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## **PUNISHMENT AFTER SLAVERY: SOUTHERN STATE PENAL SYSTEMS, 1865-1890\***

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This paper identifies and analyzes the political and economic functions of the state penal systems in the southern United States after the Civil War. The system of prison administration, discipline, and labor which emerged after 1865—known as the convict lease system—was a functional replacement for slavery. Like the Black Codes, vagrancy laws, and sharecropping arrangements, the convict lease system was a mechanism of race control used to prevent ex-slaves from obtaining the status and rights enjoyed by wage workers. The organization and philosophy of crime control both before and after the Civil War reflected the fact that both slaves and ex-slaves were problem populations. As such, they were a threat to the existing system of class rule but also a useful resource—economically as a pool of cheap labor for southern industrialization, and politically or symbolically as a means to consolidate white supremacy.

Changes in criminal law and punishment have been traced to wider political and economic developments (Conley, 1982; Rusche and Kirchheimer, 1968; Scull, 1977; Sellin, 1976). This can easily be demonstrated with reference to the southern United States which evolved a distinct penological outlook based on brutal discipline and hard labor. This paper analyzes the complex political and economic functions of the state penal systems which emerged in the southern states after the Civil War of 1861-1865.

Tannenbaum (1924:82) noted that the southern prison system in the early 20th century in fact consisted of three separate systems: state prison buildings which resembled those in the North; the county chain gang; and the state prison farm. During the 19th century, the state prison system consisted of a number of prison buildings, several of which had been built prior to the Civil War to house white offenders, and a wide variety of huts or lean-to shelters within stockades built on plantations, near coal mines and pine forests where turpentine was extracted, as well as rolling cages that could be pushed along the railroad tracks laid down by black prisoners. In addition to these settlements or camps operated by private companies which leased state convicts, punishment in the post-Civil War South also included a county system of hiring out vagrants and petty offenders to local farmers.

The focus of this paper, however, is restricted to an examination of the state penal systems. The analysis is based mainly on secondary sources. In reading the major studies of the social and economic history of blacks during the late 19th century, I was struck by how few references there were to the prison system. In my search through the sociological and historical journals, I also found very little written about punishment in the South. This article draws extensively on a small number of published studies of the prison systems in certain states, and on several master's theses and Ph.D. dissertations on southern penology.

To understand the political and economic forces which shaped the post-Civil War approach to crime control and punishment, it is necessary to keep in mind that plantation justice tended to siphon blacks out of the state punishment system in the pre-Civil War period. Slaves were punished according to slave codes, so that the criminal justice system which emerged prior to the Civil War was for whites only. Although the abolition of slavery led to a number of important changes in state criminal justice systems, there was also considerable continuity in how white and black offenders were treated and controlled. Certainly the locus of criminal prosecutions

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and punishment changed when slavery ended. But the infliction of “separate but unequal” measures of pain on white and black felons remained, for slavery continued to haunt just about every aspect of social and economic organization in the post-Civil War South.

Many historians point to the fiscal insolvency of the southern state governments during Reconstruction to explain why the convict lease system was popular (Green, 1969). Although states on both sides of the Mason–Dixon line had experimented with leasing out prison buildings and the labor of prisoners to private contractors, most adopted some form of the contract system whereby prisoners worked for outside employers and labored under the supervision of outside foremen but remained under the disciplinary control of a warden and guards.<sup>1</sup> The practice of leasing state prisoners to private companies and relinquishing responsibility for supervising and disciplining them became widely entrenched in the South after the Civil War. Many of the prisons built before the war were destroyed during it and because there was no money to erect new penitentiary buildings, leasing was adopted.<sup>2</sup> This arrangement had considerable fiscal appeal, since state governments were paid hundreds of thousands of dollars by the companies leasing convicts.

However, convict leasing appealed to governments not simply because of its fiscal utility. Hiring out convicts to planters, mining companies, and railroad contractors on a long-term basis was not designed solely to rid the state of a prison problem. In a real sense, the convict lease system was a functional replacement for slavery; it provided an economic source of cheap labor and a political means to re-establish white supremacy in the South.

The system of plantation justice prior to the Civil War and the state penal systems after the war were the principal mechanisms whereby black crime was punished in the southern United States during the 19th century. One way of accounting for the functional similarity between the two systems is to realize that both slaves and ex-slaves were “problem populations,” and one of the paradoxes which characterize problem populations is that they represent both a potential threat to the existing system of government and class rule, and a potential resource. Plantation slavery was an important cause of economic growth (North, 1961:189). In addition to being valuable economic resources, however, slaves were a problem population, or rather a troublesome property.

Similarly, slaves freed legally by the 13th Amendment in 1865 were both a threat to social relations and a useful resource, a dangerous population which stood in need of control but also a welcome source of manpower. In this respect, the ex-slaves can be analyzed as a surplus population which, according to Marxist theory, “is both useful and menacing to the accumulation of capital” (Spitzer, 1975:643). The fact that the emancipated slaves represented both a dangerous class and, in the words Marx used to describe the reserve army of labor, “a mass of human material always ready for exploitation” (Marx, 1967:631), helps to explain the rise of the convict lease system.

1. In 1798 the wardens of the houses of correction in Massachusetts were permitted to hire out prisoners to anyone who would furnish employment (Zimmerman, 1947:23). The state of Kentucky leased both its prison building and prisoners in 1825 (Sneed, 1860:182). Officials in Alabama and Louisiana resorted to leasing when prison industries failed in the 1840s. In Louisiana, however, the government stipulated that convicts had to be employed within the walls of the Baton Rouge penitentiary (Carleton, 1971:9).

2. Southern prisons were a prime target for the invading Union armies. In 1863 General Sherman ordered his troops to destroy the Mississippi State Prison—a munitions factory. Sherman’s men also burned Georgia’s penitentiary. When Nashville was besieged by Union troops, the guards at the penitentiary fled, and 240 inmates destroyed the building and fled to the countryside. A similar situation arose in Virginia where prison inmates ransacked the buildings after the guards left. Union armies burned Alabama’s prison and partially destroyed the Arkansas prison. The Baton Rouge penitentiary was so dilapidated that convicts were removed to the New Orleans workhouse and military stockades. With the exception of the Texas penitentiary, every southern prison was extensively damaged during the Civil War, either by the Union Army or as a result of misuse by confederate authorities (Carter, 1964:29; Zimmerman, 1947:50).

## PUNISHMENT UNDER SLAVERY

The existence of slavery made two separate systems of punishment necessary. Through plantation justice, masters sought to impose an absolute system of authority on their bondsmen. Like monarchical law, the slave codes prescribed barbaric and public punishments. The heads of 16 rebels in Louisiana were “stuck upon poles along the Mississippi River as a grim warning to other slaves” (Stamp, 1956:135). The northern prison reformer, Matthew Carey, was sickened to learn that South Carolina had enacted a law “for burning alive slaves who murder their masters” (Carey, 1831:12).

By turning punishment into a public spectacle, rulers are able to legitimate an absolute control over their subjects (Foucault, 1977). At public executions in monarchical Europe, the bodies of the condemned were visibly destroyed in front of the social body. In a similar fashion, plantation slaves were made to witness the awesome force of their white masters at public hangings and whippings. The most widely used plantation punishment was whipping: “no other penalty carried the same meaning or so embodied the social relations of the peculiar institution. The lash in the white hand on the black back was a symbol of bondage recognized by both races” (Wade, 1964:186).

In the cities where slavery posed a more complex problem of control, runaway slaves and hirelings caught without travel passes were detained in local jails and houses of correction. For a fee, masters could send disobedient bondsmen to municipal jails for a whipping. But penal custody was not suitable, since it deprived slave owners of labor. The very idea of imprisonment as a punishment for crimes committed by slaves was a contradiction. The African slave was already a prisoner. Whereas the white felon was punished for violating norms of freedom, slaves were punished for rejecting the rules of bondage. Any idea of rehabilitative confinement for slaves threatened the philosophical basis of the peculiar institution.<sup>3</sup>

The existence of slavery also “made it ideologically difficult to acknowledge the existence of a white criminal class and to legislate for its control” (Hindus, 1980:xix). The South was a closed society in which, ideally, all whites belonged to the master class and all blacks were slaves. Perceptions of class in South Carolina, as Hindus has shown, permitted only black and white, and the pattern of class relationships was threatened by groups which exhibited status inconsistency: poor whites, white criminals, and free blacks. The equation between race and class was legitimated by the existence of separate systems of law and punishment but also different conceptions of the kinds of illegality of which whites and blacks were capable.

White criminality was linked to an inability to control passion. This conception, as Hindus (1980:243) has pointed out, led to a philosophy of punishment that stressed vengeance; since crimes of passion were deemed unavoidable, reformation of the criminal was also considered difficult. If only a small number of whites committed crimes of passion, and if slaves were punished on the plantation, then it would seem that the region had no need for the penitentiary. Nevertheless, with the exception of Florida and the Carolinas, every southern state had erected an Auburn-type prison by 1850.<sup>4</sup> However, these institutions were not as large as their counterparts in the North, and the utopian impulse which gave rise to penitentiary construction in Jacksonian

3. Barnes (1972), Lewis (1965), Rothman (1971), and others have illuminated parts of the process whereby northern prison reform drew inspiration from and served to legitimate an emerging moral and political community founded on the philosophical principles of liberal democracy. Southern political culture was aristocratic and ascriptive, and so there was not the same need to rationalize the legal and penal systems. Also, southern leaders could not ignore the fact that northern prison reformers were abolitionists and critics of the methods used to discipline slaves (Carleton, 1971:5).

4. The Baton Rouge penitentiary had 240 cells, the Texas penitentiary, 225 cells, and prisons in Alabama and Mississippi, 208 and 150 cells respectively (McKelvey, 1977:47).

New York and Pennsylvania was missing. Plantation owners were prone to see northern penology as an “impractical scheme for the amelioration of the world” (Stampp, 1956:420).

Southern states were more likely than northern ones to rely on extra-legal and informal systems of authority: vigilantism instead of professional police forces, dueling as an alternative for litigation, the lash and the noose as much cheaper expedients than regular prison discipline (Hindus, 1980:33). The penchant for business rather than institutional solutions for crime also persisted after the Civil War. The southern reliance on custom and informal authority to settle disputes arising between whites and to control its slave population helps to explain why after the Civil War there was no opposition to the brutal convict lease, itself a highly informal system of repression. State governments in the 1870s and 1880s abdicated responsibility for overseeing discipline at the prison camps. State officials had no legal power to supervise the work done at the camps, or to regulate health conditions. It was not just prison labor that was leased, but full responsibility for custody was signed over to private companies, so that the nature of confinement hinged totally on whatever informal structures the lessees decided to implement. Working and living conditions were left to the discretion of the private lessees.

Crime control in the antebellum South was subordinated to race control. With the abolition of slavery, alternative forms of race control had to be found, and race control naturally became a major aim in crime control. Indeed, the system of crime control—the convict lease—resembled slavery in many respects, in the political and economic functions it performed, of course, but also in its organization, terminology, and relationship to the wider society. Neither slavery nor the convict lease were subjected to close public scrutiny.

#### EX-SLAVES: A PROBLEM POPULATION

The 13th and 14th Amendments to the U.S. Constitution, ratified by Congress in 1865 and 1868 created a new class of offenders.<sup>5</sup> Blacks, who comprised more than 50 percent of the population of Louisiana, Mississippi, and South Carolina, were now to be punished as free men (Carleton, 1971:44). The size of the population punishable by some form of custody also increased in the late 1860s when state governments ratified constitutions which reduced the scope of offenses punishable by death (Stampp, 1965:172). Although the Republicans who had taken over the instruments of government in the Confederate states by 1867 promised fair trials and equal treatment for black offenders, political and economic realities were such that, although the rights of black defendants and prisoners were acknowledged *de jure*, these rights could not be recognized *de facto*, without posing a challenge to the economic superiority of the white race.

Following President Lincoln’s Emancipation Proclamation, thousands of slaves fled from the plantations, wandered through the countryside, and flocked to the cities where they lived in crowded tenements. Refugee slaves rejoiced in freedom and “for a time many of them took special pleasure in making use of one of its chief prerogatives: the right to move from place to place without the consent of any white man” (Stampp, 1965:121). Union armies had to deal with the problems of vagrancy and destitution amongst the freedmen. Able-bodied men and boys were conscripted, arrested, and put to work loading and unloading military supplies, and placed on abandoned plantations. During the period of presidential reconstruction which lasted until

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5. On January 1, 1863, President Lincoln as commander-in-chief of the United States armies issued the Emancipation Proclamation which declared free those slaves still in rebel hands, but not slaves in the Border states. The importance of this declaration was mainly symbolic, since for those blacks still in the Confederacy, freedom depended on the progress of the Union armies. Legally and practically speaking, it was the 13th Amendment, approved by Congress in February and ratified in December 1865, which freed the slaves. But the 14th Amendment, ratified by Congress in July 1868, was the real piece of enabling legislation that accorded blacks the rights of citizenship. They were no longer property, but guaranteed all the legal rights of citizens of the United States, including equal protection of the laws (Stampp, 1965:135).

1867, when the radical Republicans took control of the southern state governments, the Johnsonian legislatures introduced the Black Codes. More than just vagrancy laws, their purpose was “to keep the Negro exactly what he was: a propertyless rural laborer under strict controls, without political rights, and with inferior legal rights” (Stamp, 1965:79).

In effect, the Black Codes brought back a form of the hiring-out system that had existed under slavery. Blacks without visible means of support were obliged by law to hire themselves out during the first 10 days of January. Those without labor contracts or who broke their contracts were prosecuted as vagrants and sentenced to hard labor on local plantations. Blacks in South Carolina had to obtain special licenses for non-agricultural employment. Mississippi prevented freedmen from renting land. Local communities restricted the movement of the ex-slave population by requiring them to obtain travel passes (Novak, 1978:1; Stamp, 1965:80).

Although the radical Republicans in Congress proclaimed that blacks would be granted basic political freedoms, such freedoms were meaningless given their economic destitution. Both political and economic stability in Reconstruction years depended on the continued participation of the black population in agricultural labor.<sup>6</sup> Economic assistance was not provided, and the Freedman’s Bureau, although empowered to regulate labor contracts, ended up enforcing regulations which tied the freedmen to the land. The number of blacks working as artisans, mechanics, and shopkeepers declined rapidly after 1865. Ex-slaves formed a large pool of landless labor.

Nothing less than sweeping land reform would have ended the plantation system. Southern planters and northern adventurers leased many of the plantations which had been confiscated by the federal government. Freedmen were forced to work on them for extremely low wages or payment in the form of food, shelter, and clothing. Sharecropping arrangements, whereby the ex-slave, instead of working for a wage, rented plots of land and paid to the landowner a proportion of the crop, sprang up throughout the region. The advantage of sharecropping over wage payments was that it gave planters superior control over their labor force. Croppers were compelled to purchase food, clothing, and tools from the plantation owners at high prices, and they frequently discovered that their crops failed to pay for their purchases. A system of debt peonage arose whereby “insolvent croppers unable to repay debts from one year to another were required by law to work indefinitely for the same unscrupulous planter” (Meier and Rudwick, 1966:141).

The Black Codes, sharecropping, and both the county and state systems of hiring out vagrants and felons to agricultural or industrial employers aimed to achieve the same objective: to prevent the ex-slaves from obtaining the status and the rights enjoyed by wage workers. Plantation owners stressed that ex-bondsmen needed compulsory labor. Former masters bewailed the fact that old hands were passing away, and fewer laborers were, in the words of an Arkansas planter “trained from childhood to hard labor” (cited in Litwack, 1979:344). Even the Freedman’s Bureau emphasized that the transient black population needed discipline and control.

### A THREAT AND A RESOURCE

Given the complete destitution of the freedman, it is not surprising that the ex-slaves were viewed as a dangerous class. Their powerlessness explains why state governments had no second thoughts about implementing a brutal system of forced labor outside the walls of prisons or jails. However, one of the paradoxes which characterize “problem populations” is that they can represent both a potential threat to the existing system of government and class rule, but also a potential resource. To account for the profitability and brutality of the state systems after

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6. The Civil War is viewed as a turning point in U.S. economic history, signalling the end of plantation agriculture and the rise of industrial capitalist culture. However, this shift was extremely gradual. Certainly slaves were employed in industry and construction, while after the war blacks were still tied to the land (Starobin, 1970).

1865, it is important to keep in mind that the ex-slaves were a threat to social and economic organization, but also an economic resource—a pool of cheap labor.

The system of leasing on the county level was a dragnet for sharecroppers who left their plots. Most states prescribed criminal punishments for failure to fulfill labor contracts. Vagrants, debtors, and petty thieves tried in county courts were released to planters who paid their fines. Since the planter typically charged for feeding and sheltering offenders, it took the average county misdemeanant many years to work off his or her debt. In one county in Georgia, officials sentenced blacks to long stretches of hard labor for what amounted to improper demeanour—spitting, swearing and trespassing (Novak, 1978:35). County courts were virtual employment bureaus. Company agents travelled from county court to county court to pick up men and women. Often offenders who had worked off their debt were arrested while returning home, prosecuted as vagrants, and returned for another stint of unpaid toil (Carter, 1964:95).

Both male and female state convicts were an important resource. Under slavery black women did field labor as well as domestic work. They also worked as sharecroppers and tenant farmers alongside men in the post-slavery period. Moreover, as Angela Davis (1981:89) has stated, men and women “were frequently housed together in the same stockade and were yoked together during the workday.” More men were leased out than women: 34 black females—less than three percent of the black prison population—were detained by the state of Georgia in 1878 (Green, 1969:282). Although crime control both during and after slavery fell more heavily on black males, women felons could be found in state lease camps, and most black female misdemeanants were farmed out as field hands and domestics. In spite of the larger number of male prisoners at railroad building sites and on plantations, the fact that some women were sent there as well reveals that the system of punishment aimed to achieve more than simply crime control.

Demand for cheap labor was urgent on the railroads. In the first years of Reconstruction, prisoners in Georgia, Louisiana, and North Carolina were leased to a variety of railroad companies (Zimmerman, 1947:62). Although little data on crime rates and patterns of sentencing are available in secondary source materials, it is still possible to conclude that the mobilization of cheap labor was a key element in crime control on the state level. The convict lease was designed both to punish and deter crime and to mobilize cheap labor.

In the first instance, the decision to lease state convicts to private employers occurred because the radical state governments lacked the financial resources to build new facilities. But the acceptance of a policy which failed to guarantee adequate treatment or discipline for the felon must be seen in relation to the failure of the radical Reconstruction governments to prevent the white landholders and businessmen from implementing new forms of economic control over the black laboring population. Ultimately, the economic mechanisms used to extract a surplus from the landless blacks were buttressed by the criminal justice system. Before resorting to vigilante action, ex-planters and local officials used the penal system to control unruly blacks who withheld their labor.

Southern landowners, who believed the gap between themselves and the laboring class to be permanent and unbridgeable (Wagstaff, 1970:4), also feared an uprising from below. No wonder they were unwilling to relax traditional controls over the black labor force. The very terminology of slavery was retained under the convict lease system. Employers used the slaveholders' classification of laborers, according to their ability to work, into first, second, third, fourth, and fifth class hands (Carter, 1964:63). Able-bodied males were referred to as 'full hands'; women and children prisoners were known as 'half-hands.' Company employers were reluctant to rent 'dead hands'—prisoners too old or too sick to work (McKelvey, 1977:213).

Camp discipline was repressive. It mirrored plantation discipline insofar as prisoners were whipped for poor work. The lease system perpetuated the tradition of slavery in another respect: it did not discriminate between male and female labor. Men and women were often housed

together in the same stockade. A resolution passed by the Texas State Convention of Negroes in 1883 condemned “the practice of yoking or chaining male and female convicts together” (cited in Davis, 1981:89). Women were given the same punishments as men. Several witnesses—guards and overseers—testified before a legislative committee in Georgia in 1870 that the women convicts who worked on the railroads were “whipped on their bare rumps in the presence of men” (Zimmerman, 1947:100).

While leasing was less brutal in the early years of Reconstruction than after the Democrats gained power, it was impossible to prevent abuses, since convicts were scattered throughout the region, and state officials usually yielded all disciplinary rights and responsibilities to the company overseers. Although some states had penitentiary boards, their members either sided with company officials, or lacked the power to do anything about inhuman conditions. As a result, black convicts throughout the South were starved, chained to each other at night in overcrowded, dirty stockades, overworked and forced to continue working while sick, and whipped, occasionally to death.

Legislatures pressured by landowners and businessmen to do something about the unreliability of their labor supply agreed to expand leasing, as long as the prisoners rented out were ex-slaves. In 1866 there were 300 black and only 25 white convicts in Georgia, and there were 212 black and 85 white felons detained at the dilapidated penitentiary in Baton Rouge, Louisiana in 1868. Mississippi locked up 259 blacks and 105 whites in 1869, and in 1870 the combined population of the penitentiary, city prison, and county jails in South Carolina included 584 black and 148 white offenders (Carleton, 1971:15; Taylor, 1924:18; Wharton, 1965:240; Zimmerman, 1947:62).

The radical Republicans failed to eradicate the repressive system of agriculture. By the early 1870s, railroad promoters, industrialists, and entrepreneurs with connections in New York or Boston began to exert greater influence on political affairs in the region. The average period of radical Republican state rule was under three-and-a-half years. No radical government remained in office more than a decade (Woodward, 1971:22). The defeat of the radical Republican regimes was inevitable, since they comprised a very unstable alliance of so-called ‘carpetbaggers’ from the North, southern collaborators or ‘scalawags’, and emancipated slaves. Success at election time depended upon black voter turn-out, which was high in those states which still had federal troops, but declined markedly in other states as a result of the vigilante tactics of the conservative Democrats. Opposition to radical Reconstruction existed from the outset amongst the ex-slaveholders and ex-Confederate soldiers drawn to the Democrats. Yet their ability to oust the Republican governments varied by state. Whereas the Democrats, or Redeemers as they are often called, took over in Georgia and Tennessee before 1872, other states were not redeemed until 1877. The struggle for ‘Home’ rule, as the Democrats put it, produced violent incidents throughout the South. Victory was assured, however, when the northern ruling class realized that “the southern conservatives did not represent the pre-Civil War ruling class but rather the self-same socioeconomic forces as itself” (Camejo, 1976:128).

The Democratic state regimes were business-based and allied with northern railway and mining interests. Ties between northern businessmen with resource interests in the South and southern legislators help to account for the tremendous expansion of the state prison populations in the late 1870s, and the transformation of leasing from a temporary expedient into an established means of providing cheap labor. In addition to being sent to plantations and railroad camps, state convicts worked in mines, in factories, and in turpentine woods. Unskilled, labor-intensive work was the rule. The idea of giving black felons skilled work, such as cabinetmaking, shoemaking, and iron manufacturing, never crossed the minds of the politicians and businessmen who shaped the convict lease system. Guards in the camps had no trade skills. They were paid meagre wages, and were often replaced by trusted prisoners.

The extent to which the Democrats used the state penal systems to exploit the labor of the ex-



slave population is revealed by the growth in the number of prisoners. Criminal laws were enacted which increased the number of serious crimes. Democrats in Mississippi secured passage of that state's "pig" law which defined the theft of property worth more than \$10—including cattle and swine—as grand larceny, punishable by up to five years of hard labor (Wharton, 1965:237). In 1875 a similar law in Georgia made stealing hogs a felony. North Carolina courts did not distinguish between petty and grand larceny, so that a person could get three to 10 years for stealing a couple of chickens (Logan, 1964:193). These laws increased the size of the prison labor pool. In Mississippi it increased nearly 300 percent in less than four years, from 272 convicts in 1874 to 1,072 by the end of 1877. Two years after Georgia's new law was enacted, the size of the convict population had more than tripled, from 432 to 1,441 (Novak, 1978:32; Wharton, 1965:237; Woodward, 1971:213).

The black criminal population represented a threat to the economic supremacy of the white race, but also a resource that could be easily exploited. Crime control and economic oppression were one and the same thing in the South after the Democrats seized power. The pig laws were designed to eliminate the threat posed by a wandering army of propertyless blacks, but also to channel their labor into socially productive use.

### THE LESSEES AND SOUTHERN INDUSTRIALIZATION

If Reconstruction is considered a later phase of "the victory of industrial capitalism over the fetters of the plantation economy" (Moore, 1967:151), it can be argued that the restoration of conservative Democratic rule represented the final phase in the reconstruction of U.S. society as a unified, industrial, capitalist civilization. Neither increasing fear of a dangerous class nor the fiscal self-interest of the state governments can entirely account for the growth of prison populations in the 1880s. Economic modernization of the South depended on the mobilization of cheap convict labor. As Woodward (1971) has shown, it was the Redeemers, not the radicals, who laid the foundation for an industrial order. They guaranteed northern financial and industrial interests unprecedented economic freedom. Southern politicians introduced laws which made it quite profitable for the northern corporate octopus to thrust its tentacles south of the Potomac.

The outfits leasing state convicts were northern subsidiaries. Yet, company directors held public office themselves, or knew their way around state capitols.<sup>7</sup> The virtual identity of interest between business and government helps to explain the fact that the South kept pace industrially with the rest of the country (Woodward, 1971:140). The region's untouched natural resources drew lumber syndicates, mining companies, and railroad interests from the North. Convicts supplied the labor needed for mining and lumbering, as slaves had done in the antebellum period.

Railroad companies employed large numbers of convicts. During the 1870s, 2,650 miles of track were laid in the states east of the Mississippi, and over 14,000 miles were added to this network in the following decade.<sup>8</sup> In 1884 more than 5,000 convicts worked on southern railroad building. In North Carolina alone, more than 1,800 miles of track were laid by prisoners between 1873 and 1893 (Carter, 1964:76). In 1886 Mississippi's penitentiary was leased to the Gulf and Ship Island Railroad Company. The first two Redeemer governors in this state were both railroad attorneys (Camejo, 1976:194). In the Carolinas, the Cape Fear and Yadkin Valley, and the Greenwood and Augusta were the principal railroad companies employing prisoners. Elsewhere,

7. Joseph E. Brown and Alfred H. Colquitt in Georgia participated in many northern ventures. Tennessee Governor James D. Porter was a director of the Tennessee Coal and Iron Company (Camejo, 1976:190).

8. One hundred and eighty new railroads were incorporated in the 1880s. More than \$150 million was invested in railroads—excluding those in the trans-Mississippi states—between 1879 and 1881 (Woodward, 1971:120).

there were myriad others: the New Orleans and Pacific; the Mississippi Valley Railroad Company; the Alabama Railroad Company; and, of course, the Tennessee Coal Iron and Railroad Company (Zimmerman, 1947:123).

Leasing served the interests of Redeemer politicians. Colonel Arthur S. Colyar was leader of the pro-industrial Whig wing of the Democratic party in Tennessee, and general counsel for the Tennessee Coal Iron and Railroad Company. He arranged for this company to lease the entire convict population in the state for \$101,000 a year (Woodward, 1971:215). "Penitentiary rings" were formed in almost every state. Georgia's Civil War governor, Joseph E. Brown, who became a prominent Democrat, amassed a fortune by using convicts in his coal mining operations in Dade County (Stampp, 1965:161). He cannily offered the legislature a dollar more per convict than anyone else. Beginning with 100 men at \$11 each in 1874, his companies took on more and more prisoners (Roberts, 1960:400; Taylor, 1942).

Another man who got rich from convict labor was Edmund Richardson, a Mississippi speculator and one of the richest cotton planters in the world. Several businessmen made money just by subleasing prisoners. Jones S. Hamilton was a southern-style robber baron. In addition to his interests in race tracks, gas works, and real estate, he made a fortune from subleasing convicts to railroads and plantations in Mississippi (Wharton, 1965:239). The growth of monopolies in the country at large was reflected in the consolidation of the convict business in the South. Georgia leased its prisoners to three interconnected companies. Tennessee leased its prison population to one lessee in 1884. By the mid-1880s both the number of convicts and the length of prison sentences had risen considerably (McKelvey, 1977:200).

#### *Political Foundations of Penal Repression*

The restoration of Home rule, which occurred with the victory of the Democrats at the polls, was made possible because extra-legal means of coercion were used to intimidate black voters. Terrorism was one way to redeem the South; using the machinery of crime control was another. Thus, state penal policies whereby more and more blacks were subjected to perpetual hard labor helped to increase the cohesion of a white South.

Erikson (1966) and Kanter (1972) have shown that real or imaginary threats to community order will give rise, on the one hand, to harsher treatment of those individuals or groups singled out as threats, and, on the other hand, will increase group solidarity. One of the ideological techniques used by the Democrats to gain control over southern legislatures in the 1870s was to brand the radical Republicans as traitors. The Redeemers played on the fears of the southern white population, describing the alliance of carpetbaggers, scalawags, and blacks, who were exercising their newly acquired right to vote and thereby keeping the Republicans in power, as a corrupt plot. The very foundations of southern civilization were allegedly threatened by the radical Republican state governments.

Charges of corruption and treason were brought against the so-called carpetbaggers and scalawags. Finally, the Democrats resorted to vigilante action to intimidate the black population. Groups of armed men calling themselves the White Line or the Red Shirts organized attacks on Republican meetings. The White League of New Orleans, which boasted more than 2,000 members, most of them ex-Confederate soldiers, represented the "military arm of the Democratic counterrevolution" (Camejo, 1976:151) in Louisiana. Radical Republican candidates were beaten up and threatened with death unless they withdrew. Vigilantes prevented blacks from getting to the polls on election day; white employers dismissed blacks who attended political meetings. The ultimate weapon was physical intimidation: between 40 and 80 black militant leaders were massacred at Vicksburg, Mississippi, in 1875 (Camejo, 1976:152). Against this background of extra-legal flogging and lynching, it is possible to understand why the brutality in the convict lease camps far exceeded the level needed to keep prisoners working. The ex-slaves

represented a problem in crime control, and an opportunity to redefine the South as a white man's community.

The use of penal repression to consolidate white power can be demonstrated by contrasting the lease system under radical Republican rule and under Home rule. Whereas the Reconstruction governments adopted leasing by default, the Redeemers promoted leasing as the ideal policy for handling the black criminal population. As pointed out, the decision to lease convicts to companies in the private sector was adopted during Reconstruction when state treasuries were in financial collapse. But leasing was entrenched in the 1870s and 1880s after the Democrats returned to power.

Reconstruction governments in Georgia, Louisiana, Mississippi, Alabama, and Arkansas lacked the capital necessary to rebuild prisons destroyed during the Civil War. The cost of financing penitentiary construction in North and South Carolina was one of the reasons why leasing was adopted in the first years of Reconstruction (Oliphant, 1916:4; Zimmerman, 1947:56). Moreover, leasing was thought to be a temporary measure that would be discontinued if the money could be found to build prison cell blocks.

The radical governments realized that convict labor could be profitably exploited, but did not feel justified sharing in the spoils. In looking at the financial agreements between the radical Republicans and the private lessees, it is evident that profit was *not* always the foremost consideration. Georgia and North Carolina received no money from railroad contractors employing convicts; Arkansas and Mississippi in the early years of Reconstruction actually compensated contractors for taking felons off their hands (Carter, 1964:45; Zimmerman, 1947:61). The man who leased the Chattahoochee prison-arsenal in Florida received bonuses amounting to \$30,000 from the state (Zimmerman, 1947:54).

Although leasing was conceived as a temporary solution for overcrowding, the money needed to build prisons could not be found. The recession of 1873 increased the treasury debts of the radical governments still in power. The Democrats accused the radical regimes of extravagant spending and corrupt business practices. Their central election promise was economical administration.

Penitentiary policies were singled out to illustrate that radical Republicans sought to loot the state treasury. Wade Hampton, the Governor of South Carolina and a conservative *par excellence*, vowed to make the penitentiary self-supporting by sending 500 able-bodied convicts to railroad chain gangs. The Democrats in North Carolina shelved plans to build a penitentiary and sent the prisoners who had been confined in log huts at the building site to railroad camps throughout the state (McKelvey, 1977:204).

Criminal code revision and prison reform following the American Revolution of 1775 served in part to legitimate the political boundaries of the new states, especially Pennsylvania and New York (Barnes, 1972; Lewis, 1965; Rothman, 1971). In contrast, punishment in the South following the Civil War helped to reaffirm the boundaries of the South as a white community. Thus, the transition to Home rule was symbolically legitimated by harsher punishment for the black felon. Increased severity was reflected in a total philosophical acceptance of leasing and a deliberate commitment to profit from punishment. Whereas the radical Republicans had attempted to save money by leasing prisoners, the Democrats in Mississippi, Georgia, Tennessee, and Florida received anywhere from \$40,000 to \$100,000 annually from leasing convicts (Zimmerman, 1947:66,123,151,155). Texas' governor announced that a lease signed in 1878 put "more cash into the treasury in one year than has been paid from the establishment of the penitentiary" (Zimmerman, 1947:140).

The ex-slaves were singled out as a threat to the stability of a social order based on white supremacy. Hence, punitive arrangements had to be extraordinarily severe. The Democrats discontinued state supervision of the prison camps. Inspections were infrequent or perfunctory. The

whereabouts of many stockades was unknown, since convicts were subleased. In 1874 the president of Louisiana's penitentiary board declared "the convicts may be in Plaquemine, Iberville, or at the bottom of the Mississippi for all I know" (cited in Carter, 1964:43).

### RACE CONTROL AND CLASS STRUCTURE

Southern state penal systems were themselves instruments of social stratification. Blacks comprised over 95 percent of most prison populations. In Georgia in 1878, 1,122 of the 1,239 convicts were black (Green, 1969:282). In addition to its economic function, leasing represented an effective method of segregating white and black offenders, and thereby reaffirming the age-old equation between race and class which emancipation threatened to dissolve. In most states, black felons toiled outside, while efforts were made to keep white felons employed within penitentiary walls. Officials justified this policy on the grounds that special security measures were necessary to ensure that white prisoners did not escape. No doubt this view can be traced to the antebellum stereotype of the white criminal as someone predisposed to commit violent and desperate acts.

There was almost complete segregation of white and black prisoners. While black felons in Mississippi worked on plantations and railroads, not a single white left the penitentiary (Wharton, 1965:240). No white convicts worked in the Tennessee mines (Carter, 1964:54). It was rare for a jury in Florida to send a white man to one of the convict camps (Powell, 1970:332). After all, the philosophical justification for the convict lease system, certainly after the Democrats returned to power, lay in the view that blacks needed compulsory labor. Contractors in Alabama were forbidden to mix white and black prisoners (Novak, 1978:32). Local sheriffs in Mississippi made sure that whites were never put in chain gangs (Wharton, 1965:235). In Florida black convicts outnumbered whites 20 to 1. "It was possible," a camp overseer wrote, "to send a negro to prison on almost any pretext, but difficult to get a white man there unless he committed some very heinous crime" (Powell, 1970:332).

Crime control in the antebellum South meant race control. Slaves were punished on the plantation, and harsh measures were necessary to legitimate the absolute authority of the white master. With the end of slavery, alternative forms of race control were introduced, and the system of criminal justice became a key element in keeping blacks politically and economically subservient. Whereas prior to the Civil War crime control was a problem in slavery, one of the consequences of abolition was that race control became the central aim of crime control, and measures of punishment were brutal in the extreme.

The notion that criminal slaves could be rehabilitated was a contradiction in terms. Like ex-convicts and ex-mental patients, the freedmen were rarely allowed to forget that they had once been the property of their white masters. Thus, southern penology was characterized by racist theories of black criminality, and no attempt was made to offer any rehabilitative, theoretical justification for forced labor. There was no rhetoric of reform behind which to disguise the brutality of living arrangements. The convict camps were dispersed throughout the rural South so that the public ignored them. George Cable, (1969) a man who eventually left the South to settle in Massachusetts, provided the only liberal attack on the convict lease system. In the mid-1880s he attempted to gain admission to various camps. He was turned away at the gates, and told to direct his inquiries to the government, but his letters to state officials were unanswered. Whereas inmates in the North produced several interesting memoirs about life behind bars, there are no prisoners' accounts of southern prison life during this period.

In the South no one apologized for what was done to prisoners, and no one wrote that black felons were being hurt rather than helped, or suggested that they spend time reading Bibles or in vocational training workshops. Part of criminal justice strategy in the northern states, certainly during the Jacksonian period, was to erect penitentiaries that would inspire awe and dread in the hearts of whoever passed by them. The penitentiary at Cherry Hill in Philadelphia, which

had cost \$775,000 by 1835, was the most expensive building of any kind in the United States (Teeters and Shearer, 1957:74). In contrast, the southern camps consisted of make-shift huts in which convicts slept chained together on wooden benches. Rolling cages were used on the railroads. Dogs and armed patrols, rather than granite and stone walls, maintained security. Runaways were shot on sight, or brought back and punished by being strung up by the thumbs or shut in airtight boxes – a punishment known as sweating – which caused the body to swell and bleed (Powell, 1970:8).

Living conditions for the predominantly black convict populations were inhuman. This is demonstrated by the high mortality rates. In 1883 a physician in Alabama estimated that most convicts died within three years. In that year 36 percent of the men working at the Milner coal mine died. The annual death rate at the camps run by the Greenwood and Augusta Railroad reached 53 percent (Zimmerman, 1947:160). Mortality rates were also high in Louisiana. The editor of the New Orleans *Daily Picayne* suggested quite seriously that execution would be more humane than a prison sentence (Cited in Carleton, 1971:37).

Although disease and accidents contributed to the high death rates, one cannot ignore the effects which deliberate cruelty and neglect had on prisoners. Convicts at the Inman mines in Tennessee worked all day in the mud and at night slept in wet clothes (Zimmerman, 1947:163). The prisoners who laid down the track through the Canay swamps in Mississippi suffered from malaria and pneumonia. According to a report in the *Raymond Gazette* on March 8, 1885, convicts were “placed in water ranging to their knees, and in almost nude state they spaded rooty ground, their bare feet chained together. They were compelled to attend to the calls of nature as they stood, their thirst compelling them to drink water in which they deposit their excrement” (cited in Foreman and Tatum, 1938:263).

In Florida, the work of “chipping” trees at the turpentine camps was dangerous. Prisoners stooping continuously to hack at the trunks of the pine trees had to contend with heat, mosquitoes, and snakes (Powell, 1970:29). According to a report on conditions at the Dade Coal Company, tabled in Georgia’s House of Representatives, prisoners had to “lie in mud and water to get out the daily amount of coal that will save them from the whipping boss” (cited in Taylor, 1942:126).

Living conditions in the lease camps were far worse than on the average plantation, and convicts were not as well protected from hazardous and dangerous work as industrial slaves had been. Job safety was a concern of the mining and tunnelling contractors who hired bondsmen, for if a slave were killed or injured as a result of a cave-in, explosion, fire, or flood, the employer had to compensate the slave’s owner (Starobin, 1970:45). There was no such incentive to protect the black convict. A machinist from Wilmington, North Carolina explained that a convict “works in the worst places, because if he dies it is a small loss” (cited in Logan, 1964:192). South Carolina’s prison warden admitted in 1880 that “casualties would have been far less frequent if convicts were property having a value to preserve” (cited in Oliphant, 1916:6).

## CONCLUSION

Both criminal justice procedure and penology in the southern United States between 1865 and 1890 were shaped by local economic and political conditions, rather than by the assumptions, theories, and methods embodied in policing, prosecutorial, and penal practice elsewhere in the country. The 13th Amendment created a wandering army of ex-slaves, and an immediate crisis in crime control. It was not just that crime rates rose, but that the size of the population punishable by some form of custody doubled. The crisis was partly solved by leasing convicts out to private companies engaged in labor-intensive economic projects.

But the convict lease system also served a more explicit economic function: it was one of several instruments used to prevent the ex-slaves from obtaining the status and rights enjoyed

by wage workers. The demand for cheap labor by companies engaged in railroad building, mining, agriculture, and other businesses helps to explain why leasing was so profitable. No one opposed the cruel and inhumane conditions which existed in the convict camps because both the state governments as lessors and the companies as lessees profited from the arrangement. Moreover, the harsh and unequal treatment which was accorded to blacks as a result of the leasing system symbolically reinforced the age-old equation between race and class in the wider society.

During the 1880s, the contract system of convict labor was abolished in the northern states, and replaced by a piece-price system, largely as a result of strenuous lobbying by the labor movement.<sup>9</sup> In the still predominantly rural Cotton Belt, unions restricted entry to blacks, and only objected to leasing when their interests were directly affected—if prisoners were used as strikebreakers, for example (Bloch, 1965; Grob, 1960; Mandel, 1955). Southern legislatures would not have listened to union protests anyway, since profits from the convict business made up more than 10 percent of government revenues in some states (Carter, 1964:92).

The convict lease system was an economic substitute for slavery, but also a political replacement, insofar as it helped to redefine the boundaries of the South on the basis of color. Attempts to provide the freedmen with civil and political rights during Reconstruction failed; the Redeemer governments systematically deprived the freedmen of economic opportunities, and through vagrancy laws, sharecropping arrangements, and disenfranchisement, enforced a new kind of class rule on what was, after all, a problem population. The convict lease system was an ultimate but very effective mechanism for keeping blacks politically and economically subservient.

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9. During the 1880s northern state legislatures somewhat reluctantly enacted laws restricting the market for prison goods. Both manufacturers and organized labor objected to the contract system whereby private businesses produced and sold convict-made shoes, brooms, chairs, and so on. One way to get around the anti-contract laws was to adopt the so-called piece-price system whereby contractors were prohibited entry into the prison, but the products of convict labor were turned over to outside firms at a specific price per item. In effect the piece-price system represented a return to the system of manufacturing under public account which had been popular in the early decades of the nineteenth century (Adamson, 1982:186).

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