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“Have You Read the *US Constitution*?”

Have you read the *US Constitution*: that small document that embodies the legal framework through which this country operates (<https://www.archives.gov/founding-docs/constitution>)? It is parsimonious, so that you do not have to spend an inordinate amount of time reading it to learn about your legal rights.

Recently, we read the *Constitution* with its 27 Amendments using an economist’s lens and with concern about Black Americans’ position today on the wealth front. To contextualize this discussion, we are not going to cite statistics on the Black-White wealth gap, or highlight facts about how Black ownership of land (a key source of wealth) has dwindled over the past century. (You should know these facts. If you do not, then perform the research to become aware.) What we will do is tell you what the *Constitution* says about your rights to property, and then we will juxtapose that conversation against historical facts about the “forty acres and a mule” that most Black freedmen never received.

Let us begin with the content of the *Constitution* and its Amendments:

- Amendment I to the *Constitution* ensures that Americans have a right to a “redress of grievances.”
- Article III (Section 2) says that the Judiciary has oversight to address “controversies to which the US shall be a party.”
- Article IV (Section 3) says that the Congress has the authority to “make rules concerning US Territory or property.”
- Amendments V and XIV ensure that Americans cannot be “deprived of life, liberty, and property without due process of law.”

We will not use space here to tell the long story of “forty acres and a mule.” You can find a useful historical summary on this topic that cites innumerable sources at Wikipedia—not the most scholarly, but certainly a convenient resource; https://en.wikipedia.org/wiki/Forty_acres_and_a_mule. To make a long story short, General W.T. Sherman issued his famous Special Field Order 15 in January of 1865 during the Civil War, which called for extensive lands to be parceled out to Black freedmen after due deliberations with the latter, who said that they wanted land to start their free life in America. In addition, the US Congress established the Bureau of Refugees, Freedmen, and Abandoned Lands in March of 1865 that also set forth measures to award land to former slaves. The story

goes that President Andrew Johnson, who assumed the office after President Lincoln's assassination, succumbed to pressure to normalize relations with the southern states from US companies from northern states and former southern slave owners. Johnson issued an Amnesty Proclamation on May 29, 1865, which led to the rescission of Special Field Order 15. Circular 15 of September 12, 1865 from the Freedmen's Bureau within the US War Department made Special Order 15 essentially null and void.

From the point of issuance to the point of rescission (a total of nine months), the word about "forty acres and a mule" spread far and wide among Black freedmen, and it had come to be expected as a right. Obviously, there was GREAT disappointment when it became clear that land would not be extended to former slaves so that they could have reasonable economic prospects for survival in the country.

Over 150 years have passed since the foregoing scenario. Some Black Americans were able to obtain land by a variety of means. However, most Black Americans did not have access, or the possibility of access, to land in the same way that access was granted to White Americans by the US Government through a variety of homestead programs that were operationalized during the middle part of the 19th Century.

What we know, and have already mentioned, is that land was, and is, a primary source of wealth in America. Without land ownership, Black Americans were placed behind the eight ball of little-to-no means to produce wealth, which laid the foundation for the Black-White wealth gap that is apparent today.

We also know that it is not as simplistic as all of that. The US Government's failure to enforce Black freedmen's rights in the South by not squelching Black Codes and Jim Crow laws created conditions under which Blacks lost the right to own land that they had acquired legally.

Therefore, we can conclude that: (1) the US Government was party to a failure to ensure that Black freedmen had a reasonable means to support themselves following the Civil War (the antithesis of the support that the US Government granted to the White landless); and (2) the US Government was party to a failure to support and defend the unalienable rights of Black freedmen.

Now let us reconsider the latter in relation to the *Constitution*. Let us not concern ourselves with what was morally right. Let us consider what was, and is, legally right.

We should ask and find answers to the following questions:

- Was not General Sherman an instrument of the US Government?
- Was not his issuance of Field Order 15 legal and binding?
- After its issuance, did sufficient time elapse before its rescission for the order to become consistent with expectations of rights in common law terms?
- Was the rescission of Special Field Order 15 through Circular 15 consistent with due process—in the same way that the US Government negotiated with other parties with which it encountered land disputes? (The Native Americans come to mind in this regard.)

In other words, did Black freedmen have a voice in the controversy over “forty acres and a mule?” Was the issue discussed in Congress? Were any Black congressional representatives party to the discussion? Was due process followed in rescinding the order?

- If it is the case that the order was legal, that it was wrongly rescinded (without due process), then what form of compensation is due to the descendants of Black freedmen, who were denied access to wealth to extend to their posterity?

The foregoing yields the following conclusion about rights under the *Constitution*:

- Black Americans’ rights to life, liberty, and the pursuit of happiness were likely egregiously violated because Field Order 15 was not rescinded through an appropriate due process.
- Black Americans now have a right to a redress of our grievances for our forefathers because of the wrongs that were committed.
- The US court system constitutes the instrument of the US Government that should hear and decide on this matter.
- Under a favorable decision, the US Government has the right to address this land dispute issue—most logically by ensuring that the descendants of Black freedmen gain access to land. However, the land that is to be awarded, should not be awarded in an amount that is equivalent to what was due to the Black freedmen. Rather, the courts must conclude that, like White Americans, free Black Americans would have multiplied their wealth. Therefore, the courts should award land to Black Americans today in support of justice to the Black freedmen, but with an added return.

We are economists, not legal scholars or historians. However, it is perplexing why Black support groups, such as the Congressional Black Caucus, the NAACP, the Urban League, the National Action Network, Black Lives Matter, the Nation of Islam, etc., have failed to make this case in US courts.

Malcolm X (El-Hajj Malik El-Shabazz) stated that these types of cases should be taken to the United Nations (UN). Malcolm X may not have recognized that, at that time, the US owned (provided a significant portion of the budget for) the UN, and that, until recently, most countries in the UN feared voting in the US disfavor. Today, the outcome might be different. This is not to say that the US has a history of adhering the UN rulings.

Former Rep. John Conyers, Jr. of Michigan introduced congressional legislation for over 30 years to “study reparations.” There is no need for a study. There is a need for the courts to hear the case and make a decision – up or down. There are not many choices. A refusal to hear the case will tell Blacks in America where we stand as US citizens. And once heard, a decision by the courts to deny Blacks in America access to land, will enable Blacks to see once and for all whether the lives of our forefathers count for naught in the eyes of White America.

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