Derlip reported that “many of the freedmen were cheated in 1865” when they first entered into labor contracts, but in 1866 gained leverage and obtained somewhat more favorable sharecropping and land-renting arrangements, an assessment backed by extensive Bureau

local Bureau agents, Bureau leaders instituted a legal aid program in Maryland to address rampant violations of the 1866 Civil Rights Act, specifically, civil courts' refusal to recognize blacks' legal rights, including the right to give evidence, and the effective re-enslavement of newly freed young people through court-ordered indentures.

First, as Commissioner O. O. Howard recognized, funding legal counsel was incumbent in Bureau districts like Maryland, where state courts remained the exclusive forum for the administration of justice—and where, as Union general Lew Wallace reported in late 1864, “law officers [were] so unfriendly to newly-made freedmen ... as to render appeals to courts worse than folly.”⁷⁷ Commissioner Howard explained the rationale for appointing Bureau solicitors in D.C. and Maryland in his November 1866 report to Congress:

Owing to the fact that no freedmen's or provost courts were in operation in Maryland and the District of Columbia, and justice, where freedmen were concerned, must be obtained, if at all, through the ordinary operations of the civil courts, and especially owing to the great number of appeals to this bureau for assistance, which could only be rendered effectively in the courts, or which involved questions of law, a solicitor was appointed⁷⁸

Thus, where no Bureau or provost courts existed, and recourse to civil courts—“folly” or not—was a necessity, federally funded legal counsel proved to be critical. As historian Chandra Manning has written, freedpeople and their allies in the Bureau “confronted the simultaneous

records of contract disputes in Maryland. W. L. Van Derlip to W. W. Rogers, July 19, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Bureau records offer evidence that at least some agents provided meaningful oversight over exploitative contracts. Explaining his refusal to approve one such contract, a Bureau officer in St. Mary's County confessed, “a better embodiment of slavery under the guise of freedom I never saw.” E. F. O'Brien to S. N. Clark, January 4, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

⁷⁷ Maj. Gen. Wallace, General Orders No. 112, November 9, 1865, in *Communication from Major General Lew Wallace*, 4.

⁷⁸ Report of the Commissioner of the Bureau of Refugees, Freedmen, and Abandoned Lands, November 1, 1866, in *Message from the President of the United States*, 665. In 1866, before Howard appointed Bureau solicitors for the district of Maryland, the D.C. solicitor handled freedpeople's cases in some of the neighboring counties of Maryland. See Westwood, “Getting Justice for the Freedman,” 508.

necessity and inadequacy of civil authority” to protect the rights of blacks in the postwar South.⁷⁹ Legal aid was a partial response to that dilemma.

Moreover, as in other Southern states, Maryland’s antebellum statutes barring black testimony and authorizing court-ordered indentures—laws retained by the postwar Maryland legislature and enforced by judges in violation of the Constitution and the 1866 Civil Rights Act—made Bureau intervention necessary to secure some modicum of justice for freedpeople in court. State law, until reversed under the 1867 constitution, provided that “[n]o negro or mulatto, whether slave or free, shall be admitted as evidence in any matter ... in any court ... where any white person is concerned, either as plaintiff or defendant.”⁸⁰ Even after the Maryland Court of Appeals sustained the constitutionality of the Civil Rights Act and affirmed “the competency of colored persons as witnesses” in July 1866,⁸¹ Bureau lawyers and agents in Maryland frequently protested to their superiors about local judges’ and lawyers’ exclusion of black witnesses and juries’ distrust of testimony by blacks, when admitted.⁸² For example, as one Bureau agent

⁷⁹ Chandra Manning, *Troubled Refuge: Struggling for Freedom* (New York: Alfred A. Knopf, 2016), 277.

⁸⁰ Act of March 2, 1864, § 5(2), ch. 109, in *Laws of the State of Maryland* (Annapolis, MD: Richard P. Bayly, 1864), 138. Article 3, Section 53 of the 1867 Maryland constitution provided that “[n]o person shall be incompetent as a witness, on account of race or color,” but with the proviso, “unless hereafter so declared by Act of the General Assembly.” *The Constitution of the State of Maryland* (Annapolis, MD: William Thompson, 1868), 57.

⁸¹ Opinion of Judge Richard J. Bowie, Maryland Court of Appeals, July 2, 1866, enclosed in W. L. Van Derlip to W. W. Rogers, July 11, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Judge Bowie issued this opinion in a ruling denying the habeas petition of a white defendant, Dr. A. H. Somers, who was charged with brutally assaulting a black man, Hillary Powell, on the victim’s information. For a detailed account of Somers’s crime and the subsequent case, see Report of R. G. Rutherford, July 21, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

⁸² See, for example, John C. Carlisle to C. H. Howard, March 27, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL (detailing the “practical disabilities under which the Colored people of Maryland labor,” and arguing that the most “grievous [*sic*] offenses” were traceable to the ban on black testimony); W. L. Van Derlip to W. W. Rogers, July 28, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL (reporting that, “[n]ow that the magistrates signify a desire to be governed by the decision of Judge Bowie, the juries place another obstacle in the way by refusing to *believe* colored testimony”); E. M. Gregory to O. O. Howard, November 3, 1866, 39th Cong., 2d sess., Senate Exec. Doc. No. 6, p. 90 (reporting that a major “obstacle in securing justice to freedmen has been the refusal of justices of the peace to take the testimony of colored persons, in violation of the civil rights bill”); R. G. Rutherford to W. W. Rogers, July 19, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL (reporting from Montgomery County that “[c]rime is punished by regularly organized civil tribunals and the testimony of colored people has, in some cases, been received in the County Court, tho’ there is a strong prejudice among members of the bar to its introduction”); and G. E. Henry to W.

reported, Judge Daniel Magruder of Anne Arundel County was indicted in late 1866 for refusing to admit black testimony and for sentencing black defendants to terms of slavery, under a provision of Maryland’s antebellum criminal code, in “palpable violation of the Civil Rights bill.”⁸³ Similar reports came from Calvert County, where Judge William Tuck sentenced black defendants, without trial, “to be sold . . . at auction, to the highest bidder.”⁸⁴ In June 1866, for example, five black men were sentenced to sale, for terms ranging from six to eighteen months, for the offenses of stealing a three-dollar pig, a one-dollar pocketbook, a five-dollar beehive, and twenty-five dollars’ worth of tobacco.⁸⁵ By November 1866, the Bureau had secured indictments against four Maryland justices of the peace for refusing to admit black witnesses’ testimony.⁸⁶

However, where indictments were insufficient to change practice, Bureau officials recognized the need to fund legal counsel for black criminal defendants in local courts. H. P. Jordan, the Maryland lawyer whom the Bureau paid before appointing a solicitor, sought to

W. Rogers, July 19, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL (reporting similar resistance to black testimony in Prince George’s County).

⁸³ W. L. Van Derlip to W. W. Rogers, December 19, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL (enclosing a copy of the Maryland statute authorizing judges to sentence slaves to sale “out of the state,” and to sentence free blacks to sale, in or out of the state, for terms of slavery). Van Derlip’s letters provide a detailed account of Judge Magruder’s persistent civil rights violations and Bureau agents’ struggle to get the district attorney to bring Magruder to trial on the indictments. In December 1866, Van Derlip reported that he had testified against Judge Magruder and that a grand jury had indicted the judge, but Van Derlip urged that “[n]o reliance [could] be placed” on the local district attorney, and that “it [would] require Counsel on behalf of the [federal] Government to prosecute.” W. L. Van Derlip to W. W. Rogers, December 26, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Nearly a year later, though, Assistant Commissioner Charles Howard’s October 1867 report—also included in Commissioner O. O. Howard’s report to Congress—revealed that the indictments against Judge Magruder were “still pending in the District Court,” and that the district attorney had been “repeatedly requested to bring these cases to trial but as yet [had] failed to do so.” Annual Report of Charles H. Howard, October 10, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL; see also Report of the Commissioner of the Bureau of Refugees, Freedmen, and Abandoned Lands, November 1, 1867, 40th Cong., 2d sess., House Exec. Doc. No. 1, pp. 659-60.

⁸⁴ The Calvert County Bureau officer protested that Judge Tuck “entirely disregarded” the Civil Rights Act by applying the Maryland slave code in criminal sentencing. For example, as the agent reported, Isaac Skinner, who was charged with stealing “a pocket book valued at \$1.00,” was “sentenced to be sold in the State for one year,” and was later “bought by one John Stafford for \$54.00.” S. N. Clark to C. H. Howard, June 16, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

⁸⁵ *Ibid.* Similar methods for preserving conditions of slavery through criminal law, namely, the enforcement of debt peonage and convict leasing contracts, are the subject of extensive literatures beyond the scope of this paper.

⁸⁶ E. M. Gregory to O. O. Howard, November 3, 1866, 39th Cong., 2d sess., Senate Exec. Doc. No. 6, p. 90.

remove criminal cases to counties “where it was supposed a jury of loyal men could be found.”⁸⁷ However, as a legal strategy, removal was expensive, and no guarantee of success. For example, in an October 1866 letter, Jordan sought financial support for his defense of “six of the colored men charged with rioting” at the Shipley’s Woods camp meeting in Anne Arundel county: “Of course we shall not let them be tried here, and much labor and expense will follow the removal. They have no money to pay Counsel or expenses, and if the Bureau could help them it would be a real charity.”⁸⁸ Jordan also served as defense counsel in the murder trial of William Shannon, a black veteran convicted of manslaughter after a white jury rejected unanimous testimony from twelve black witnesses that Shannon acted in self-defense against a mob of white men.⁸⁹ Notwithstanding Jordan’s presentation of witnesses and removal of the case to a more “loyal” county, according to Bureau agent William Van Derlip’s report, “the jury rejected *all* the colored testimony.”⁹⁰ Bureau lawyers and agents petitioned for executive clemency, apparently without success.⁹¹

The most prominent—and, ultimately, transformative—legal aid and law reform work undertaken by the Bureau’s lawyers in Maryland was in a multi-pronged campaign against the

⁸⁷ W. L. Van Derlip to W. W. Rogers, October 12, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

⁸⁸ H.P. Jordan to E. M. Gregory, October 1, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL. The camp meeting case was one of the more widely reported “outrages” against freedpeople in Maryland: local whites attacked black congregants at the Methodist Episcopal Church, and many of the black congregants were charged with rioting. “The Camp-Meeting Outrage—The Truth Vindicated,” *Annapolis Gazette*, December 25, 1866.

⁸⁹ W. L. Van Derlip to W. W. Rogers, October 12, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

⁹⁰ As Van Derlip explained, Jordan, “knowing the feeling in Calvert County against the freedmen, succeeded in having the case removed to Howard Co.,” but ultimately won only a “compromise” verdict of manslaughter, rather than willful murder. The state offered testimony on which “[n]o white man *could* have been convicted.” *Ibid.*

⁹¹ Assistant Commissioner Charles Howard reported Shannon’s case to Commissioner O. O. Howard, who included Howard’s and Van Derlip’s accounts of the case, as well as the Bureau’s petitions to the governor for executive clemency, in his November 1866 report to Congress. Report of the Commissioner of the Bureau of Refugees, Freedmen, and Abandoned Lands, November 1, 1866, in *Message from the President of the United States ... with the Reports of the Heads of Departments* (Washington, D.C.: Government Printing Office, 1867) 664. A year later, Charles Howard drew attention to Shannon’s continued incarceration. See Annual Report of Charles H. Howard, October 10, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

court-ordered apprenticeship of newly freed children and young adults in the state. Immediately following the abolition of slavery on November 1, 1864, Maryland planters revived the state's antebellum apprenticeship statute effectively to re-enslave young freedpeople, through indenture, until adulthood. From 1864 to 1867, Maryland orphans' courts apprenticed an estimated 2,519 black children.⁹² The purpose was hardly disguised: as General Wallace put it, planters' aim was to "nullify[] ... the emancipation provision ... [by] availing themselves of ... the ancient slave code of Maryland."⁹³ As scholars like Margaret Burnham have noted, and as Bureau leaders themselves made clear, the court-ordered apprenticeship of black youth preserved two key features of slavery: the extraction of unfree labor, and the nullification of family bonds and parental rights.⁹⁴ State courts defended the practice, not as a form of slavery, but as a vindication of the state's responsibility to police parental unfitness and prepare black children for wage labor.⁹⁵

Orphans' courts' broad latitude to order the apprenticeship of black children to white masters, often the child's former owner, lay in the state's apprenticeship law. Maryland's apprenticeship statute, like those of many Southern states, was modeled on the English Poor Laws, but included explicit racial distinctions.⁹⁶ The provisions of the law governing black

⁹² Fields, *Slavery and Freedom on the Middle Ground*, 153; Fuke, "A Reform Mentality," 224.

⁹³ Maj. Gen. Wallace, General Orders No. 112, November 9, 1865, in *Communication from Major General Lew Wallace*, 4; see also H. H. Lockwood to S. B. Lawrence, December 15, 1864, reprinted in Ira Berlin et al., eds., *The Wartime Genesis of Free Labor: The Upper South*, series 1, vol. 2 of *Freedom: A Documentary History of Emancipation, 1861-1867* (New York: Cambridge University Press, 1993), 532 ("[B]inding-out had been very general and began as early as October last; masters having manumitted their slaves under 21 years of age for that purpose. ... [N]o attention [was] paid to whether parents could or could not support [their children] or to their wishes as to binding out."); Report of the Assistant Commissioner for the District of Columbia, 39th Cong., 1st sess., Senate Exec. Doc. No. 27 ("[T]he law in Maryland by which ... colored children may be apprenticed without the consent of their parents [duplicated] a feature of slavery."); E. M. Gregory to O. O. Howard, November 3, 1866, 39th Cong., 2d sess., Senate Exec. Doc. No. 6, p. 90 (calling apprenticeship "a phase of slavery").

⁹⁴ See Margaret A. Burnham, "Property, Parenthood, and Peonage: Reflections on the Return to Status Quo Antebellum," *Cardozo Law Review* 18 (1996): 433-49.

⁹⁵ See *ibid.*, 439.

⁹⁶ England's Poor Law Act of 1601 authorized "Churchwardens and Overseers ... by the assent of any Two Justices of the Peace ... to bind out any such children [poor children] ... to be Apprentices, where they shall see convenient,"

apprentices directed orphans' courts to "summon before them the child of any free negro," and, if it "appear[ed] upon examination ... that it would be better for the habits and comfort of such child that it should be bound as an apprentice to some white person to learn to labor," to bind the child "as an apprentice to some white person," males until age eighteen, and females until age twenty-one.⁹⁷ Upon the court's order, the sheriff or constable would "arrest and carry [the] child before the court" to be bound out.⁹⁸

Maryland's white leadership justified planters' use of the law in the language of proslavery paternalism, while invoking the Bureau's own mandate to restore agricultural productivity and eliminate "dependency."⁹⁹ In a letter to the Bureau provost marshal at Annapolis, Maryland orphans' court judges defended apprenticeship as "an act of humanity," explaining that they "invariably" bound black children to "their previous owners" when the latter were "known to the court to be proper persons to care for & bring them up in habits of industry."¹⁰⁰ Likewise, Governor Augustus Bradford insisted that the apprenticeship law, because it specifically applied to free blacks, was unaffected by abolition, and was "particularly required by the new state of things" to avert the "great danger ... of large number[s] of [black

males until the age of 24, and females until the age of 21 or marriage. Quoted in Joan Lane, *Apprenticeship in England, 1600-1914* (London: UCL Press, 1996), 3. Planters in other Southern states relied on similar apprenticeship laws, some of which explicitly distinguished on the basis of race, and some of which were formally race-neutral but discriminatory in application. In addition, Bureau policies on child apprenticeship differed by state: in North Carolina, for example, the Bureau did not mount a full campaign against the state's apprenticeship law, but instead directly oversaw the process of binding out black children, challenging some indentures where parents protested that the indenture violated the law. For studies of postwar apprenticeship in North Carolina, see Farmer-Kaiser, *Freedwomen and the Freedmen's Bureau*; Mary Niall Mitchell, *Raising Freedom's Child: Black Children and Visions of the Future After Slavery* (New York: New York University Press, 2008), 143-87; Rebecca J. Scott, "The Battle Over the Child: Child Apprenticeship and the Freedmen's Bureau in North Carolina," in N. Ray Hiner & Joseph M. Hawes, eds., *Growing up in America: Children in Historical Perspective* (Urbana: University of Illinois Press, 1985), 193-207; and Karin L. Zipf, *Labor of Innocents: Forced Apprenticeship in North Carolina, 1715-1919* (Baton Rouge: Louisiana State University Press, 2005).

⁹⁷ *The Maryland Code: Public General Laws and Public Local Laws* (Baltimore: John Murphy & Co., 1860), 38.

⁹⁸ *Ibid.*

⁹⁹ See *supra* note 37.

¹⁰⁰ P. Pettibone, C. S. Welch, and J. W. Hunter to G. W. Curry, November 22, 1864, reprinted in Berlin et al., eds., *The Wartime Genesis of Free Labor*, 520-22 (arguing that the courts' actions had "been misrepresented by some mothers who think they can support themselves & family").

minors] being suddenly thrown adrift in every county of the state.”¹⁰¹ Dismissing freedpeople’s complaints of illegal indentures, Bradford argued that parents possessed the “entirely adequate security” of habeas corpus petitions—disregarding a problem frequently highlighted by Bureau lawyers and agents, namely, the “considerable expense to pay for suing out and serving the writs.”¹⁰²

The statute’s explicit distinction between the treatment of white and black apprentices—a key premise for suits challenging the law under the Constitution and the Civil Rights Act—gave the lie to the law’s purportedly charitable aims. The provisions governing white apprentices contained at least nominal protections against “cruel or improper” treatment by masters, as well as specific grounds on which white children could be apprenticed, in contrast with courts’ unmoored discretion to separate black children from their families.¹⁰³ The law required that indentures of white children include a promise to provide the child with “reasonable education in reading, writing and arithmetic,” and, “especially if a male,” training in “some useful art or trade.”¹⁰⁴ The provisions on black apprentices, however, explicitly specified that it was “not necessary ... to require that any education ... be given to [a] negro apprentice.”¹⁰⁵ The law referred to black apprentices as “the property and interest of the master,” such that they could be assigned to third parties “[u]pon the death of the master.”¹⁰⁶ No such language applied to white apprentices. As this paper will discuss, the law’s recognition of a property interest in black

¹⁰¹ A. W. Bradford to L. Wallace, November 10, 1864, quoted in Fuke, “A Reform Mentality,” 223 n.31.

¹⁰² A. W. Bradford to O. O. Howard, October 4, 1865, quoted in Fields, *Slavery and Freedom on the Middle Ground*, 151; W. L. Van Derlip to W. W. Rogers, October 29, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL. In 1866, Bradford’s successor, Thomas Swann, echoed Bradford’s defense of the apprenticeship law, the prohibition of black testimony, and the sentencing of black defendants to sale. See Fields, *Slavery and Freedom on the Middle Ground*, 152.

¹⁰³ *The Maryland Code*, 32, 34. For example, under the provisions on white apprentices, courts were authorized to bind out “any orphan or other poor child” under the care of the county trustees of the poor, any minor “free male convicts” in the Maryland Penitentiary, as well as “the children of female convicts.” *Ibid.*, 35.

¹⁰⁴ *Ibid.*, 34.

¹⁰⁵ *Ibid.*, 36.

¹⁰⁶ *Ibid.*, 39.

apprentices provided an important weapon to masters who sought to reclaim apprentices, even after Bureau lawyers and parents won their release, by means of replevin actions.

Another racially discriminatory provision that posed a formidable challenge in the Bureau's legal campaign against apprenticeship was the criminalization of enticement, again, only in the case of black apprentices. The law made it a crime, punishable by up to four years' imprisonment, for "any negro or other person [to] entice or persuade any negro apprentice to run away or abscond from the service of [his or her] master," and it allowed orphans' court judges to bind black children who left their masters to longer terms in order to "compensate the master."¹⁰⁷ By contrast, the law only imposed a twenty-dollar fine and damages on "any person" who "entic[ed]" a white apprentice to leave or disobey his or her master.¹⁰⁸

Above all, the outpouring of complaints by freedpeople whose children were forcibly indentured testified to the rampant abuse of Maryland's apprenticeship law, and motivated the Bureau to fund legal challenges to the practice. Freedpeople's petitions effectively galvanized the Bureau two primary reasons: they demonstrated the need for federal legal intervention where state authorities gave no recourse and self-help posed dangers; and they framed involuntary indentures as a threat to the Bureau's mandate of promoting free labor and economic independence. First, freedpeople's stories revealed the severe obstacles and dangers faced by parents, often mothers, in their efforts to recover indentured children, both through legal recourse and self-help. They also exposed the use or threat of physical violence underlying indentures that were, "apparently, in compliance with legal forms."¹⁰⁹ A Maryland freedwoman named Jane Kamper detailed her ordeal in November 1864: after the state's declaration of abolition, her former owner William Townsend insisted that her "children should be bound" to him, "locked

¹⁰⁷ *Ibid.*, 39.

¹⁰⁸ *Ibid.*, 36.

¹⁰⁹ E. M. Gregory to O. O. Howard, November 3, 1866, 39th Cong., 2d sess., Senate Exec. Doc. No. 6, p. 90.

[them] up,” and then, when she freed them “by stealth,” “pursued [her] to the Boat” on which she had hidden them.¹¹⁰ Seeking to recover her children from their former owner, Hester Anthony reported that the man threatened to “blow their brains out” before he would return them to her.¹¹¹

Freedpeople were not safe from violence in the courtroom either. As one Bureau agent reported from Calvert County, when Basil Croudy and his wife “refused to consent to the binding” of their three children in December 1864, “[t]he constable . . . , finding the mother obstinate, . . . struck her in the face with his fist in the presence of the judge,” after which the judge “reprimanded” the constable and proceeded to bind out two of the children.¹¹² Judging from “statements made by parents,” Bureau officers reported, would-be masters frequently used “misrepresentation and threats . . . to compel [parents’] attendance at the orphans’ court, which attendance [was] considered equivalent to their consent,” though “in many cases, not even the presence of the parents was considered necessary to sanction the compact.”¹¹³ In some cases, apprenticed young people themselves petitioned the Bureau for aid. Carter Holmes wrote that he “was indentured or bound” to a Maryland planter in 1864, and was “so tired of not receiving any compensation for [his] services—no clothing, no chance for school—nothing but *whippings* that [he] determined to leave” for D.C. to seek his parents.¹¹⁴ Bureau agent William Van Derlip’s

¹¹⁰ After making it to Baltimore, Kamper recounted her story in a petition to the Bureau to “regain possession of [the] bed clothes & furniture” that Townsend had taken from her. Statement of Jane Kamper, November 14, 1864, reprinted in Berlin et al., eds., *The Wartime Genesis of Free Labor*, 519.

¹¹¹ Statement of Hester Anthony, in *Communication from Major General Lew Wallace*, 9.

¹¹² S. N. Clark to C. H. Howard, June 11, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL (reporting the “general complaint among the freedpeople in Calvert County . . . that their children ha[d] been illegally apprenticed to white masters,” and finding that “nearly two hundred children [had] been apprenticed in [the] County” from November 1864 to early 1866).

¹¹³ E. M. Gregory to O. O. Howard, November 3, 1866, 39th Cong., 2d sess., Senate Exec. Doc. No. 6, p. 90. The Maryland apprenticeship law, by its terms if not in practice, required that “the parent or parents shall be summoned to be present at [the] binding” in orphans’ court. *The Maryland Code*, 38.

¹¹⁴ Holmes wrote to the D.C. Bureau, “Please don’t let Mr. Suit take me back for I have a mother and father (named *Sylva* and *Abraham* Holmes) who would care for me if they knew where I was. I think they are in this city.” The endorsement on Holmes’s statement noted that the Bureau superintendent sent Holmes to the D.C. Orphan’s Home, leaving it doubtful as to whether Holmes ever reunited with his parents. Carter Holmes to W. M. Beebe, April 22, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

July 1867 report revealed parents' persistent efforts to reclaim children taken from them years earlier: "Not a day passes but my office is visited by some poor woman, who has perhaps walked ten or twenty miles, to see the 'Agent of the Bureau,' and try to procure the release of her children, ... held, to all intents and purposes, in slavery."¹¹⁵ Because of the law against enticement, Van Derlip explained, "[i]f she visits them, to see after their health, and how they are treated, she is arrested and sent to the penitentiary."¹¹⁶

Second, freedpeople's petitions for legal assistance illustrated not only the Bureau's responsiveness to black Marylanders' claims, but also freedpeople's own understanding of the Bureau's priorities, whites' assumptions about freedpeople, and the legal forms governing apprenticeship. A freedwoman named Lucy Lee, for example, buttressed her claim against the man who apprenticed her daughter by appealing to the Bureau's political loyalties, writing, "[h]e is no friend to the Union."¹¹⁷ Some freedwomen pointed to their husbands' service in the U.S. Army in order to bolster their claims to federal assistance, draw a contrast with their former enslavers' disloyalty, and, in cases where the child's father was killed or disabled at war, to explain why the child should not be taken away for lack of paternal support.¹¹⁸ As Lee and other complainants recognized, Bureau officials understood involuntary indentures not simply as unfair contracts, but as acts of rebellion by "disloyal parties" who did "not regard the rights" of

¹¹⁵ W. L. Van Derlip to W. W. Rogers, July 19, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹¹⁶ *Ibid.* Another Bureau officer reported similar concerns: "the father desiring the custody of his child may be unwilling to commit the trespass as it would be deemed under the law by going after [apprenticed] children." John G. Mitchell to Gen. Lew Wallace, November 22, 1864, in *Communication from Major General Lew Wallace*, 24.

¹¹⁷ Lucy Lee to Sir, December 2, 1864, in *Communication from Major General Lew Wallace*, 19. Barbara Jeanne Fields offers a similar analysis of Lee's shrewdness in alleging disloyalty. Fields, *Slavery and Freedom on the Middle Ground*, 149.

¹¹⁸ Charlotte Hall, for example, wrote in January 1865 that her son was apprenticed without her consent, "contrary to the free laws and institutions for which his father is fighting." Charlotte Hall to Gen. Ross, January 20, 1865, in *Communication from Major General Lew Wallace*, 90. As Richard Fuke notes, it is not possible to verify how many fathers of apprenticed children served in the army, but it was likely a significant portion, based on the large numbers of Maryland enlistees in the U.S. Colored Troops. See Fuke, *Imperfect Equality*, 85.

freedpeople, in the words of Maryland Provost Marshal Andrew Stafford.¹¹⁹ Lucy Lee’s self-effacing plea for aid also revealed her awareness of how the Bureau imagined its paternalist, educational mission: “Give us our children,” she wrote, “and don’t let them be raised in the ignorance we have.”¹²⁰

Moreover, freedpeople’s statements to local judges and Bureau officers demonstrated a keen understanding of the apprenticeship statute and the Bureau’s mission to eliminate public charges and encourage wage work. They took pains to refute the ostensible legal premise for apprenticeship—namely, a parent’s inability to support his or her child. The Maryland law governing black apprentices, on its face, prohibited apprenticing a child if the “parents [had] the means and [were] willing to support such child, and keep the same employed so as to teach habits of industry.”¹²¹ In practice, the law operated to deny black parents’ claims on the labor of their children, which was often crucial to families’ economic survival.¹²² This hypocrisy prompted rueful sarcasm from some Bureau personnel. In November 1864, the Calvert County agent wrote, “Gilbert, a child *not an orphan*, three months old, was bound” as an apprentice, “[r]ather young to begin learning ‘habits of industry’ certainly.”¹²³ The more typical problem, highlighted in freedpeople’s affidavits, came when courts indentured teenaged children, old

¹¹⁹ Andrew Stafford to General H. H. Lockwood, November 4, 1864, quoted in Marjorie Elizabeth Wood, “Emancipating the Child Laborer: Children, Freedom, and the Moral Boundaries of the Market in the United States, 1853-1938” (Ph.D. diss., University of Chicago, 2011), 78.

¹²⁰ Lucy Lee to W. E. W. Ross, January 10, 1865, in *Communication from Major General Lew Wallace*, 69.

¹²¹ *The Maryland Code*, 38.

¹²² As one provost marshal protested, in the immediate aftermath of emancipation, apprenticeship was carried out “by secessionists, (under cover of an old State law) to such an extent that it threaten[ed] to take every able bodied negro boy (without regard to age) from his parents just at the time when they [were] becoming able to support themselves.” George W. Curry to John Woolley, November 15, 1864, in *Communication from Major General Lew Wallace*, 13. Two years later, a Bureau officer complained, “[p]arents [were] deprived of those who [were] able and willing to support them, while children [were] denied the blessing of education, and doomed to spend long years in toil and servitude without an adequate compensation.” E. M. Gregory to O. O. Howard, November 3, 1866, 39th Cong., 2d sess., Senate Exec. Doc. No. 6, p. 90.

¹²³ The Bureau officer also explained that “in many cases a stipulation was made in the indenture that a certain amount of money, usually \$10.00 or \$15.00 per year, should be paid the apprentice or his parents—thus admitting that he was able to maintain himself and a little more, besides, paying for being taught ‘habits’ of industry.” S. N. Clark to C.H. Howard, June 11, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

enough to help support their families through wage work and therefore most valuable to former slaveholders, while leaving parents to support the youngest children unassisted. When freedpeople and their allies petitioned the Bureau to intervene, or protested apprenticeships before the orphans' court, they took care to portray involuntary apprenticeship as a form of enforced dependence—an infringement of the right to earn wages and a threat to family self-sufficiency. Joseph Hall, a white Unionist who frequently appealed to the Bureau on behalf of freedpeople, protested to General Wallace that “[t]he colored people here can take care of their own children, ... as all or nearly all have children that they can get good wages for.”¹²⁴ Emeline Woolford, a freedwoman in Talbot County, also petitioned Wallace to recover her four children from their former owner, explaining, “I can by their assistance maintain them.”¹²⁵ Freedpeople were also careful to tailor their arguments to the Maryland statute’s language on parental support. John Lox, for example, presented the court with a note from his former mistress “stating that he was fully able to take care of his children and teach them habits of industry.”¹²⁶ Likewise, Eliza Low urged that her daughter Harriet should be freed from indenture to their former owner because Eliza and her husband were employed, and “so the child [would] not become a charge to any one but [themselves].”¹²⁷

Such testimony complicated Assistant Commissioner Howard’s claim that staffing Bureau solicitors was necessary, in part, to avert “injustice ... resulting to the freedmen from

¹²⁴ Joseph Hall to Major General Wallace, November 26, 1864, in *Communication from Major General Lew Wallace*, 59.

¹²⁵ Emeline Woolford to General Wallace, December 22, 1864, in *Communication from Major General Lew Wallace*, 78.

¹²⁶ J. Hall to W. L. Van Derlip, December 13, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL (recounting Lox’s case).

¹²⁷ Statement of Eliza Low, October 10, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

their ignorance of the process of law or inability to employ suitable counsel.”¹²⁸ Freedpeople’s understanding of the law laid bare the racial stereotyping underlying the Bureau’s professed pedagogical function.¹²⁹ Certainly, legal counsel could provide great assistance to freedpeople facing a hostile and largely alien legal system, one designed to serve the interests of slaveholding whites. In addition, as the Maryland campaign makes clear, the Bureau’s legal aid program served an important informational function, raising freedpeople’s awareness of new legal rights and remedies.¹³⁰ However, freedpeople’s engagement with the state’s legal system, and the Bureau’s legal aid program, tended to confirm the observation made by historians like Dylan Penningroth, namely, that freedpeople amassed considerable legal knowledge under slavery and, after emancipation, made strategic use of both legal and extralegal remedies.¹³¹ Indeed, the Maryland campaign exemplified how legal aid could produce a kind of feedback loop for civil rights enforcement, by informing Bureau lawyers about freedpeople’s legal needs and priorities, raising freedpeople’s awareness of legal rights and remedies, and providing the means for vindicating those rights.¹³²

Ultimately, black Marylanders’ appeals to Army and Bureau officers, and initial efforts to stop apprenticeship through military orders, exposed the difficulty of defeating Maryland’s apprenticeship system through self-help or pressure alone. After orphans’ courts began apprenticing newly freed children in “droves” in late 1864, immediately following the state’s

¹²⁸ Annual Report of Charles H. Howard, October 10, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹²⁹ For discussion of the Bureau’s pedagogical mission, as reflected in the Bureau courts’ conciliation model, see Kessler, “The Freedmen’s Bureau Exception.”

¹³⁰ For analysis of the role of Bureau lawyers in Georgia, including black lawyers like Aaron A. Bradley, in “spreading the news to freedpeople of ... rights secured by the various statutes and constitutional provisions fought over in Congress,” see Rapport, “The Freedmen’s Bureau as a Legal Agent,” 51-52.

¹³¹ See Penningroth, *The Claims of Kinfolk*, 112, 115-16 (discussing freedpeople’s understanding of property rights and their interaction with provost courts, the Bureau, and the Southern Claims Commission).

¹³² For a discussion of the “feedback loop ... between federal enforcement and rights consciousness” in the context of mid-twentieth-century civil rights enforcement, see Risa Goluboff, “The Thirteenth Amendment and the Origins of Civil Rights,” *Duke Law Journal* 50, no. 6 (2001): 1646.

abolition of slavery, the U.S. Army promptly intervened to stem the pace of new indentures.¹³³ On November 9, 1864, General Lew Wallace issued General Orders No. 112, which established an early iteration of the Freedmen’s Bureau in Maryland to combat “forced apprenticeship” and “to carry out truly and effectively the grand purpose of ... emancipation.”¹³⁴ Wallace ordered that “all persons ... now free ... [would] be considered under special military protection,” and directed officers to “hear complaints,” “institute investigations, ... and [] make necessary arrests.”¹³⁵ In a December 1864 circular, Brigadier General Henry Lockwood issued a “[w]arning” to all Maryland planters that officers had “arrived ... with orders to BREAK UP the practice now prevalent of Apprenticing Negroes, without the consent of their parents, to their former masters or others,” and “if necessary to arrest all persons, who refuse[d] liberty to such apprentices.”¹³⁶ Former slaveholders immediately defied the Army’s orders. A lieutenant colonel reported in January 1865 that Eliza Goodwin still claimed the child she formerly enslaved as an apprentice, “without even having gone through the form of binding.”¹³⁷ When the officer issued her “an order to appear and show by what authority she held the child,” Goodwin “burned” the order in front of him, “remarking that she would not read it for fear it would poison her.”¹³⁸ Henry Stockbridge, the Maryland lawyer who would later assume the position of Freedmen’s Bureau solicitor, wrote back that Goodwin’s conduct constituted criminal “contempt of military authorities” and a “direct violation” of the constitution’s prohibition on slavery.¹³⁹ Stockbridge

¹³³ W. B. to Major Este, November 15, 1864, in *Communication from Major General Lew Wallace*, 6.

¹³⁴ Maj. Gen. Wallace, General Orders No. 112, November 9, 1864, in *ibid.*, 4.

¹³⁵ *Ibid.*

¹³⁶ The circular also “offer[ed] to all such parents as may not be able to maintain their children a free passage to the ‘Freedman’s Home’ in Baltimore if so desired.” Brig. Gen. Henry H. Lockwood, Circular, December 6, 1864, reprinted in Berlin et al., eds., *The Wartime Genesis of Free Labor*, 527.

¹³⁷ W. E. Ross to Samuel B. Lawrence, January 20, 1865, in *Communication from Major General Lew Wallace*, 90-91.

¹³⁸ *Ibid.*, 91.

¹³⁹ Henry Stockbridge to Samuel B. Lawrence, January 23, 1865, in *ibid.*, 91.

suggested that the illegal indenture might be redressed through a habeas action—the first prong of the Bureau’s legal campaign against apprenticeships.¹⁴⁰

While military action, at least in some counties, effectively halted the rush to indenture children, without a ruling on the legality of existing indentures, officers lacked a solid legal basis to free children already apprenticed or to arrest those who held children in bondage.¹⁴¹ A convention of black leaders in Baltimore in December 1865 appealed to the Maryland General Assembly for “removal of the disabilities under which ... [they] labor[ed],” and later petitioned President Johnson to intervene.¹⁴² Bureau leaders also lobbied the Maryland legislature “to procure a change in the law, but without success,” and even drafted “a proposed Act of Congress looking to relief for these cases.”¹⁴³ Joseph Hall reported to Assistant Commissioner Howard in August 1865 that the freedpeople of Calvert County believed “they ought to have an agent appointed in [the] county” to address illegal indentures, and would “suggest one in whom they [had] confidence.”¹⁴⁴

Freedpeople, Bureau agents, and local lawyers soon identified the need for a federally funded legal aid program to attack apprenticeship on multiple fronts: bringing habeas corpus petitions, and defending against replevin claims, in order to invalidate indentures in individual cases; defending parents against criminal charges of “enticing” children to escape; and bringing test cases to attack the validity of the state apprenticeship law itself. The origins of the Bureau’s

¹⁴⁰ *Ibid.*

¹⁴¹ On the effectiveness of military orders in halting new indentures, see Fuke, “A Reform Mentality,” 224.

¹⁴² *Baltimore Sun*, December 29, 1865, quoted in Fuke, *Imperfect Equality*, 79.

¹⁴³ W. L. Van Derlip to W. W. Rogers, July 19, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁴⁴ Joseph Hall to C. H. Howard, August 12, 1865, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Hall wrote to Bureau officials on various matters beyond apprenticeship, often conveying concerns voiced by the black community in Calvert County. For example, in an 1867 letter, Hall urged the Bureau not to dismiss John Butler, an African-American Bureau agent who had “done more to aid the cause of education than any other man, white or black.” Joseph Hall to C. H. Howard, December 7, 1867, Records of the Field Offices for the States of Maryland and Delaware, BRFAL. On Butler’s work in Maryland, see Joseph Browne, “‘To Bring out the Intellect of the Race’: An African American Freedmen’s Bureau Agent in Maryland,” *Maryland Historical Magazine* 104, no. 4 (2009): 374-401.

legal aid efforts lay in early challenges to the apprenticeship system in the Baltimore Criminal Court: habeas petitions brought on behalf of freedpeople by the future Bureau solicitor for Maryland.¹⁴⁵ Henry Stockbridge, along with three other Republican lawyers, Archibald Stirling, Jr., William Daniel, and Henry Winter Davis, brought several habeas cases before a like-minded judge of the Baltimore Criminal Court, Hugh Lennox Bond, in the spring of 1865.¹⁴⁶ Stockbridge, as a delegate to Maryland's 1864 constitutional convention, had made an impassioned case against a "monstrous" proposed provision that would have declared it "the duty of the orphans' court" to apprentice "all [minor] negroes emancipated" by the new constitution and, when choosing masters, to give "preference ... to [children's] masters while in a state of slavery."¹⁴⁷ Stockbridge also voiced racist views typical of white moderate Republicans: defending against charges that he favored social equality, Stockbridge derided the possibility that any black person could "becom[e] intellectually the equal of the white man."¹⁴⁸ Judge Bond, a supporter of black suffrage, appeared more closely aligned with Radical Republican thought.¹⁴⁹ Both proved to be concerted opponents of apprenticeship.

One early apprenticeship case decided by Judge Bond provided an important foundation for the Bureau's legal campaign: Leah Coston's successful habeas petition to reclaim her sons Simon and Washington from their former enslaver, Samuel Coston.¹⁵⁰ In May 1865, Judge Bond

¹⁴⁵ The criminal court was able to hear such cases because the Maryland constitution permitted any court in the state to hear applications for writs of habeas corpus, from any county. See *Coston v. Coston*, 25 Md. 500, 504 (1866).

¹⁴⁶ Fuke, *Imperfect Equality*, 78.

¹⁴⁷ *The Debates of the Constitutional Convention of the State of Maryland* (Annapolis, MD: Richard P. Bayly, 1864), 3: 1589, 1576.

¹⁴⁸ *Ibid.*, 3: 1590.

¹⁴⁹ See "Radical Mass Meeting," *Baltimore Sun*, May 7, 1868 (reporting Archibald Stirling and Judge Bond's support for black suffrage); Richard Paul Fuke, "Hugh Lennox Bond and Radical Republican Ideology," *The Journal of Southern History* 45, no. 4 (1979): 576-77 (discussing Bond's support for black suffrage, as well as the limits of his radicalism).

¹⁵⁰ See Fuke, *Imperfect Equality*, 78-79.

discharged Simon and Washington from their indentures and denied Samuel's appeal.¹⁵¹ While Judge Tuck ruled in Samuel's favor in a separate proceeding,¹⁵² in July 1866 Chief Judge Richard Bowie of the Maryland Court of Appeals upheld Judge Bond's decision on the ground that an appeal could not lie from a lower court's order upon a habeas petition—without addressing Leah Coston's argument that apprenticeship constituted “involuntary servitude contrary to [the 1864] Constitution.”¹⁵³ However, in an August 1865 decision dismissing Adeline Brown's appeal from her conviction for “[e]nticing and persuading a negro apprentice to abscond,” Judge Daniel Weisel of the Court of Appeals upheld the constitutionality of the apprenticeship law, invoking Governor Bradford's argument that the new constitution did not affect laws governing free blacks.¹⁵⁴ Likely in reference to this decision, Joseph Hall wrote to Assistant Commissioner Howard in August 1865 to highlight the difficulty of “appeal to civil authority,” and to underscore the plight of parents “charged with persuading apprentices to leave their masters.”¹⁵⁵

In 1866, the Bureau took on a direct role in the legal campaign against apprenticeship and began funding legal representation for freedpeople in apprenticeship cases. William Van Derlip, Bureau agent for Calvert and Anne Arundel counties, promptly reported the 1866 *Coston* decision to his superiors as a useful precedent for securing the release of apprenticed children.¹⁵⁶ He closed his letter with a plea: “In cases in which the parties are too poor to procure counsel,

¹⁵¹ *In re Coston*, 23 Md. 271, 271 (1865) (upholding Judge Bond's decision); “General News,” *New York Times*, July 17, 1865 (reporting Judge Bond's decision).

¹⁵² “Local Matters,” *Baltimore Sun*, July 10, 1865.

¹⁵³ *Coston v. Coston*, 25 Md. 500, 505, 502 (1866).

¹⁵⁴ *Brown v. State*, 23 Md. 503, 503 (1865). William Schley, a former slave-owner and prominent opponent of abolition in 1864, served as counsel both for the appellee in *Brown v. State* and for Samuel Coston in *In re Coston*. Schley's tax assessment records, which listed enslaved men and women as property, as well as his newspaper advertisements for fugitive slaves, are available in the Maryland State Archives online.

¹⁵⁵ Joseph Hall to C. H. Howard, August 12, 1865, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁵⁶ W. L. Van Derlip to W. W. Rogers, July 16, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

will the Bureau render assistance for that purpose?”¹⁵⁷ Van Derlip began working closely with local attorney H. P. Jordan to hear complaints and raise funds in order to bring habeas cases before Judge Bond and bail out parents jailed for enticement. As Van Derlip later explained, Jordan helped to prepare freedpeople’s cases for trial at a time when the Bureau “had no Solicitor” for the Maryland district.¹⁵⁸ Bureau officials’ communications with Van Derlip and Jordan confirm that, after request, Jordan received compensation from the Bureau for his services in apprenticeship cases, on a fee basis.¹⁵⁹

Letters from Van Derlip and Jordan highlighted the main challenges to combating apprenticeship: legal expenses, and the hostility of judges and lawmakers. Even before the “considerable expense to pay for suing out and serving the writs,” Van Derlip explained, it was “necessary ... to procure a copy of the indentures,” which cost “50 cts. to \$1.00 each,” a “considerable sum in the aggregate.”¹⁶⁰ Though Jordan advanced part of the cost of the writs, by late 1866 the Sheriff of Baltimore refused to “serve any more without being paid his fees in advance.”¹⁶¹ Van Derlip “endeavored to procure the necessary funds from the parents,” but found that many were “entirely destitute, relying on the wages of their children for support.”¹⁶² He urged that “[i]f any more of these [habeas] cases [were] to be taken up ... some provision

¹⁵⁷ *Ibid.*

¹⁵⁸ W. L. Van Derlip to W. W. Rogers, September 28, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁵⁹ See, for example, W. W. Rogers to W. L. Van Derlip, October 1, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL (approving \$75 compensation for Jordan’s services in bringing suits on behalf of Phillip Belt and Joseph Gray to reclaim apprenticed children).

¹⁶⁰ W. L. Van Derlip to W. W. Rogers, October 29, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL; W. L. Van Derlip to W. W. Rogers, July 20, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁶¹ W. L. Van Derlip to W. W. Rogers, December 19, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁶² W. L. Van Derlip to W. W. Rogers, October 29, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

must be made for the expenses, ... and also for the lawyers to sue them out.”¹⁶³ Van Derlip’s argument for federally funded legal assistance echoed a long line of complaints from freedpeople and Bureau officers about the prohibitive cost of legal action.¹⁶⁴ Moreover, not all freedpeople could even find a local lawyer willing to take their money. One letter forwarded by Henry Stockbridge reported that the father of two boys who were “seized previous to the rebellion under the vagrant act” had in fact “carried \$50 in cash ... and offered it to a lawyer to procure their release, but the old man being dark complected [*sic*], was laughed at.”¹⁶⁵ General Wallace’s Order No. 112 summarized the problem: state “law officers [were] so unfriendly ... as to render appeals to the courts worse than folly, even if the victims had the money with which to hire lawyers.”¹⁶⁶

Still greater than the expenses of bringing habeas petitions were the fines and costs imposed on parents charged with enticing their children to escape. In these cases, black men and women were commonly arrested for enticement *after* recovering their children through habeas proceedings, because courts subsequently “replevined” children to their former masters.¹⁶⁷ For example, Jordan defended Maria Richardson “on indictment for enticing apprenticed children to leave” their master after they had been “discharged by writ of habeas corpus and replevined” by

¹⁶³ W. L. Van Derlip to W. W. Rogers, December 19, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Likewise, Jordan urged Bureau officials that “something ought to be done to help them in the way of expenses.” H. P. Jordan to E. M. Gregory, October 1, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁶⁴ See, for example, Statement of John Dennis, in *Communication from Major General Lew Wallace*, 17, 18.

¹⁶⁵ Jas. D. Carter to H. Stockbridge, in *ibid.*, 85.

¹⁶⁶ Maj. Gen. Wallace, General Orders No. 112, November 9, 1865, in *ibid.*, 4.

¹⁶⁷ Van Derlip, Jordan, Joseph Hall, and others frequently reported on the problem of replevin actions, which allowed masters legally to reclaim children after they were discharged and to “divest[] their earnings from their parents.” Joseph Hall to C. H. Howard, August 12, 1865, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Van Derlip wrote in December 1866: “Until it shall be decided whether *replevin* will lie in these cases, no children are safe unless they are removed from the County.” Van Derlip to W. W. Rogers, December 19, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

the same man.¹⁶⁸ As Van Derlip explained, the judge who replevined Richardson’s children after Judge Bond released them—none other Judge Magruder, recently indicted for civil rights violations—claimed that “a writ of replevin issued by *his court*, took precedence of *any* proceeding of the Criminal Court.”¹⁶⁹ Richardson was fined five dollars plus court costs—an exorbitant forty dollars total—and sent to jail for five days, to “remain 60 days longer unless she [could] raise the money to pay.”¹⁷⁰ Writing to Assistant Commissioner Howard on Christmas Eve, Jordan explained that he had drawn up “a subscription paper” on Richardson’s behalf, and asked, “Have you it in your honor to assist her in paying the amount?”¹⁷¹ Van Derlip, however, responded that he “could not recommend the payment of the fine out of the Bureau funds, as it would establish a dangerous precedent.”¹⁷² The Bureau’s reluctance to pay individual fines reflected its generally tight-fisted approach to material relief and preference for private fundraising. The Bureau’s ultimate decision to fund legal counsel was therefore striking evidence that federal authorities had come to see legal aid as a priority.

Ultimately, recognizing the great expense and “immense undertaking [of] consider[ing] each individual case,”¹⁷³ in 1867 Assistant Commissioner Charles Howard formally appointed two lawyers as Bureau solicitors for Maryland, Henry Stockbridge and J. S. Dalrymple, to

¹⁶⁸ H. P. Jordan to C. H. Howard, December 24, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁶⁹ W. L. Van Derlip to W. W. Rogers, December 19, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁷⁰ H. P. Jordan to C. H. Howard, December 24, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL. For comparison, recall that Bureau solicitors’ monthly salary, the maximum for civilian agents, was \$100.

¹⁷¹ *Ibid.* (italics omitted).

¹⁷² W. L. Van Derlip to W. W. Rogers, January 5, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁷³ W. L. Van Derlip to C. H. Howard, July 11, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

manage the apprenticeship caseload and prepare test cases to overturn the apprenticeship law.¹⁷⁴ H. P. Jordan appears to have been passed over for the position because Judge Bond indicated that he “would prefer ... someone else than Mr. Jordan.”¹⁷⁵ Van Derlip suggested hiring a lawyer “residing in Baltimore,” as “it would save the expense of frequent journeys to Baltimore, and place [the Bureau] on a more cordial footing with Judge Bond.”¹⁷⁶ Accordingly, in April 1867, “Henry Stockbridge, Esq., of Baltimore, was appointed ... a Special Agent for the management of cases of illegal and unjust apprenticeship.”¹⁷⁷ Likewise, judges of the Calvert County orphans’ court advised Howard that “the Court would be more inclined to a favorable consideration if the cases were prepared by a lawyer of that county.”¹⁷⁸ Howard “therefore appointed J. S. Dalrymple, Esq., of Calvert county, Special Agent of [the] Bureau for [that] purpose.”¹⁷⁹ By retaining dedicated legal counsel, supported with federal funds, and friendly with local judges, Howard sought to overcome the problems that his subordinates described: in particular, the Bureau’s inability “to legally test the matter, owing to the inability of complainants to furnish the

¹⁷⁴ In February 1867, before appointing Stockbridge and Dalrymple to handle the Maryland cases, Howard appointed W. H. Owen as solicitor for the D.C. headquarters to help with apprenticeship cases referred to him from Maryland. See *supra* note 62.

¹⁷⁵ W. L. Van Derlip to W. W. Rogers, December 19, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Though Bureau records do not make precisely clear why Judge Bond disfavored Jordan, Bond’s opinion, understandably, carried weight. In July 1866, Assistant Commissioner Charles Howard requested that Van Derlip forward to Judge Bond a question from Commissioner O. O. Howard, asking him “to advise what [could] be adopted to remedy the evils of the apprentice system,” and “whether he [could] put in operation such measures in the Courts, as [would] prove effectual, or would prefer that [the] Bureau take the matter in hand.” C. H. Howard to W. L. Van Derlip, July 11, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Judge Bond likely favored Henry Stockbridge because of his standing and prior handling of habeas cases in Bond’s court.

¹⁷⁶ W. L. Van Derlip to W. W. Rogers, December 19, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁷⁷ Annual Report of Charles H. Howard, October 10, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL. In January 1868, Commissioner Howard formally elevated Stockbridge to Bureau solicitor for Maryland and Delaware, but noted that the position was effective from June 1867. O. O. Howard to H. Stockbridge, January 2, 1868, Records of the Assistant Commissioner for the District of Columbia, BRFAL; see also Westwood, “Getting Justice for the Freedman,” 516-17.

¹⁷⁸ Annual Report of Charles H. Howard, October 10, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁷⁹ *Ibid.*; see also W. W. Rogers to J. S. Dalrymple, September 25, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL (enclosing Dalrymple’s appointment).

means required in paying expenses of court and sheriff.”¹⁸⁰ While Dalrymple continued to fight indentures in orphans’ court, Stockbridge focused on litigation attacking the validity of the apprenticeship law itself, rather than challenging the legality of individual indentures on procedural grounds only.¹⁸¹

Bureau lawyers and their clients faced stumbling blocks in their initial efforts to advance test cases. With the Bureau’s assistance, Maria Richardson appealed her case to the Maryland Court of Appeals, but confronted a court “reorganized by the Rebels”—that is, the resurgent Democrats.¹⁸² In 1867, the Maryland General Assembly struck back against Judge Bond’s efforts to free apprenticed children by “pass[ing] a law restraining Judge Bond’s power to issue writs of Habeas Corpus.”¹⁸³ With their ally in the Baltimore Criminal Court disempowered, Van Derlip and Stockbridge promptly turned to the U.S. District Court in Baltimore. Stockbridge relied on the Habeas Corpus Act of 1867, which expanded federal courts’ habeas jurisdiction to persons held under the orders of state courts, a measure designed by the Republican Congress to bolster civil rights enforcement.¹⁸⁴

¹⁸⁰ E. M. Gregory to C. H. Howard, November 3, 1866, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁸¹ See J. S. Dalrymple to W. L. Van Derlip, November 7, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁸² W. L. Van Derlip to W. W. Rogers, October 8, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁸³ Van Derlip wrote: “The law is undoubtedly unconstitutional but our hands are tied, for, though Judge Bond might issue the writ, the sheriff would not serve it, the master would not obey it, and the Judge could not enforce it.” W. L. Van Derlip to W. W. Rogers, July 19, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁸⁴ Habeas Corpus Act, ch. 28, 14 Stat. 385 (1867). On the legislative history and significance of the 1867 Habeas Corpus Act and other Reconstruction-era removal legislation, see William M. Wiecek, “The Reconstruction of Federal Judicial Power, 1863-1875,” *The American Journal of Legal History* 13, no. 4 (1969): 333-59. For an intriguing analysis of the use of petitions and habeas suits by white Northerners seeking to reclaim adolescent children who enlisted in the Union Army during the Civil War, and the conflict it engendered between state and federal courts on the question of habeas powers, see Frances M. Clarke and Rebecca Jo Plant, “No Minor Matter: Underage Soldiers, Parents, and the Nationalization of Habeas Corpus in Civil War America,” *Law and History Review* 35, no. 4 (2017): 881-927.

However, Van Derlip was not optimistic about bringing habeas petitions before Judge Giles, the federal district court judge known to “sympthathize[] with the opponents of Congress.”¹⁸⁵ Van Derlip’s pessimism was not entirely misplaced: Judge Giles held that apprenticeship under Maryland law “was not a case of involuntary servitude” within the meaning of the Thirteenth Amendment, and he therefore lacked authority under the 1867 Habeas Corpus Act to issue writs in apprenticeship cases.¹⁸⁶ As Van Derlip explained, Judge Giles’s opinion rested “on the ground that the Dred Scott decision was the law of the U.S. and the parents of the children were not citizens of the U.S.”¹⁸⁷ Stockbridge appealed Judge Giles’s ruling to the U.S. Supreme Court, but because the Court “was overcrowded with important cases, it was impossible for it to give these cases a hearing.”¹⁸⁸ Stockbridge therefore trained his attention on “bring[ing] a case raising all the points before the Ch. J. as the Judge of this Circuit,” that is, to get a ruling from Chief Justice Salmon P. Chase while he was riding circuit in Baltimore.¹⁸⁹ Chief Justice Chase’s decision on a facial challenge, Stockbridge anticipated, would “settle a great many cases.”¹⁹⁰ A favorable ruling would not only free hundreds of indentured children, Bureau lawyers recognized, but could also overturn the legal justification for black codes across the South—namely, Judge Giles’s notion that emancipation had not disturbed *Dred Scott*’s holding that African Americans lacked citizenship rights.

¹⁸⁵ Commenting on a newspaper report about the federal habeas corpus bill, Van Derlip deplored that he could see “no help” in the law “unless the District Court of Maryland [could] be remodeled on a basis of loyalty.” W. L. Van Derlip to W. W. Rogers, January 9, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁸⁶ Opinion of Judge Giles, January 6, 1868, excerpted in Circular No. 1, January 11, 1868, in *Index to the Miscellaneous Documents of the Senate of the United States* ... (Washington, D.C.: Government Printing Office, 1868) (discussing Judge Giles’s prior holding, issued in the spring of 1867, denying authority to provide habeas relief).

¹⁸⁷ W. L. Van Derlip to W. W. Rogers, July 19, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁸⁸ H. Stockbridge to C. H. Howard, October 3, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

The Bureau's legal campaign against apprenticeship ultimately won success in October 1867 in the landmark case of *In re Turner*, in which Chief Justice Chase, sitting in circuit court, struck down Maryland's apprenticeship law.¹⁹¹ The case arose from a habeas petition brought by Elizabeth Turner, a then-eight-year-old girl freed through abolition on November 1, 1864, and indentured two days later to her former owner, Philemon T. Hambleton.¹⁹² At Turner's hearing before Chief Justice Chase in October 1867, Stockbridge argued that Turner's apprenticeship constituted involuntary servitude prohibited by the 1864 state constitution and the Thirteenth Amendment, and that the Maryland statute's disparate treatment of white and black apprentices violated the Thirteenth Amendment and the 1866 Civil Rights Act.¹⁹³ At a time when opponents of Radical Reconstruction vehemently challenged both the scope of the Thirteenth Amendment and the constitutionality of the Civil Rights Act, which still awaited the backing of the Fourteenth Amendment, the apprenticeship case would test the strength of an incipient constitutional revolution. Stockbridge invoked *McCulloch v. Maryland* and defended Congress's authority to enact the law under the Thirteenth Amendment, while dismissing objections that the law unconstitutionally "impair[ed] the obligation of contracts" insofar as it invalidated pre-existing indentures.¹⁹⁴ Stockbridge's arguments also echoed those he offered at the 1864 constitutional convention, where he condemned the apprenticeship law for denying education

¹⁹¹ *In re Turner*, 24 Fed. Cas. 337, 339 (1867).

¹⁹² *Ibid.*

¹⁹³ For a report of the hearing, see "In Re Elizabeth Turner," in *The American Law Times: U.S. Courts Reports* (Washington, D.C.: American Law Times Association, 1868), I: 7-9. Although Chief Justice Chase requested to hear the respondent's legal defense, in light of the "grave and important" questions presented, Hambleton declined to hire counsel to represent him at the hearing. Although "he wished to retain the girl," he claimed he lacked "sufficient interest in the case to spend money on it." *Ibid.*, 8; see also *In re Turner*, 24 Fed. Cas. At 338-39.

¹⁹⁴ "In Re Elizabeth Turner," in *The American Law Times*, 8.

and other protections to black children, and for violating the “right of the parent to foster and educate the child.”¹⁹⁵ Chief Justice Chase agreed: “the variance [was] manifest.”¹⁹⁶

In a brief but remarkable opinion, the Chief Justice ruled in Turner’s favor while upholding the legal framework of Reconstruction. First, Chief Justice Chase held, the Thirteenth Amendment “establishes freedom as the constitutional right of all persons in the United States.” Second, Turner’s “alleged apprenticeship” amounted to “involuntary servitude” within the meaning of the Thirteenth Amendment. Third, the indenture contradicted the provision of the Civil Rights Act guaranteeing “full and equal benefit of all laws.” Fourth, Chief Justice Chase held that the Civil Rights Act was constitutional under the Thirteenth Amendment’s Enforcement Clause, and finally, in a rebuke to his predecessor’s *Dred Scott* ruling, he affirmed that “[c]olored persons equally with white persons are citizens of the United States.”¹⁹⁷ Chief Justice Chase ordered Hambleton to discharge Elizabeth Turner immediately, on the ground that her “detention and restraint [were] in violation of the Constitution and laws of the United States.”¹⁹⁸ The decision was transformative for the “thousands of colored minors whose term of slavery had been protracted” by apprenticeship, as Stockbridge put it in his oral argument.¹⁹⁹ Beyond its immediate significance as a victory for freedpeople and the Bureau’s legal team in Maryland, though, the *Turner* decision also signaled the radical potential of the Thirteenth Amendment as a vehicle for policing unfair contracts, including contracts for child labor, and vindicating the rights of black citizens, including minors, in federal court.²⁰⁰ Freedpeople, Bureau lawyers, and

¹⁹⁵ *The Debates of the Constitutional Convention of the State of Maryland*, 3: 1577. Stockbridge proposed a compromise amendment that would have required a promise to educate children in the terms of all indentures. *Ibid.*

¹⁹⁶ *In re Turner*, 24 Fed. Cas. at 339.

¹⁹⁷ *Ibid.*, 339.

¹⁹⁸ *In re Turner*, 24 Fed. Cas. at 339.

¹⁹⁹ “In Re Elizabeth Turner,” in *The American Law Times*, 8.

²⁰⁰ Risa Goluboff, for example, refers briefly to *Turner* as an example of the early, broad reading of the Thirteenth Amendment, from which the Supreme Court soon retreated. See Goluboff, “The Thirteenth Amendment,” 1637 n.98.

Chief Justice Chase, in *Turner*, recognized the importance of the “full and equal benefit” clause of the Civil Rights Act in enshrining equal protection principles, soon to be constitutionalized through the Fourteenth Amendment. But they also read the Thirteenth Amendment to establish “freedom” as a potentially expansive positive right, shared by “all persons,” regardless of age or legal status.²⁰¹ Though the Supreme Court ultimately did little to extend the implications of *Turner*, at the time the case drew national attention in the press for its defense of the Civil Rights Act and its challenge to the “remnants of the slave system,” as the *New York Times* put it.²⁰²

Bureau officials immediately hailed the *Turner* ruling: “[a]s Mr. Stockbridge says,” Van Derlip wrote, “this decision releases every apprentice in Maryland.”²⁰³ However, the Bureau also promptly recognized the need to publicize, test, and enforce the decision—an undertaking in which the legal aid program proved instrumental. Within a week, Assistant Commissioner Charles Howard issued the *Turner* decision as Circular No. 8, with instructions for Bureau agents to “furnish a copy ... to each person ... holding apprentices in violation of the Civil Rights Law, ... demand the immediate release of said apprentices,” and, “[i]n case of refusal,” institute “legal proceedings.”²⁰⁴ Armed with Chief Justice Chase’s ruling, Bureau lawyers and the parents of apprenticed children returned to Judge Giles’s court. In a January 1868 ruling on Jane Cromwell’s habeas petition, Judge Giles explicitly reversed his prior opinion and declared that the *Turner* decision would “govern [him] in all future applications of a similar character.”²⁰⁵ The

²⁰¹ *In re Turner*, 24 Fed. Cas. at 339.

²⁰² “Remnants of the Slave System—The Law of Apprenticeship,” *New York Times*, October 18, 1867. For other examples of national press coverage, see Wood, “Emancipating the Child Laborer,” 88-91.

²⁰³ W. L. Van Derlip to C. H. Howard, October 16, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL. Likewise, the Bureau solicitor for D.C. wrote that “hundreds if not thousands of enslaved ... children held under the slave code of Maryland ... ha[d] been practically liberated.” A. K. Browne to C. H. Howard, October 18, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

²⁰⁴ Circular No. 8, October 22, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

²⁰⁵ Opinion of Judge Giles, January 6, 1868, excerpted in Circular No. 1, January 11, 1868, in *Index to the Miscellaneous Documents of the Senate of the United States*.

Bureau promptly released Judge Giles’s opinion as Circular No. 1, “as a notification to all parties illegally holding colored apprentices that they w[ould] be prosecuted.”²⁰⁶

These circulars served not only to “enlighten” resistant masters, but also to spread word of the ruling—and the availability of legal assistance—to parents and apprenticed children.²⁰⁷

Bureau agent Frederick von Schirach explained that, after the *Turner* decision, freedpeople “were at once notified through various sources to make their complaints known to the Office and steps were taken to settle the many apprenticeship cases that had accumulated” before *Turner*.²⁰⁸

Von Schirach reported that in the year following *Turner*, Bureau lawyers closed 84 apprenticeship cases and returned 110 children to their parents or guardians, with 61 cases “remaining open” as of October 1868, a few months before the Bureau was dismantled.²⁰⁹

Bureau procedure was to send letters to “the party complained of,” with copies of Chief Justice Chase’s decision and Judge Giles’s decision, and then, if there was no reply, refer the case “to Mr. Stockbridge Bu. Solicitor.”²¹⁰ For example, three days after the *Turner* ruling, Van Derlip wrote to Samuel Lucas to “demand the instant release” of the “two children of Eliza Ann Howard,” warning that if Lucas did not comply, the Bureau would “file a petition for their release ... and ask for wages ... and for the penalties prescribed by the civil rights bill.”²¹¹

²⁰⁶ Circular No. 1, January 11, 1868, in *Index to the Miscellaneous Documents of the Senate of the United States*.

²⁰⁷ Referring to masters who still held black minors illegally, Van Derlip complained that “people in the benighted regions of Southern Maryland seemed not to know or care who Chief Justice Chase was or what his opinions might be,” and “[i]t was necessary therefore to enlighten them in some way.” W. L. Van Derlip to W. W. Rogers, October 6, 1868, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

²⁰⁸ F. C. von Schirach to D. G. Swain, October 10, 1868, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

²⁰⁹ F. C. von Schirach to D. G. Swain, October 7, 1868, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

²¹⁰ F. C. von Schirach to D. G. Swain, October 10, 1868, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

²¹¹ W. L. Van Derlip to Samuel Lucas, October 19, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL. According to Van Derlip’s report, Lucas complied and released Howard’s children. W. L. Van Derlip to S. N. Clark, October 26, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

The Bureau also combated efforts by the state to nullify *Turner*—demonstrating, on the eve of the Bureau’s disbandment, the importance of federal intervention against state civil authorities. In late 1867, Lott Warfield, who held Adeline Jackson’s children as apprentices, petitioned Governor Swann “to instruct the Attorney General to defend [his] case” against Jackson, and to “test the validity of Chief Justice Chase’s decision.”²¹² Maryland Attorney General Isaac Jones penned a lengthy opinion declaring the Chief Justice’s decision “illegal null and void,” and suggesting that Governor Swann ask the legislature to “appropriate funds to defend these cases.”²¹³ The large numbers of children freed during the Bureau’s final year of operation in Maryland indicated that Jones’s argument did not win the day in court. Ultimately, though, unresolved complaints of illegal apprenticeship revealed that the practice persisted—at least until children aged out of indentures—in part because of reluctance, on the part of the Bureau’s D.C. leadership, to intervene further during the agency’s waning days.²¹⁴ Nevertheless, legal advocacy by Bureau lawyers and agents in Maryland served an important political function, helping to publicize both the state’s intransigence and the new legal remedies available to freedpeople. The legal campaign that culminated in *Turner*, and the demise of one of the most visible forms of *de facto* slavery in the postwar South, demonstrated the radical potential of grassroots organizing by freedpeople coupled with federally funded legal assistance.

²¹² W. L. Van Derlip to S. Eldridge, December 28, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

²¹³ *Ibid.* (describing Attorney General Jones’s opinion). After reading a copy of the Attorney General’s opinion, Van Derlip received a visit from the Maryland Secretary of State asking that Van Derlip keep the opinion “private,” and offering “an apology for having allowed [him] to see the opinion, which contained so much abuse of [Van Derlip] and of the Bureau.” W. L. Van Derlip to S. Eldridge, December 30, 1867, Records of the Assistant Commissioner for the District of Columbia, BRFAL.

²¹⁴ On the Bureau’s “waning influence and growing complaisance” at the end of its operation, see Fields, *Slavery and Freedom on the Middle Ground*, 154-55. For instance, in response to John Maynard’s petition for the return of his late sister’s children, still held as apprentices in Calvert County in 1869, officials at the Bureau’s D.C. headquarters wrote that the Bureau lacked jurisdiction and that “unless ill-treated the children had better remain.” Quoted in *ibid.*, 155.

III. Conclusion

Beyond its immediate impact on Reconstruction-era criminal defense and civil rights enforcement, the legacy of the Bureau's legal aid efforts—for the local administration of justice and access to legal counsel—is difficult to gauge with certainty. In the latter half of the nineteenth century, municipal government functions—for example, salaried, elected prosecutors and police—expanded and professionalized, as did the legal practice generally.²¹⁵ But while many state laws permitted or directed courts to assign counsel to the poor, and state courts increasingly recognized attorneys' duty to serve indigent defendants when appointed by the court, states' willingness to fund public defense remained limited.²¹⁶ Thus, Bureau-funded legal assistance in criminal and civil cases marked a brief but significant venture in the history of state-sponsored legal aid, a moment in which freedpeople and Bureau officers sought to realize the right to counsel enshrined in the Maryland constitution and the Sixth Amendment.²¹⁷

The Bureau's legal campaign in Maryland should not be dismissed as a contained, temporary response to a moment of legal crisis—even if it did not necessarily signal, at that time, a broader conceptual shift about the federal government's responsibility to provide access to counsel. The ordeal of black Marylanders exposed the massive demand for legal assistance and the possibilities of government-funded legal aid as a tool for racial justice. In postwar Maryland, black plaintiffs and federal lawyers deployed many of the same tools that would be instrumental in the twentieth-century civil rights struggle, including mass petitioning and test case litigation.

²¹⁵ For analysis of these trends, see, for example, Allen Steinberg, *The Transformation of Criminal Justice: Philadelphia, 1800-1880* (Chapel Hill: The University of North Carolina Press, 1989).

²¹⁶ For examples of postbellum Southern case law on state courts' statutory or common-law power to appoint counsel, and licensed lawyers' obligation to represent indigent defendants (typically involving lawyers' challenges to compelled or uncompensated service), see *Arkansas Co. v. Freeman & Johnson*, 31 Ark. 266 (1867) (holding that appointed attorneys had a duty to serve indigent clients and were not entitled to compensation); *Elam v. Johnson*, 48 Ga. 348 (1873) (same); and *Posey & Tompkins v. Mobile County*, 50 Ala. 6 (1873) (same).

²¹⁷ On the history of the Maryland Declaration of Rights, including the provision recognizing the "right" of criminal defendants "to be allowed counsel," see Dan Friedman, "The History, Development, and Interpretation of the Maryland Declaration of Rights," *Temple Law Review* 71, no. 3 (1998): 637-709.

The Maryland campaign set out a blueprint that might have been replicated on many fronts in the postwar South, if federal resources for legal aid had been extended rather than withdrawn. The history of the Bureau's legal aid program may therefore help to illuminate a broader story, not just about the failures and possibilities of Reconstruction, but also about the government's shifting commitment to civil rights and legal services for the poor, and the complex interaction between legal aid lawyers and clients in shaping the social justice function of legal aid.