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Reconstructing the Black Family:

How the Freedmen's Bureau Sought to Shape Black Family Structures
After Emancipation

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Department of History
Senior Honors Thesis
May 2021

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Table of Contents

	Page #
1. Introduction.....	<u>1</u>
2. Chapter 1: Marriage Rules.....	<u>4</u>
3. Chapter 2: Widows' Pensions.....	<u>22</u>
4. Chapter 3: Apprenticeship Cases.....	<u>34</u>
5. Conclusion.....	<u>45</u>
6. Bibliography.....	<u>48</u>

Introduction

In 1865, the federal government printed marriage certificate forms for use throughout the states of the former Confederacy. These forms included blank spaces for recording information about the name, age, and other characteristics of the spouses. The forms also included these curious phrases: “lived with another woman... separated from her by ____” and “lived with another man... separated from him by ____”. Why would a government document anticipate, and seek to record, that so many individuals on the cusp of marriage had previously lived with another romantic partner? The answer to this question lies in the unique work that these marriage certificates had to accomplish: to validate the marriages of freedmen and women who were trying to solemnize their marriages under the law for the first time.

The Bureau of Refugees, Freedmen, and Abandoned lands, also referred to as the Freedmen’s Bureau, was a government agency established by the United States War Department in 1865, by an act of Congress. The Bureau was responsible for the supervision of all affairs relating to newly freed people, including recording their marriages. The Bureau’s operations were confined primarily to the former Confederate States. The 1865 Act authorized the appointment of Assistant Commissioners to aid the Commissioner in supervising the work of the Bureau all across the Southern United States. The Freedmen’s Bureau was a large governmental agency tasked with providing aid to millions of freedpeople during their transition from slavery into freedom. The Bureau had a myriad of responsibilities, such as providing food, shelter, clothing, medical aid, and other services to assist freedpeople.

The Bureau also played a large role in the personal lives of formerly enslaved peoples. The Bureau issued marriage certificates, a task that included legalizing unions that had been informally entered into by enslaved people, as enslaved people could not legally marry. The

Bureau was also responsible for approving pension claims for the widows and families of Civil War veterans. Additionally, the Bureau adjudicated apprenticeship cases, which often involved questions concerning the custody of formerly enslaved children. In my thesis, I draw upon these documents: marriage records, widows' pension claims, and apprenticeship cases, for evidence of what enslaved Black families experienced and endured under slavery. I argue that as enslaved families became newly freed citizens, the Freedmen's Bureau ultimately undermined the Black family's freedom by controlling the circumstances under which they were allowed to create their own family units, through strict legislation and invasive validation procedures.

In Chapter 1, I explore how the Freedmen's Bureau validated the marriages of freedmen and women. The Bureau required states to keep records of the marriages that were solemnized. Some states simply kept a list of the names of couples getting married, and others kept meticulous marriage records which detail the birthplace, age, former partners, and number of children for each spouse. Additionally, I look at "the Marriage Rules" published by the Freedmen's Bureau after emancipation, which established rules for freedpeople to follow in order for them to get legally married. During slavery, enslaved people were not allowed to legally marry because as property, they did not have the right to contract. The United States government had a profound interest in controlling the circumstances under which its citizens were allowed to marry, because both marriage and citizenship are incredibly crucial sources of identity and belonging for United States citizens. Marriage represents a civil status that can be either adopted or dissolved, yet still holds a powerful impact on an individual's personal identity.

In Chapter 2, I look at widows' pension files to show what they reveal about family structures in slavery, through the eyes of formerly enslaved women. The federal government required any widow or family member to provide documentary evidence of a relationship to a

veteran, but the families of African American Civil War veterans, had no such documents. Enslaved peoples were not provided with birth certificates or marriage certificates, so they had to provide oral testimonies and depositions when they were applying for a pension. The pension cases reveal intimate details about what these women experienced in the household during slavery, and how the Freedmen's Bureau intervened to get such information

In Chapter 3, I look at how Black parents attempted to exercise their parental and familial rights by fighting for custody over their children, who had been apprenticed, often illegally, by their former enslavers. After emancipation, white southern farmers and planters found themselves with a huge loss in labor on their farms and plantations. In response to this, some former enslavers would coerce Black children into working on their land, in exchange for food, shelter, or education, but this labor was largely unpaid and non-consensual. The Freedmen's Bureau ruled over these cases, however, they did not always side with freedpeople in decisions over the custody of their children. Sometimes, the Bureau unilaterally decided that the children would be better off under the "care" of their former enslavers. The documentation left by these apprenticeship cases demonstrate the lengths Black parents would go to in order to reconstruct their households and family units.

Chapter 1: Marriage Rules

The United States government has always had a profound interest in controlling the circumstances under which its citizens were allowed to marry. Marriage is a civil right that has been highly contested throughout the country's history. Intermarriage was policed and prohibited for centuries and enslaved people were prohibited from participating in legally recognized marriages. Marriage is an institution with very deep meaning and personal significance to American life, which today is recognized by the U.S. Supreme Court as "one of the 'basic civil rights of man', fundamental to our very existence and survival"¹. It is typically seen as being a private relationship, but marriage is an inherently public institution, as a legitimate legal marriage requires approval from the state in the form of a government-issued marriage license, witnesses, and must be ordained by a government-approved officiant or religious figure. The government has a direct interest in regulating marriage because as an institution, marriage helps to define both men's and women's identities and roles within the greater political organization. By establishing the existence of legal marriage, controlling the circumstances under which marriages are legitimized, and prescribing its legal requirements, governments become directly involved in the private lives of its citizens by creating the civil statuses of both men and women.

Enslaved peoples were not recognized as citizens of the United States; they were seen as property to be owned. The Southern legal system did not recognize slave marriages on the grounds that property could not enter into a legal contract. For enslaved peoples, marriage was not a legally endorsed sacred union between two people, but "an institution defined and controlled by the superior relationship of master to slave"². Enslaved couples were sometimes

¹ Legal Information Institute, "Richard Perry LOVING et ux., Appellants, v. COMMONWEALTH OF VIRGINIA".

² Hunter, Tera W, *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century*. (Cambridge, Mass: The Belknap Press of Harvard University Press, 2017), 6.

able to form unions and romantic relationships of their own volition, although they were often required to obtain their enslaver's permission to enter into such a relationship. Some enslavers sanctioned slave marriages because they believed that slaves in stable family units were more productive in their labor, and in turn, would provide their plantations with more slave labor when they had children. Slave owners also believed that they were instilling moral values in their slaves by encouraging them to form their own marriage unions³.

Because marriage between enslaved peoples was not seen as legitimate in the eyes of the law, slave marriages had no legal foundation or protection. As enslaved peoples were not citizens, they were not permitted to enjoy the same rights allotted to American citizens, such as the right to contract. African Americans did form and maintain relationships in slavery that they called marriage. By calling their relationships "marriages", this terminology indicates that this type of relationship was important for enslaved peoples, and that they desired such a relationship. The existence of these marital relationships is evident in documentation from the Freedmen's Bureau during Reconstruction. The Bureau began issuing legal, tangible marriage certificates and subsequently published marriage rules for freedmen and women to follow while making their own family units. These documents not only reveal what family units looked like in slavery, but they also expose some of the methods used by the federal government to exert control over freed peoples' newfound familial rights and autonomy.

Legal History of Marriage in the United States

After the Emancipation Proclamation, thousands of Black couples chose to make their marriages official by getting legally married. Some state governments required formerly

³ Shaffer, Donald Robert, and Elizabeth Ann Regosin. *Voices of Emancipation Understanding Slavery, the Civil War, and Reconstruction through the U.S. Pension Bureau Files*. (New York: New York University Press, 2008), 114.

enslaved couples to validate their marriages by solemnizing through the government. Many couples responded to the new legal requirements of the states by either getting legally married, or resisting the new marriage requirement by not getting legally married, but still maintaining their romantic relationships after slavery. After the Civil War, many southern states made special provisions in their Black Codes that either automatically deemed former slave couples who took up together married, or required couples to formally legalize their unions under the penalty of fine or imprisonment⁴. Nonetheless, the state and federal governments tried to intervene in the private lives of former slaves long after they were released from the chains of slavery, in an attempt to control how they formed their marital unions and established their families. However, the rules established for freedpeople were, for the most part, similar to the marriage rules that the state and federal governments established for white citizens.

The state and federal governments have intervened in the personal lives of citizens since the beginning of the Republic. The government needed strong public reactions to justify entering the private sphere. From as early as the colonial era in the United States, local governments were known to intrude in citizens' private lives in circumstances such as when a husband refused to support his wife and children, with the suspicion that he was "transforming his dependents into public charges"⁵. As long as the marital unit did not become a burden on the government or to public welfare, and moral failures within the family did not come to public consciousness, then the government stayed out of private matters. The federal government claimed little constitutional responsibility or interest over the laws of marriage. The topic never arose during the framing of the Constitution in 1787, and "that implicit denial of constitutional responsibility

⁴ Shaffer and Regosin, "Voices of Emancipation", 129.

⁵ Hartog, Hendrik. *Man and Wife in America: a History*. (Cambridge, Mass.; Harvard University Press, 2002), 24.

was reaffirmed... during debates over the Fourteenth Amendment after the Civil War”⁶. It is not to say that the Constitution was not of any significance in the formation of marriage rules and norms in the United States. And while states themselves were their own lawmaking entities, there were constraints from the federal government that impeded the states’ abilities to create laws for marriage and divorce.

Two clauses in particular, the contract clause and the takings clause of the Constitution obstructed the states’ ability to create marriage laws. The contract clause found in Article I of the Constitution states that no state may pass a law “impairing the Obligation of Contracts”. The takings clause of the Fifth Amendment reads that “Nor shall private property be taken for public use, without just compensation”. These two clauses placed limits on the power of the states to potentially alter the terms of marriage and divorce. However, the presence of these clauses did not make much difference in the marital practices of the states. While there were few laws which specifically dictated the rules of marriage for its citizens, the government had a direct interest in mandating how citizens formed their family units.

Notwithstanding the federal government’s lack of involvement in marriage laws, state governments, and American legal and political culture more generally, tended to impose a very particular version of marital relations. Historian Nancy Cott emphasizes this point when she says, “political and legal authorities endorsed and aimed to perpetuate nationally a *particular* marriage model: lifelong, faithful monogamy, formed by the mutual consent of a man and woman...”⁷. This model for marriage brought with it prescribed gender norms and expectations for men and women. Following the standards for marriage from the Christian religion and

⁶ Hartog, “Man and Wife in America”, 17.

⁷ Cott, Nancy F., *Public Vows: a History of Marriage and the Nation*. (Cambridge, Mass: Harvard University Press, 2000), 3.

English common law⁸, it was expected that the husband assumed the role as the head of the family and the wife was his dependent partner. The notion of mutual consent between the parties in a marriage was crucial for early marriage policy because it was the central idea behind a representative government.

The system of common law turned a married couple into one legal entity, with the husband representing both parties in the public and private spheres. The man's role in society was enlarged when he became a husband while the wife's role was minimized. The wife gave up her own last name and taking her husband's name symbolized her relinquishing her individual identity. This legal doctrine, also adopted from the English common law system was called coverture, and the wife, a "feme covert". Coverture was a legal doctrine wherein a wife could not use legal means such as suits or contracts, own assets, or execute legal documents without her husband's involvement. Before marriage, a woman could freely execute a will, enter into contracts, sue or be sued, and sell real estate and personal property. However, once she married, her legal existence as an individual was suspended under the guise of marital unity. Through marriage and coverture, women were rendered disenfranchised. The husband was allowed to become one full citizen in the household and in the public sphere. The husbands' authority and responsibility over his dependents contributed to his citizenship capacity, leaving the wife's autonomy and capacity for citizenship within the confines of the home. Marriage and citizenship are two very closely related entities.

In every nation, laws and public policies have mandated authority relations and dependency relations in marriage and directed these to be reproduced through the socialization of

⁸ Common law is law that is based on judicial decisions instead of statutes, or legislation. American courts originally fashioned common law rules based on English common law until the American legal system was mature enough to create precedents of its own.

future citizens. The institution of marriage has been used as a vehicle for the state's involvement in forming and sustaining the gender order, or in forming and sustaining gender itself⁹. Marriage served as a political tool that allowed the government to determine and control the capacity to which citizens are able to exercise their rights. For instance, when a couple married, the husband became the political and legal representative of his wife. These gendered roles have proved to be powerful, throughout history, in shaping both male and female citizens' entitlements and obligations¹⁰ in the nation. When the institution begins to dictate the degree to which an individual is allowed to express and exercise their civil rights, marriage becomes all the more important politically.

Marriage Records during Reconstruction

During the Reconstruction era, formerly enslaved peoples secured their freedom, citizenship, and a myriad of legal, social, and political rights, including the right to marry. At the national level, Congress passed the Civil Rights Act of 1866, which extended the right to make contracts, this included the right to enter into marriages, to all formerly enslaved peoples. Now that the freedmen and women had the ability to enter into contracts, state governments quickly began to create rules and laws that outlined the requirements for marriage for these new citizens. As Tera Hunter writes, "most states passed laws between 1865 and 1866 that recognized prewar slave marriages and the children that resulted from them"¹¹. Looking back at marriage records organized by the Freedmen's Bureau reveals the presence of this system¹². It also reveals the

⁹ Cott, Nancy F. "Marriage and Women's Citizenship in the United States, 1830-1934." *The American Historical Review* 103, no. 5 (1998): 1440-474, 1442.

¹⁰ Cott, "Public Vows", 3.

¹¹ Hunter, "Bound in Wedlock", 5.

¹² It is important to note that not all states required marriage records before the twentieth century. The availability of marriage certificates was limited to states that required this documentation.

mechanisms through which this system was organized, and the conditions that the Freedmen's Bureau took into consideration when validating marriages.

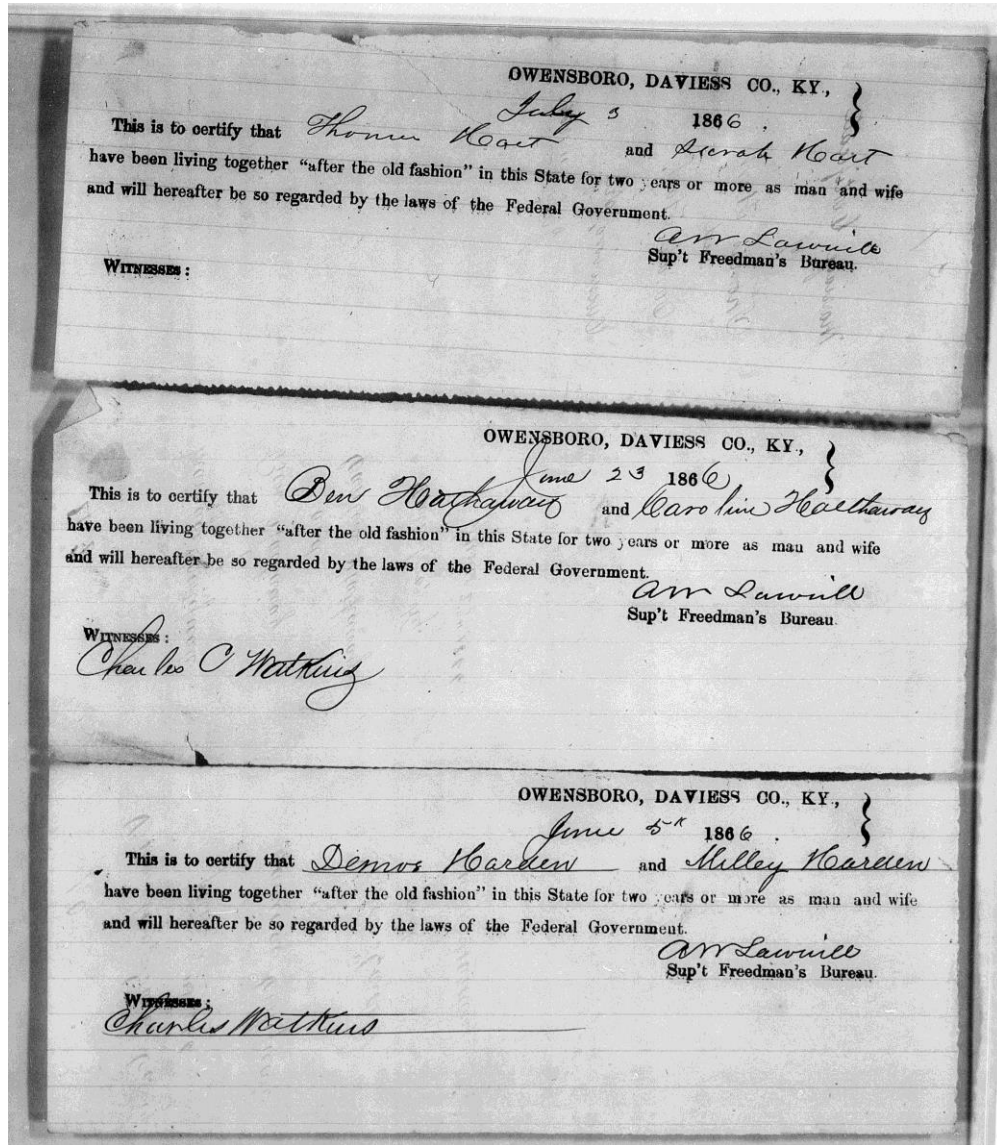


Figure 1. Photograph of Marriage Certificates (Owensboro, KY), 1866.

In Owensboro, Kentucky, enslaved couples that lived together for a period of two years or more were deemed to be married in the eyes of the federal government. As seen in Figure 1, the documents decree, "this is to certify that *Thomas Hart* and *Sarah Hart* have been living together 'after the old fashion' in the State for two years or more as man and wife and will

hereafter be so regarded by the laws of the Federal Government”¹³. The document was then signed by a witness under the jurisdiction of the Superintendent of the Freedmen’s Bureau. These three marriage certificates are dated between June and July of 1866, a little more than a year after the end of the Civil War. The three certificates are very uniform. The text is largely in print, with blank spaces for Bureau officials to quickly jot down the couple’s names, wedding date, and a witness’ signature. The formatting of the marriage certificates suggests that perhaps the Bureau was having to fill out multiple of these documents with such high frequency, these government documents evolved to meet the needs and convenience of Bureau officials. These documents are significant not only because they serve as evidence of the federal government legitimizing marriages of former slaves and Black citizens, but they also reveal so much about the intimate family structures that enslaved peoples experienced during slavery. Notably, the forms include the words “SEPARATED FROM HIM BY”, which indicates that the Bureau recognized the high proportion of relationships which involved forced separation.

The Freedmen’s Bureau agents in Memphis, Tennessee kept meticulous records of marriages conducted by both the Bureau and clergy. The documents themselves are but small pieces of paper, but they had tremendous amounts of personal and legal significance. Every marriage certificate reveals intimate details of former slaves’ domestic lives. As Figure 2 reads, “*Memphis, Tenn Jul 9th 1865. I HAVE this day united in Matrimony, Mr. Henry Armstrong of Memphis, Tenn and Catherine Lair of the same place. Age of man 27 years; color, black; do¹⁴. of his father, black; do. of his mother, black; lived with another woman 2 years; separated from her by death. Age of women, 27 years; color, black; do. of her father, black; do. of her mother,*

¹³ United States Freedmen’s Bureau Marriages, 1861-1872. *Kentucky Hart Thomas 1866*. FamilySearch database with images. College Park, Maryland: National Archives, 8 July 2019.

¹⁴ “Ditto of”.

black; lived with another man 7 years; separated from him by *death*. They, unitedly, have 1 children; do. of the man by previous connection, 1; do. of the woman by do. ___”¹⁵. These marriage certificates reveal the complex network of familial connections that formerly enslaved peoples experienced during slavery. Henry Armstrong and Catherine Lair each were involved in long term relationships before marrying each other legally. Together they have one child, and Henry had another child from a previous relationship. There was no singular household experience for enslaved peoples.

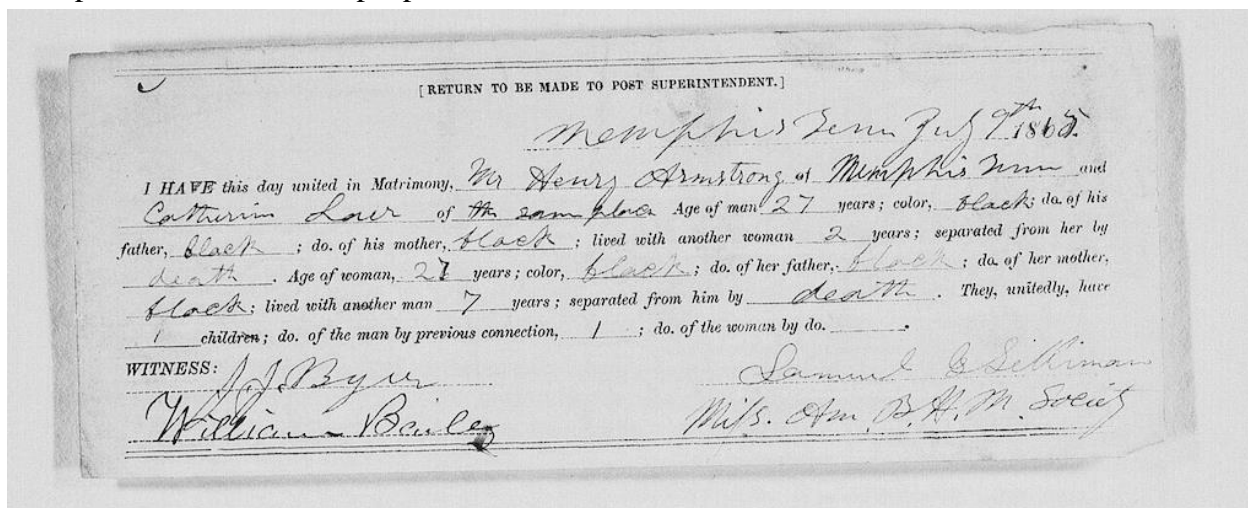


Figure 2 Marriage Certificate of H. Armstrong & C. Lair

As the Freedmen’s Bureau records demonstrate, couples entered into post-emancipation marriages with a variety of relationship histories. Separation from a previous spouse due to death or sale may have been commonplace, but not every freedperson shared that experience. For example, the marriage certificate of Samuel Gillespie and Henrietta Moral states, “*Memphis Tenn Dec 8th 1864. I HAVE this day united in Matrimony, Samuel Gillespie of Co H 59 U.S.C.I. and Henrietta Jane Moral of Memphis Tenn. Age of man 21 years; color, black; do. of his father,*

¹⁵ United States Freedmen’s Bureau Marriages, 1861-1872. *Tennessee Henry Armstrong 1865*. FamilySearch database with images. College Park, Maryland: National Archives, 8 July 2019.

black; do. of his mother, *black*; lived with another woman ___ years; separated from her by ____.
Age of women, 20 years; color, *black*; do. of her father, *black*; do. of her mother, *black*; lived
with another man ___ years; separated from him by _____. They, unitedly, have ___ children; do.
of the man by previous connection, 1; do. of the woman by do. ____”¹⁶. Samuel and Henrietta
married at a relatively young age. According to their record, neither individual lived with another
partner beforehand, and neither of them bore any children with another partner.

Older couples also fought to have their marriages recognized. We see this in the example
from Louis Armstrong and Maria Wylie, “*President Island, Tenn. May 1865. I HAVE this day
united in Matrimony, Louis Armstrong of Tennessee and Maria Wylie of Arkansas. Age of man
55 years; color, black; do. of his father, black; do. of his mother, -do-; lived with another woman
___; separated from her by _____. Age of women, 43 years; color, yellow; do. of her father, white;
do. of her mother, black; lived with another man ___ years; separated from him by _____. They,
unitedly, have ___ children; do. of the man by previous connection, ___; do. of the woman by
do. ____*”¹⁷. This marriage certificate offers a lot of valuable information about other experiences
of family life in slavery and after emancipation.

Both of these individuals are of middle-age. There is no mention of any past partners for
either spouse and neither Louis nor Maria had any children before they were married, we can see
that there were some black families which were comprised of only two people. Another key
aspect of this marriage certificate is that the Bureau agent that filled out this form, described
Maria Wylie as “yellow”. This term was meant to describe people of mixed race, and in Wylie’s
case, she was half Black, on her mother’s side, and white, on her father’s side. These

¹⁶ United States Freedmen’s Bureau Marriages, 1861-1872. *Tennessee Samuel Gillespie 1864*. FamilySearch database with images. College Park, Maryland: National Archives, 8 July 2019.

¹⁷ United States Freedmen’s Bureau Marriages, 1861-1872. *Tennessee Maria Wylie 1865*. FamilySearch database with images. College Park, Maryland: National Archives, 8 July 2019.

circumstances allude to the presence of interracial sexual relationships during slavery. And since interracial relationships were outlawed in the South at the time, Maria and her relatives were likely conceived from a sexual relationship between an enslaver and an enslaved person.

In another marriage certificate, we see even more influence from the institution of slavery in the involvement of family structures, this time with forced separations *and* interracial relationships. In the case of Alexander Abernathy and Harriet Roberts, the certificate states, “November 6th 1864. I HAVE this day united in Matrimony, *Alexander Abernathy of Memphis and Harriet Roberts of same place. Age of man 26 years; color, Black; do. of his father, Black; do. of his mother, Black; lived with another woman six months years; separated from her by force. Age of women, 26 years; color, Octoroon; do. of her father, Quadroon; do. of her mother, Octoroon; lived with another man 4 years; separated from him by Death. They, unitedly, have 4 children; do. of the man by previous connection, ___; do. of the woman by do. 4*”¹⁸. This relatively young couple both had partners before getting married. Alexander was in a relationship for only six months with no children from this relationship, but he was separated from her by force.

Harriet herself was of mixed race, the Bureau official referring to her as “octoroon”, meaning that she was one-eighth Black by descent. Her mother and father were both also of mixed race, one-fourth and one-eighth Black, respectively¹⁹. Harriet has eight children in total, four with Alexander and four from a previous relationship. In her 26 years of age, Harriet had already been in two long-term relationships and bore eight children, suggesting that Harriet began to have children at a very young age. There are thousands more marriage certificates that

¹⁸ United States Freedmen’s Bureau Marriages, 1861-1872. *Tennessee Alexander Abernathy 1864*. FamilySearch database with images. College Park, Maryland: National Archives, 8 July 2019.

¹⁹ It is unclear how the Freedmen’s Bureau made the determination that she was 1/8 black, and it was unclear whether that was self-reported or the determination of the Bureau agent based on his visual assessment.

describe in intimate detail the private lives of former slaves. This begs the question as to why the Freedmen's Bureau required freed people to provide such descriptive detail of their personal lives? And why did the federal government feel as though it had a stake in knowing and preserving this information? Nonetheless, these marriage certificates are an invaluable resource which conceal critical information about the diverse familial circumstances experienced by enslaved peoples during slavery.

Marriage Rules

The Freedmen's Bureau led the federal initiative to validate Black marriages. The Bureau established marriage rules shortly after the Civil War, to help guide newly freed slaves into marriage and family life. Marriage became a guaranteed and coveted civil right for African Americans for the first time, codified in law, but was still restricted because of the strict rules set forth by the state and federal governments. *General Orders No. 8: Marriage Rules* was written by Rufus Saxton, the Assistant Commissioner of the Bureau of South Carolina, Georgia, and Florida in 1865 during the Reconstruction era when the U.S. Constitution underwent significant revision after the end of slavery and the Civil War. The Freedmen's Bureau was established just two months before the end of the Civil War, with the Bureau being made responsible for ensuring the welfare of freemen and women.

After emancipation, formerly enslaved peoples were challenged with beginning their lives anew, forced to craft new identities for themselves in their newfound state of freedom. One of the central goals of former slaves was to reunite themselves with their spouses, children, and extended family members that were displaced because of slavery. Marriage rules were established across the postbellum south. Evidenced by marriage records kept by the Bureau, these documents reveal that these rules extended far past South Carolina, Georgia, and Florida.

The Freedmen's Bureau's marriage records trace back to states across the South, like in Alabama, Mississippi, Louisiana, Tennessee, and Kentucky; and they reach as far North as Washington, D.C., Delaware, and Illinois. Each state had different standards for documentation and marriage certificates. In Kentucky and Tennessee, more formal documents were used to keep track of marriages after Emancipation. Alabama's marriage certificates are very ceremonial with intricate designs and a little title stating "*you are hereby authorized to celebrate*".

In other states, such as Florida and Delaware, a handwritten letter from a member of the clergy stating that the two were married by him was documentation enough. Some states, like Virginia and Alabama simply documented marriages in list format in a monthly report, rather than in the form of a marriage certificate. These varying types of documentation imply that there was some differentiation in the documentation process of marriage for African American couples, but these rules for making marriages official were still in effect across the United States. In response to freedmen's search for family and identity, many couples followed such rules and quickly got married to legitimize their relationships according to the government. These agencies published rules, which were to be "strictly enforced", dictating how freed peoples would be allowed to set up their new family structures²⁰.

General Orders Number 8 outlined the rules that freed peoples in southern states had to abide by to get married, reunite with their spouses, or even set up their family units between parents and children. There were different rules created for families if children were involved. The intended audience of this publication was formerly enslaved peoples as almost a guide to

²⁰ Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division, The New York Public Library. "General Orders No. 8: Marriage Rules, Bureau of Refugees, Freedmen and Abandoned Lands, South Carolina, Georgia and Florida, S.C." New York Public Library Digital Collections. Accessed October 23, 2020. <https://digitalcollections.nypl.org/items/510d47db-c5b7-a3d9-e040-e00a18064a99>

help them navigate the complex process of emancipation. The rhetoric used in the document mentions freedmen and women, stating that the purpose of the document was “to correct as far as possible one of the cruelest wrongs inflicted by slavery, and also to aid the freedmen in properly appreciating and religiously observing the sacred obligation of the marriage state”²¹. On the surface, the function of this document was to provide freed people with rules and guidelines on how their family lives should be formed based on traditional, moral, and religious standards of the time. But, the document also served a dual purpose of attempting to control the private lives of newly freed Black citizens after slavery.

Section I of the *Marriage Rules* dictates at what age freed people were eligible for marriage. First, all male persons, at least twenty-one years old, and all females at least eighteen years of age, who had never married before, were deemed eligible for marriage. All persons who were “married” under slavery and could produce some type of “satisfactory evidence” of marriage or separation from all former partners during slavery were eligible for marriage. Additionally, all married persons who could produce some sort of evidence of separation from their first spouses during slavery by death, force, or sale, for a period of at least three years would be considered eligible to marry again. In lieu of legal government documentation, satisfactory evidence for freedmen and women included depositions or verbal testimonies from at least two witnesses (often fellow former slaves or former enslavers) of the relationship as proof of marriage. The term “satisfactory evidence” is ambiguous because most formerly enslaved peoples did not have any documentary evidence to provide “proof” of their relationships. Section I of the *Marriage Rules* reveals some of the language incorporated into laws at the time which sought to control freed people’s ability to get married and start families.

²¹ "General Orders No. 8: Marriage Rules, Bureau of Refugees, Freedmen and Abandoned Lands, South Carolina, Georgia and Florida, S.C.", 108.

The state governments were able to select the ages at which freed peoples were allowed to get married.

Section IV of the *Marriage Rules* imposes rules for the marriage of husbands and wives being reunited after emancipation and also established the responsibilities of husbands had to their former wives. This section is divided into two parts. Part I of Section IV is titled, “First marriages and reunions”, and dictates that the marriage of all parties living together “as husband and wife” at the time of obtaining their freedom would be acknowledged as legal and binding. This section also asserts that all couples who claimed to have been married, but were separated by slavery, and had no certificate of marriage, were required to obtain from “some society or church a permit for their reunion before they will be allowed to live together as husband and wife”²². This rule may explain why there were so many marriage certificates created in the wake of Emancipation. All parties whose marriages were “only mutual agreements” between themselves during slavery with no public form or ceremony were required to have their marriage confirmed by a minister. Here, by specifically stating that marriages that were only mutual agreement were not valid is a direct nod to the couples who were married in slavery the Freedmen’s Bureau was imposing its own sense of morality by suggesting that only legally sanctioned marriages were valid.

Part II, entitled, “Duties of husbands to former wives”, reveals how the legacy of slavery affected the creation of Black family units after Emancipation. In this section, the Bureau prescribed that if a man living without a wife found himself with two wives restored to him by freedom – one woman having children by him, and the other not – he would be required to take the mother of his children as his lawful wife, unless he showed a moral cause to refuse this

²² "General Orders No. 8: Marriage Rules, Bureau of Refugees, Freedmen and Abandoned Lands, South Carolina, Georgia and Florida, S.C.", 110.

union, such as adultery or fornication²³. Additionally, if a man living without a wife refused to renew a marriage with a former wife restored by freedom, there being no moral or legal objection to the same proven by him, he shall be responsible for the support of the wife, and all children by her, so long as they remain minors²⁴. Policymakers were imposing monogamy and the patriarchal family structure on Black citizens' family units after emancipation. As Stephanie McCurry writes, "Universal emancipation was unthinkable without the prior disciplinary structure of the patriarchal family"²⁵. Here, the Freedmen's Bureau were continuing to control its Black citizens, undermining Black families' new rights to family autonomy by not allowing Black families to decide for themselves who they could marry or live with if the family unit included children. If they could not control the Black population through the institution of slavery, it would try to control them through the special circumstances presented in the institution of marriage for freedpeoples.

Section V of the rules, entitled, "Rights of wives and children", establishes rules for women who either found herself reunited with a former husband, or if she found herself reunited with multiple husbands after Emancipation. The rule states that if a woman living alone was claimed by two former husbands, she shall be allowed to accept either, provided there were no moral or legal objections to either party. If a wife was released from her husband for a moral cause proven against him, such as adultery or fornication, she was entitled to receive half of all

²³ The difference between adultery and fornication being that fornication is generally considered to be consensual sexual intercourse between two people not married to each other, and adultery is when one or more partners has sexual intercourse outside of the marriage with another person.

²⁴ "Marriage Rules, Bureau of Refugees, Freedmen and Abandoned Lands, South Carolina, Georgia and Florida, S.C."

²⁵ McCurry, Stephanie, "Reconstructing Belonging: The Thirteenth Amendment at Work in the World," in *Intimate States: Gender, Sexuality, and Governance in Modern US History*, ed. Margot Canaday, Nancy Cott and Robert Self (Chicago: University of Chicago Press) forthcoming, 2021.

his real and personal property²⁶. If the wife had children by him, she was allowed to assume the entire control of his real and personal property as long as her children were minors. Finally, if a wife was deceased, all children by her, “being minors and without means of subsistence” had a claim for protection and support upon their “natural father”, even if he had another family.

Together, Sections IV and V expose both the family structures experienced by enslaved peoples during slavery and the gender roles imposed by the federal government in Black family structures. One of the most significant rules in Section V states that if a woman was “released” from her husband, she was entitled to half of all his property, and if they had children she was allowed to assume complete control over his property. Black women were being given greater economic rights, allowing them to exercise greater control over their own lives because the rule gave more financial responsibility to free Black women than had ever existed before. But at the same time, the rule reinforced traditional gender roles in which men were seen as being the providers and protectors in a family, simultaneously maintaining that women were the ones in need of protection, an example of the federal government trying to establish normative family structures and gender roles in freed Black families.

Despite the Freedmen’s Bureau’s attempt to aid in the relief effort and social reconstruction that would bring freedmen and women in transitioning into citizenship and life outside of slavery, Congress dismantled the Bureau in July of 1872. The Bureau’s former responsibility of validating freedpeoples’ marriages was turned over to the state governments. Evidenced in marriage records kept in large binders referred to as “marriage books”, both Black and white couples filled the pages side by side. These marriage books are but one aspect of the

²⁶ The difference between personal property and real property is that personal property is anything other than land that can be the subject of ownership such as stocks, money, notes, and copyrights, also including intangible property. Real property generally refers to land.

prodigious amount of documentary evidence left behind by the Bureau's attempt to validate marriages after Emancipation. These documents, such as marriage records, marriage certificates, and marriage rules, all in different ways reveal some aspect of the family experience of formerly enslaved peoples. The marriage certificates that were dispensed by the Freedmen's Bureau reveal some of the interpersonal relationships that former enslaved people were part of, whether they were married once in slavery and chose to solemnize their relationship, or whether they had been separated by their partners by sale, death, or force, marriage certificates demonstrate the existence of these relationships during slavery. The Marriage Rules established by the Freedmen's Bureau expose some of the consequences of forced separations between married couples and families with children in the post-emancipation South, when families were trying to reunite their family units and establish new ones in the wake of the Civil War.

Chapter 2: Widows' Pensions

In August of 1896, Hannah Brown, a freedwoman, sat down and gave a deposition describing the nature of her relationship to her husband, Lindsey Brown, in order to be approved for a Civil War widow's pension, after he abandoned her and their family. Hannah Brown recounts the details of her life and her relationship in her pension deposition. She states that she had none of his army papers, and he did not preserve any of the letters she wrote to him. Hannah mentions that "a colored man, Jim London", found out about her husband's service from his army comrades²⁷. In her deposition, Hannah also describes her life in slavery. She was born in Augusta, Georgia in 1831, and she was brought to Missouri eleven years later. Hannah married Lindsey Brown before the war, and they were married at her enslaver's house.

Hannah mentions that she had never been married before, but Lindsey had a "slave wife in Virginia, whom he had parted years before". Hannah gave birth to two boys before marrying Lindsey, and the couple also, unitedly, had two children together. Hannah ends her deposition by stating that Lindsey decided that it would be dangerous to live in Missouri during the last year of the war, and he packed up some clothes and left for Illinois. Lindsey wrote Hannah a few letters, and informed her that he had "gone into the service". He wrote her a few letters with the last one telling her that he planned to move, but he did not know where and asked her not to write him until he wrote to her first. She never heard from her husband again. Hannah's pension file, like many others, reveals a tremendous amount about what family life looked like for enslaved peoples, and how freedwomen tried to secure their own freedom and economic independence by applying for a widows' pension²⁸.

²⁷ Shaffer and Regosin, "Voices of Emancipation", 120.

²⁸ This chapter draws upon sources from Paul Shaffer and Elizabeth Regosin's book, "Voices of Emancipation". These sources are transcripts of pension case files, located in the National Archives, which are not published online.

Pension Law after Emancipation

After the Civil War, Black widows submitted pension claims to the federal government. These pension claims not only demonstrate what marriage and family looked like for enslaved peoples, they also reveal how pension legislation was designed to control the way widows and children of deceased veterans were able to live their lives after the War. One significant piece of legislation to come out of the Civil War era was an Act from July 14, 1862, called *An Act to Grant Pensions*. The Act established the general law pension system for Civil War veterans. The system was created for veterans to receive financial compensation if they sustained any war-related injuries or disabilities. Two years after the first *Act to Grant Pensions* was enacted, a second supplementary set of laws were passed in 1864, which extended pension benefits to widows, children, and parents of soldiers who died in military service. Section XIV of the law states,

“...the widows and children of colored soldiers who have been, or who may be hereafter, killed or who have died, or may hereafter die... shall be entitled to receive the pensions now provided by law, without other proof of marriage than that the parties had habitually recognized each other as man and wife, and lived together as such for a definite period preceeding²⁹ the soldier’s enlistment... to be shown by the affidavits of credible witnesses...”³⁰.

In this act, the federal government is extended the financial rights of pensions to African American widows and families, and at the same time, acknowledged the existence and legitimacy of Black family structures during and after slavery. This law reflects a significant shift in the legislative regulation of Black families. During slavery, Black people were not

²⁹ Orthography preserved from the original text.

³⁰ Thirty-Eighth Congress, "An Act to grant Pensions".

recognized as citizens. After emancipation, Black people were legally entitled to citizenship and rights came along with it. This included formal recognition of their familial ties (marriage and paternity) by the federal government. The Black family was now considered a civil entity, subject, at least in theory, to the same protection and regulation as the white families were. The United States Congress was also formally recognizing the legitimacy of enslaved couples and acknowledging that they lived together and raised families while enslaved by providing them with legal and economic protections. Congress' extension of the rights to family, and the ability to inherit pensions, must be seen not only as an offering of citizenship to former slaves but also as a "manifestation of white society's desire to mold former slaves into proper citizens, to find a specific place for them in American society"³¹. When Congress enacted pension legislation that set down the general requirements for Black families to receive a pension, the requirements were flexible in not requiring legal documentation to prove the legitimacy of a marriage.

Pension claims came under the authority of the Pension Office in Washington, D.C. The Pension Bureau recognized that slaves' familial relations existed even though they lacked legal recognition and lacked tangible documentation. This lack of material evidence required Bureau agents to investigate pension claimants closely, probing claimants' personal lives for details to corroborate witness' depositions for verification.

When it came to awarding pensions to deceased soldiers, familial relationships between soldiers and their relatives were the central focus of the pension system. The pension system played a critical role in the process of socializing former slaves to take up "proper" family relationships. Although some pension legislation made distinctions between Black and white citizens to deal with such issues as slaves' lack of legal marriage, the government expected

³¹ Regosin, Elizabeth Ann. *Freedom's Promise: Ex-Slave Families and Citizenship in the Age of Emancipation*. (Charlottesville: University Press of Virginia, 2002), 11.

former slaves to apply for pensions through the same channels and according to the same requirements as freeborn citizens. According to historian Elizabeth Regosin, “Pension Bureau officials often used their own sense of morality as the measure by which to determine the legitimacy of many relationships”³². However, investigators from the Bureau were allowed to impose their ideas of what circumstances qualified Black widows and families for pensions.

Freedmen’s Bureau Pension Cases

Pension officials were rooted in white, middle-class Victorian social standards and they tended to operate under the belief that stable families (which were those sanctioned by the law), promoted morality among former slaves and helped to make them more suitable members of American society. Elizabeth Regosin argues that while it was the job of pension officials to make sure that the Bureau was awarding pensions to legitimate relatives of Civil War soldiers, many officials felt that they had a secondary responsibility to instill in former slaves the morality that they believed was lacking during slavery. Most importantly, looking into the pension files of Black families provide portraits of the family life of enslaved peoples during slavery³³.

The deposition of Hagar Washington from the pension file of George Washington (December 29, 1894) provides one example of family structures experienced in during slavery in which enslaved couples created and supported families, without ever getting married. Hagar narrates that she was between 55 and 60 years of age, and her occupation was a servant, claiming a pension as the widow of George Washington, who served in the 58th United States Colored Infantry. Before the war, Hagar was owned by Colonel Ben Pryor and her husband George was

³² Shaffer and Regosin, “Voices of Emancipation”, 113.

³³ Pension files offer a new and better resource for understanding family structures and widows’ pensions historiographically because they are more contemporary to the timing of slavery than the WPA narratives were, and they demonstrate how formerly enslaved women were able to advocate for themselves and participate in political processes in their own right.

owned by a man she refers to as Mr. Bingman. Their owners sometimes worked together as Mr. Bingman would send his horses to Colonel Pryor to be trained. The couple lived about two or three miles apart. Hagar and George became acquainted with each other three to four years before their marriage, which occurred about seven to eight years before the war. She states that they were not regularly married, but they “took up” and lived together as man and wife³⁴. Neither of them had married anyone before meeting each other, and she makes sure to point out that they were regarded as husband and wife by people in their neighborhood. She and her husband would visit each other frequently in the fall and winter seasons, but George would have to go with the horses during racing season. At the time of her husband’s enlistment, they had three children: Virginia, Madison, and Elizabeth Washington, and she also gave birth to three more children: Sarah, Francis, and Richard Eugene, while he was in the service³⁵.

Hagar Washington’s deposition is but one example of the familial relationships that formerly enslaved people experienced as she reveals in her pension file. Hagar and George were considered to be a married couple even though they did not get married until long after they began their relationship. George would go visit Hagar when his owner would send his horses over to her owner for training, and they spent time together whenever they could. This experience of living together in a long-term relationship without ever having a formal wedding ceremony. George and Hagar had six children together, indicating that she had a lot of children to care for while her husband was serving in the war. Hagar cites herself as being a servant, which could have been one of the central reasons why she needed to apply for a pension; it is likely that her wages were not sufficient to support her family.

³⁴ Hunter, “Bound in Wedlock”, 32.

³⁵ Shaffer and Regosin, “Voices of Emancipation”, 121.

Other depositions, such as that of Harriet Booker, reveal three different kinds of intimate romantic relationships experienced by enslaved Black couples during slavery. Harriet Booker's deposition is located in the pension file of her third husband, Glenn Booker, dated December 18, 1908. Harriet Booker's circumstances are notable because she was engaged in three marriages: a slave marriage, an informal marriage after emancipation, and a formal, legal marriage. Harriet recounts that she was the widow of Glenn Booker, a soldier in the Civil War. She was raised as a slave for a man called Dr. Rand near Tuscumbia, Alabama. Long before the war, she married a man named Berry at the insistence of her owner. She could not remember Berry's "other name" or the name of his owner. The two of them lived together for two years, and had three children, all of whom died within the two years of their marriage.

After the War, Harriet Booker married Henry Jackson. She said that she married him on "the Preston Place", and they were married by a Black preacher named Sam Dixon. Harriet mentions that Henry's granddaughter Margaret Rollie and her husband Henry Rollie could testify as witnesses to the marriage as both Harriet and Margaret lived at "the Preston Place" at the same time. She had one child with Henry, a daughter, Dillie, who she mentions is the wife of Wilson Buford. After Henry Jackson died, Harriet married Glenn Booker and they lived together until his death in 1892. She never remarried. In Glenn Booker's pension file, Harriet's deposition is paired with a deposition from Special Examiner O.M. Goodwin³⁶ from the office the Pension Bureau in Washington, D.C.

Goodwin's deposition highlights his concerns from his investigation into Harriet Booker's life as he assesses her eligibility for a pension. He begins by addressing Harriet's daughter, Lizzie, a child from a fourth relationship she did not mention in her deposition.

³⁶ Shaffer and Regosin, "Voices of Emancipation", 138.

Goodwin explains that while Harriet did not mention the daughter, she made no effort to conceal the child when she told her story. He seems unbothered by the omission because the daughter does not belong to the soldier, Glenn Booker, therefore her existence does not pose a threat to Harriet's pension claim. Goodwin also states that he was unable to find any records or evidence of her marriage to Henry Jackson, but he says that knowledge of the plantation they lived on and their child, Delia, were sufficient proof of the marriage, and the subsequent end of the marriage. There was also no evidence secured in regards to her "slave marriage" to Berry. According to Goodwin, Harriet herself was unable to provide any details about the man which could be proved or disproved. Goodwin expresses interest in locating the family of Dr. Rand, her owner during her first marriage, but he claims it was not "worth the effort, so I shall recommend consideration by the chief of the Board for review". This was an important distinction on the part of the pension officer, as he is stating that he is going through with recommending that Harriet's pension claim get approved.

Goodwin's deposition is noteworthy because it reveals the perspective of pension board officials, and it also serves to demonstrate how invasive and personal these pension investigations were. It is important to acknowledge that the pension process had two sides, one being the claimants, and the other being the federal government³⁷. It was important for the Pension Bureau to know that each claim be thoroughly investigated to eradicate the possibility of either fraudulent claims, or fraudulent evidence of the part of pension commissioners³⁸. Not all pension commissioners who were responsible for investigating pension claims worked for the Pension Bureau directly. Many were independent agents who did not work for the federal

³⁷ It is also important to consider that the words of freedwomen were being filtered *through* the writing of pension officials, which could have likely affected how the details of their stories were recorded or come across.

³⁸ Regosin, "Freedom's Promise", 38.

government. The Pension Bureau was afraid of claimants being taken advantage of by charging high prices, filing false evidence, or filing false claims. Nonetheless, although the Pension Bureau required thorough investigations of claimants' lives for purposes of fraud on both sides of the pension process, the experience of having every aspect of their lives analyzed, and approved of by government officials truly demonstrates how the federal government sought to mold Black familial relationships into normative family structures after Emancipation. While Black women's depositions in pension files are tremendous sources that unveil what family structures and marriages looked like during slavery, they fail to explain how these women obtained their pensions and what experiencing this process was like for Black women.

Harriet and Joseph were married in June 1863. As with many enslaved couples, by getting the consent of their enslavers. The two were enslaved by different men in Camden County, located in northeast North Carolina. Harriet and Joseph were able to escape from North Carolina to Virginia, where they depended on other freed peoples for lodging and support. Regosin suggests that the timing of their escape indicated that the couple heard about the Emancipation Proclamation and escaped to test its validity³⁹. Joseph enlisted in the United States Colored Troops in 1863 after he heard that men could join the Union army with recruiters stationed at Fort Monroe. Harriet struggled greatly after her husband left for the war, as it is speculated that she was pregnant or had just given birth to a son, Andrew, who died in his infancy⁴⁰. Harriet's pension claim makes no mention of any assistance from the Union, as was promised for families of military veterans⁴¹. Joseph died a year after he enlisted from pneumonia on July 19, 1864.

³⁹ Regosin, "Freedom's Promise", 25.

⁴⁰ Shaffer and Regosin, "Voices of Emancipation", 27.

⁴¹ Regosin, "Freedom's Promise", 30.

Soon after, Harriet received a letter a few weeks later from Captain Constantine Nitzsche in the 37th US Colored Infantry. The letter informed Harriet that she was eligible to receive “a handsome amount of back pay due to your late husband which you have a right to collect but you must take the greatest care that you are not swindled out of it by some unprincipled person... Inquire if you are also entitled to a pension. I am not certain about it...”⁴². This letter is incredible, as it reveals so much about how the federal government recognized the marriages of formerly enslaved peoples and the economic rights that were granted to the widows of Black soldiers after emancipation. The Captain acknowledges that Harriet and Joseph were married and that this marriage was legitimate – evidenced in the fact that she was offered support in the form of financial compensation for her husband’s death in the War.

Another key aspect of the letter is that Nitzsche mentions that Harriet may be able to receive a pension. The Captain cautions Harriet to be careful when she collects the pension because there could be government officials who wish to bar her from receiving a widow’s pension. Government officials would claim that freed women lacked sufficient evidence of their relationships, considering that enslaved peoples were never seen as citizens of the United States, they did not have any birth records or marriage certificates to validate their identities or relationships. Material evidence would have constituted documents such as birth records, marriage certificates, contracts, or photographs. Formerly enslaved peoples were, in essence, barred from having any sort of public identity, and therefore they did not possess any of these documents. Freedwomen were able to prove their marriage’s legitimacy by getting their former enslavers or other enslaved people to testify before the Freemen’s Bureau. These testimonies

⁴² Regosin, “Freedom’s Promise”, 28.

were often sufficient to allow widows to obtain pensions, but the federal government still placed many barriers for freedwomen which made it difficult for them to obtain pensions.

Being widowed and childless, Harriet relied upon her own labor to support herself. Her employment opportunities were limited to domestic housework for very little pay, and her difficult financial situation was most likely one of her main reasons for seeking a pension. Harriet first applied for a widow's pension in 1868, but she did not follow through with a full application until 1878⁴³. Harriet found a lawyer to help her apply for her husband's bounty of \$300, which was the money promised to him by the government for enlisting in the army. Harriet claimed that the lawyer, whom she refers to as "Cooper", tried to take all of the money she claimed for the bounty. She did not know of anyone else who would help her complete and defend her pension application, which is part of the reason why she received her pension so long after first applying. Harriet relied on her own persistence and the generosity of other people to receive her pension. Because she lacked education and documentation, Harriet had no other choice but to turn to others to help her; there was no way for her to access her pension independently. However, even if she had an education, she would still not be able to access a pension without the cooperation of the federal government.

Because she lacked material evidence the information, Harriet needed witness testimony to prove the legitimacy of her marriage to Joseph. Around 1866, she met Henry Knight, a literate Black merchant. Henry recommended that Harriet consult John Desendorff, a white lawyer, to help her apply for her pension. Harriet's case began like those of other women who applied for pensions, regardless of their racial background. They went through a lawyer to apply and attempted to present documentation to prove their identity, but Harriet's case became more

⁴³ Regosin, "Freedom's Promise", 28.

complicated after she was unable to provide any material evidence because she was born into slavery. She had no documentation to prove who she was or who she had been married to. Therefore, she had to rely on the testimony of witnesses. One of the only forms of documentation she possessed was the letter from Joseph's army captain informing her of the chance to receive a pension.

The Bureau looked deeper into Harriet's case to try to investigate any potentially fraudulent claims by aggressively probing into her past. One factor that concerned the Bureau was the fact that she had the alias of "Harriet Bell" written on her very first application. The Bureau worried that she was trying to claim more than one pension, which would indicate she was either remarried or lying about her identity, both of which would prevent her from receiving a pension. Due to this error, the Bureau made sure to ask every witness to clarify this difference. Harriet sought to produce as many witnesses as possible; if there were more witnesses to corroborate her background and identity, she had a better chance of convincing the government officials. Eventually, Harriet's case made its way up to the Pension Office in Washington, D.C., where in 1884, the Bureau renewed her pension claim after Harriet began asking questions about her application, and her case was opened back up. After providing countless testimonies and witnesses to her case, the Pension Bureau called Robert Berry and Mary Burgess to confirm Harriet's identity as the widow of Joseph Berry. Robert was the son of Joseph's former owner, and Mary Burgess was a white woman who hired Harriet from her mistress, Martha Burgess, before the war. Both of the witnesses confirmed that she was indeed married to Joseph and both received permission from their owners. Harriet's pension claim was approved on April 22, 1884, allowing her to receive \$8 per month dating back to Joseph's death two decades prior⁴⁴.

⁴⁴ Regosin, "Freedom's Promise", 36.

Harriet's story is but one of many examples that show the complexity of the issues facing formerly enslaved people. We do not know how all of these cases were ultimately resolved, because much of the evidence is missing. What is clear, however, is that formerly enslaved people fought to have their families recognized and their rights respected. There are hundreds of other pension cases which detail the beautiful and complex stories of other African American widows who applied for pensions. Although the agents of the Freedmen's Bureau used strict and invasive measures to validate widows' pension claims, they unwittingly created valuable documents that encapsulate these women's stories in time, adding to a blossoming sector of historical scholarship that seeks to learn and understand more of what family life was like for enslaved peoples.

Chapter 3: Apprenticeship Cases

After emancipation, formerly enslaved women and men demanded that the freedom they gained granted them the ability to reclaim the families that were torn apart by war and slavery. While some Black families' main priority was to legitimize their marriages, another central priority of many Black families was to "claim and control their own progeny" without interference from the government or any other external threats⁴⁵. Despite Black families' relentless hope and determination to restore and retain their family units, their rights to familial authority and autonomy were still exceedingly difficult to secure. The battle for custody over freedchildren demonstrates the lengths to which parents would go to reconstruct their households after slavery. One of the most serious threats to Black parents' familial authority and autonomy was the apprenticeship system.

The Apprenticeship System

Many of the apprenticeship cases that were adjudicated in the post-war South involved free Black children being bound out, or apprenticed to, white planters. Though many southern states had laws on the books requiring parental consent in such cases, in many instances freedchildren were apprenticed to planters *without* the consent of their parents⁴⁶. The Freedmen's Bureau oversaw thousands of apprenticeship cases, but the Freedmen's Bureau was not always on the side of Black families in these cases. Sometimes the Bureau acted upon its own interests by appointing Black children to work for white planters, rather than living with their families. This chapter draws upon apprenticeship cases between Black mothers and fathers appealing to the Freedmen's Bureau to gain custody of their own children from the apprenticeship system, revealing how Black parents fought for their parental and familial rights after emancipation. The

⁴⁵ Farmer-Kaiser, "Freewomen and the Freedmen's Bureau", 97.

⁴⁶ McCurry, Stephanie, "Reconstructing Belonging: The Thirteenth Amendment at Work in the World", 28.

apprenticeship system, also called involuntary apprenticeship, codified in law, was used by the state to control the composition and character of Black families after emancipation⁴⁷.

Though it had existed in North America since the colonial era, the apprenticeship system was resurrected after emancipation by white planters and farmers when they experienced a tremendous loss in labor. White southerners used apprenticeship to become the legally appointed guardians of Black children. This allowed white planters to profit from the labor of formally enslaved children until they reached adulthood. These farmers would take young free children under their care, expecting them to perform labor in exchange. The law allowed these farmers and planters to discipline the apprentices with corporal punishment, or even re-capture apprentices who escaped and threaten them with prison if they resisted. Apprenticeship was a method to secure labor and a tool of racial control on the part of white southern planters and farmers. White southerners exploited apprenticeship to gain authority over the former slaves' families and households. The apprenticeship system that was established in the South after slavery and undermined freed people's ability to reestablish and maintain family units and familial rights they desired to obtain.

Apprenticeship statuses placed on freedchildren by the courts were hard for Black parents to dispute, because they were granted by local magistrates which allowed the Freedmen's Bureau to seize control of black children and gave them the ability to bind these children out to these planters and farmers in the post-Civil War South. The postwar laws and legal practices governing apprenticeship reflected southern whites' apprehensions about free labor. It reflected their worries about the scarcity of labor, and their continued adherence to a belief in the innate

⁴⁷ Zipf, Karin L. *Labor of Innocents: Forced Apprenticeship in North Carolina, 1715-1919*. (Baton Rouge: Louisiana State University Press, 2005), 2.

dependency and inferiority of African Americans⁴⁸. States enacted black codes, or laws, which catered to whites' need for labor and their desire to maintain a society based on racial hierarchy. For example, both the courts and the Freedmen's Bureau often authorized the indenture of African American boys, or young men, until the age of twenty-one, and girls, young women, until the age of eighteen or marriage. Most laws granted preference to former owners in the binding out of African American children, and these laws were redesigned after emancipation, presenting ample latitude and loopholes that took advantage of the insecure nature of former enslaved families.

The apprenticeship system constrained free parents' ability to achieve family autonomy by allowing white southerners to reassert control over black labor. This labor was unpaid and nonconsensual. However, the postwar southern laws differed from antebellum apprenticeship statuses because these new laws directed employers to teach black children a skill or trade of some kind in addition literacy skills, like reading and writing. This system was disguised as being beneficial to free Black children, when in reality, it severely obstructed Black parents' rights to create and maintain their households and family units. In the Freedmen's Bureau mission to help enslaved peoples enter into "free" society, they oversaw apprenticeship cases between Black families and these former enslavers.

Freedmen's Bureau Apprenticeship Cases

The case of Samuel Clark demonstrates the desire for Black parents to reunite with their children and gain back their parental rights in the wake of the Civil War and Emancipation.

Samuel Clark was a freedman and a veteran of the Union Army who appealed to the Freedmen's Bureau in April of 1866 to regain custody of a child, who he claimed to be his daughter named

⁴⁸ Farmer-Kaiser, Mary. *Freedwomen and the Freedmen's Bureau Race, Gender, and Public Policy in the Age of Emancipation*. 1st ed. (New York: Fordham University Press, 2010), 99-100.

Liza Jane Clark. The child was being held by her former owner, Mrs. Elizabeth Toby. The postmaster and Mrs. Toby alleged that the child was not really Clark's daughter, and asserted that she could not be his daughter because she was "mulatto", and both Clark and the girl's mother were Black⁴⁹. In his letter to the Bureau, Clark writes, "sir, My daughter, aged about ten years, is living with Mrs. Elizabeth, her former owner... Desirous of having my child with me. I wrote a... note to Mrs. Toby and sent it to her by a colored man from requesting Mrs Toby to send my child to me by the bearer, which she refused to do, now I respectfully request you to take the proper steps to have her released and forwarded to me, I will pay all necessary expense, for transportation..."⁵⁰. In his letter, Clark also states that he previously wrote a "polite note" to Toby asking her to release his daughter to him. Toby refused, and wrote to local officials in an attempt to undermine Clark's ability to exercise his parental rights.

On May 14, 1866, Toby wrote a letter to Levi F. Burnett, wherein she asserts that the child was born twelve years previous on her property. She refers to the child under her own surname, as Eliza Jane Toby. Mrs. Toby claims that she raised and fed the child "ever since as one of my family and it certainly would have been an act of Great inhumanity on My Part to have drifted her out upon the cold charity of the world without any one to take care of her"⁵¹. Here, Toby is using paternalistic language to try to persuade the government to believe that the child was better off living with and working for the Toby family. In slavery, many slave owners were paternalistic (or they professed to be) in the sense that they maintained that it was in the

⁴⁹ This word is an outdated racial classification used to refer to people of mixed Black African and white European ancestry.

⁵⁰ Samuel Clark (Private, 12" USCHA) to Chf of FB Hospital, 27 April 1866, T-23 1866, Letters Received, ser. 68, box 6, Louisville, KY, Asst. Comr., RG 105 (Bureau of Refugees, Freedmen, and Abandoned Lands), National Archives [FSSP A-4301].

⁵¹ Mrs. Elizabeth Toby to Lieut. Levi F. Burnett 14 May 66 T-23 1866, Letters Received. Series 1068 KY, Asst Cmmr, RG 105 (Records of the Bureau of Refugees, Freedmen, and Abandoned Lands), National Archives [FSSP A-4301].

enslaved peoples' best interest to remain enslaved under the "protection" of slave owners. Toby is using paternalistic language to convince the Bureau that the child was better off under her care, not because she developed a close or intimate relationship with the child, but because she thought that it might be uncharitable to release the girl to a stranger. She announces that the girl is not officially apprenticed to her, but she informs Burnett that she intends to apprentice the child soon.

The letter from Toby also alleges that Clark was only married for seven or eight months before the girl was born. The "mistress" also claims that Clark left the mother because the child appeared to be of mixed race, and that he returned to his family occasionally, but eventually abandoned his mother and the child altogether. The Freedmen's Bureau officials denied the child to Samuel Clark, claiming that since Mrs. Toby had been widowed for a long time, and she was financially capable of supporting the child, the girl was better off apprenticed to Mrs. Toby. The Clark case is a powerful example of how African American parents fought for their parental rights to reunite with their children and reestablish their family units, but it also demonstrates how former slave owners tried to suppress these rights and the Freedmen's Bureau undermined Black familial autonomy by reinforcing the apprenticeship statuses of freedchildren.

Formerly enslaved women in the immediate post-emancipation South found themselves vulnerable to the denial of parental rights as a result of reconstructed apprenticeship laws. Freedwomen suffered from dual burdens of both racial and gender prejudice, and possessed less authority over their own children than white women⁵². Freedwomen lived in what historian Karin Zipf has deemed, a "legal limbo", or an ambiguous state outside of the defined place of white women. Freedwomen fought this status by trying to claim unlimited rights of their own children.

⁵² Zipf, "Labor of Innocents", 85.

Apprenticeship cases reveal that black women challenged two dominant ideologies: one that held the definition of womanhood in terms of white female domesticity, and another that reserved the status of independence for white men⁵³. Freedwomen manipulated social customs and legal doctrines to reconstruct the meaning of the term “free woman”, defining Black women as both women and free, independent citizens.

This new term “free woman” offered Black women limited protections under the law. Apprenticeship law prevented free single women from obtaining full custody rights because the courts had the ultimate authority to decide who held custody over freedchildren. Conversely, bastardy laws enabled women to obtain support from their children’s father, allowing women to obtain financial support and avoid apprenticeship, as long as the child did not require support from the government. In the post-emancipation South, the Freedmen’s Bureau was responsible for presiding over cases regarding apprenticeship and child custody. Judges decided apprenticeship cases upon hearing the arguments of both former enslavers and parents, with each party defending his or her personal rights to the children in question. Some apprenticeship records suggest that judges rarely considered the child’s welfare when deciding their cases.

Antebellum law required courts to apprentice children of poor widows, single women, and free Blacks⁵⁴. However, after emancipation, legal authorities developed new standards that judged the character of Black mothers seeking custody of their children, and measured their conformity to white notions of motherhood. Black mothers who failed to meet the court’s standards of womanhood saw their children apprenticed against their wishes. Even by the 1890s, the question of the rights of children was seemingly irrelevant when courts decided apprenticeship statuses, but as the courts heard more and more child-custody cases, lawmakers

⁵³ Ibid.

⁵⁴ Zipf, “Labor of Innocents”, 107.

became more willing to reconsider mothers' rights to their children in terms of custody when deciding between the freedchildren's parents and their former enslavers. Freedwomen objected to apprenticeship whenever the indenture occurred without their consent, and Freedmen's Bureau Records are replete with letters from freedwomen demanding the return of children who had been bound out⁵⁵.

The law considered children born under slavery illegitimate, but at the same time, refused them rights under bastardy laws. For example, North Carolina's bastardy laws required that every unmarried woman who bore a child to name its father within three years of the child's birth, and in order to prevent the child from becoming a financial burden on the part of the government, the laws required fathers to support their "illegitimate" children. Fathers who failed to support their illegitimate children were threatened with the penalty of imprisonment⁵⁶. The state and federal governments had a direct interest in controlling the circumstances under which Black parents and children were allowed to reunite their family units because if the absence of a male patriarch required both the child and the mother to receive financial support on behalf of the state, then the courts were more likely to apprentice the children than to allow them to stay with their single mothers. Freedmen's Bureau apprenticeship records indicate that some Black women demanded their rights as autonomous single mothers, and single free women, who were most vulnerable to losing their children to court-ordered indentures⁵⁷. This is reflected in the case of Margarite Hood.

In January of 1867, Margarite Hood was a freedwoman living in Vicksburg, Mississippi with her two youngest daughters, Virginia and Dona. Her two older daughters, Lizzie and Mary,

⁵⁵ Zipf, "Labor of Innocents", 91.

⁵⁶ Zipf, "Labor of Innocents", 88.

⁵⁷ Zipf, "Labor of Innocents", 90.

lived in Louisiana close to the location where they were formerly enslaved. In her petition to the Freedmen's Bureau, Hood recounts the details of an incident where she allowed her two younger daughters to visit their sisters in Carroll Parrish, Louisiana during the Christmas holiday. The girls' former owner, and father, talked them into signing a document that bound them to him for life⁵⁸. In her petition, contests the validity of the agreement on the grounds that there were no laws in Louisiana in place which gave the father custody of children over the mother. Hood asserts that she took care of the children, and she therefore should retain custody over her own children.

The letter utilizes language which highlights Margarite Hood's ability to support and care for her children independently. The petition writes, "the two latter are minors and have been under the sole care and protections of their mother – Margarite – ever since their emancipation. She had provided for them in all of their wants and cared for them in sickness, and at no time has she been unfaithful in the administration of her duties towards them as a mother"⁵⁹. The letter emphasizes Hood's role as the girls' primary caregiver, arguing that because she takes care of the children by herself and has since the family's emancipation from their father, she is deserving of custody of her children. Margarite Hood's petition reveals how some "former slave owners attempted to have their former slaves apprenticed to them after emancipation, even when the mothers of these children objected"⁶⁰.

Hood was most likely trying to construct a strong case for herself, demonstrating that she was fully capable of caring for her children, because the Bureau tended to side with former

⁵⁸ Petition of Margarite Hood, 2 Jan. 1867, Unregistered Letters Received, ser. 2363, box 54A, Warren co, MS & Carroll par, 1A, VBG, RG 105 (Records of the Bureau of Refugees, Freedmen, and Abandoned Lands), National Archives [FSSP A-9275].

⁵⁹ Ibid.

⁶⁰ Neumann, Alexis Broderick, "American Incest: Kinship, Sex, and Commerce in Slavery and Reconstruction" (2018). AAI13419228. 250.

enslavers in these apprenticeship cases. The petition dictates, “Not only has she cared for their sickness, protected them from the indecency of the [illegible], and provided for them in health, but through her own industry and thrift, she has in the short space of two years and a half given them a very fair English education”⁶¹. The language of the petition constantly reinforces Hood’s role as a responsible and caring mother, as it is mentioned that she was able to care for her children and educate them on her own, before they were taken away from her without her consent. Unfortunately, Margarite Hood’s petition was returned to her, and there is no indication of whether or not Dora and Virginia were ever reunited with their mother. However, Hood’s apprenticeship case is a strong testament demonstrating how formerly enslaved women, especially single Black mothers, fought to have their parental rights recognized. Additionally, through these apprenticeship cases, we see that these women were also exercising their legal and political rights as mothers and freewomen.

Another case which highlights the experiences of freedwomen demanding the return of their children who had been bound out was that of Sarah Cherry. In this case, Cherry, a freedwoman, was trying to regain her twelve-year-old daughter who was claimed under apprenticeship by their former enslaver in Hamilton County, Florida. In about 1863, Cherry and her three children were purchased by Henry Stephens from a “slave trader” in South Carolina⁶². Stephens did not allow marriages off his plantation, so Sarah, as a single woman, lived as a “concubine”⁶³ to Warnick Stephens, who had another woman as a wife. After emancipation, Sarah refused to continue living with Stephens, and planned to marry her “present husband”,

⁶¹ Petition of Margarite Hood, 2 Jan. 1867.

⁶² Affidavit of Sarah Cherry, 13 Dec. 1867, Letters Sent, ser. 988, box 26, Hamilton co, FL, VBG, RG 105 (Records of the Bureau of Refugees, Freedmen, and Abandoned Lands), National Archives [FSSP A-5596].

⁶³ This is an outdated term used to describe a sexual relationship between a man and a woman in which the couple cannot or chooses not to get married. In this case, Sarah Cherry was most likely in a sexually exploitative relationship with Warnick Stephens.

Prince Cherry. Warnick Stephens had Cherry's daughter bound to her former enslaver, Henry Stephens, and Cherry had successfully "taken the child away", or taken her back from apprenticeship, but she fears that the former enslaver will reclaim the child.

Included in Cherry's Freedmen's Bureau case file is a letter to the Freedmen's Bureau which states that, "makes a statement in case of Henry M. Stephens⁶⁴ who had a Colored child bound to him by its mother and afterwards the mother married a freedman of bad character named Prince Schiver who stole the child and is now on the place of David Jones... requests that the child be returned to Mr. Stephens"⁶⁵. This letter reveals some of the methods by which former enslavers tried to keep children bound to them. In this letter, Stephens is requesting that the child be restored to him. The letter also asserts that the male figure, Sarah Cherry's husband, Prince, was a freedman of "bad character". Stephens may have intended to defame the character of Prince Cherry, Sarah's husband, possibly trying to frame him in a way that would make him seem unfit to be the child's father figure. The letter also makes no mention of Sarah Cherry by name, only referring to her as "the mother". The letter makes no mention of Cherry's ability to care for and raise her children, which demonstrates that Stephens may have placed more importance on the father figure's parental rights, rather than the rights of the mother.

Apprenticeship cases from the Freedmen's Bureau reveal how Black mothers and fathers fought for their parental and familial rights by trying to regain their children back from illegal apprenticeship to their former enslavers. We see this in the case of Margarite Hood, whom appealed to the Bureau to reclaim her two youngest daughters who were deceived by their former enslaver and father into signing a document which illegally bound them to him. Despite

⁶⁴ The spelling of the surname "Stephens" is written as such in the letter to the Freedmen's Bureau, but in the Freedmen and Southern Society Project's summary of the case, the surname is spelled "Stevens". I chose to use the "Stephens" spelling from the archival documents.

⁶⁵ Affidavit of Sarah Cherry, 13 Dec. 1867.

the Freedmen's Bureau goal of helping freedmen and women reestablish their family units, the Bureau did not always side with Black parents in apprenticeship and custody cases. In the case of Samuel Clark, the Bureau decided that the girl that Clark claimed to be his daughter was better off apprenticed to Mrs. Elizabeth Toby. Black mothers and fathers both struggled to reconstruct their households in the aftermath of slavery, and these apprenticeship cases demonstrate the great lengths freedpeople would go to in order to exercise and retain their parental and familial rights.

Conclusion

Documentary evidence issued by the Freedmen's Bureau, such as marriage records, pension cases, and apprenticeship cases, together reveal a great deal about what enslaved peoples experienced in their family lives. In addition, these records demonstrate how the government sought to tightly control the ways in which Black families set up their family structures post-Emancipation. In many ways, this level of tight control impinged on the newfound freedom promised to formerly enslaved people after the end of the Civil War. In Chapter 1, marriage certificates issued by the Freedmen's Bureau revealed the complex and circumstances Black families were confronted with when trying to reconstruct their family units. Some couples, such as Alexander Abernathy and Harriet Roberts, were both involved in relationships before they married each other and were separated from them by force and death. They also had children together, and Harriet had children from another relationship. Additionally, Harriet's family history reveals a pattern of interracial relationships in slavery, with her mother being one-eighth Black, and her father being one-fourth Black. The "Marriage Rules" written by the Freedmen's Bureau after Emancipation demonstrate how the Freedmen's Bureau attempted to control the ways in which Black families were allowed to establish new family structures under the law.

Chapter 2 looked at Black widows' pension files from the Freedmen's Bureau. These documents were largely overlooked and not seen as valuable resources by most historians. For years, the depositions provided by Black widows laid hidden within the sparse pages of pension files in the National Archives. Despite this fact, these pension records serve as powerful examples of Black women advocating for themselves and their own livelihoods after suffering years of subjugation under slavery. Pensions were necessary for Black widows because these women found themselves without the resources necessary to provide a life for themselves.

Pensions served as a means for Black women to be able to access financial support after the loss of their husbands, considering jobs for Black women in the Jim Crow South were largely limited to hard labor working in white households.

The original purpose of the documents was for the Pension Bureau to allow the women seeking pensions to provide an explanation as to how and why they merited a Civil War pension. The depositions were incredibly detailed, all for the purpose of meticulously documenting the lives of freed Black women in order to determine if they qualified for a pension. After rediscovering these documents, a new purpose emerges. These depositions now also stand as a living example of Black women telling their stories. The stories of their upbringing, their experiences during slavery, their marriages, and their families. The deposition of Harriet Booker shows that there was no standard marriage experience for Black women during or after slavery, with Booker being married three times: once in an informal slave marriage, an informal marriage right after emancipation, and finally, an official and legally sanctioned marriage to Glenn Booker. The pension files of former enslaved peoples demonstrate the complexity of family practices after emancipation, especially in the instance of marriage.

Finally, apprenticeship cases from the Freedmen's Bureau documented the powerful resistance that Black mothers and fathers fomented against former enslavers in order to gain custody over their own children. During Reconstruction, the apprenticeship system was resurrected from a previous system in the colonial era, with the purpose of white southern planters and farmers reinstating its labor force with Black children under the guise of offering to teach them a skill in exchange for this labor. The transition from slavery to freedom promised formerly enslaved families the very legal protections that slavery had once denied them, but the

federal government's administration of these legal protections sought to constrain Black men and women would exercise their hard-won freedom.

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