Chapter 5
The Thirteenth Amendment and Beyond

That slavery has *begun* its fall is plain, but...its fall will be resisted by those who cling to it.... The end will be slow. Woe to abolitionists, if they dream that their work is well nigh done.

- Theodore Weld, 1852[1]

The most piteous thing amid all the black ruin of war-time, amid the broken fortunes of the masters, the blighted hopes of mothers and maidens, and the fall of an empire, - the most piteous thing amid all this was the black freedman who threw down his hoe because the world called him free. What did such a mockery of freedom mean? Not a cent of money, not an inch of land, not a mouthful of victuals, - not even ownership of the rags on his back. Free!

- W.E.B. DuBois[2]

Charles Sumner's Lonely Battle

Charles Sumner embarked on his long career as representative for Massachusetts in the Senate with a unique statement of commitment:

> Whatever I am or may be, I freely offer to this cause. I have never been a politician. The slave of principles, I call no party master.[3]

Sumner enraged the slaveholding interests by his intruding commitment to abolition. He served with Senators Howard, Pomeroy, Brown, Buckalew, Carlile and Conness on the Senate Select Committee on Slavery and the Treatment of Freedmen.[4] With Sumner as its outspoken chairman, that committee was charged "to take into consideration all propositions and papers concerning slavery and the treatment of freedmen."[5] The Committee on the Judiciary was the more powerful committee, to which all Senate proposals for amendments to the Constitution were submitted for consideration.

On February 8, 1864, Sumner submitted a joint resolution (S.B. 24) to the Senate to amend the Constitution:

> Everywhere within the limits of the United States, and of each state or Territory thereof, all persons are equal before the law, so that no person can hold another as a slave.[6]

Not only would passage of Sumner's proposal have ended all slavery,

but it would have secured equality for all persons before the law. Its consequences would have been far-reaching for all people, regardless of race, sex or condition of servitude.

Senator Henderson from Missouri had also proposed a joint resolution (S.B. 16) almost one month earlier, on January 11, 1864, for an amendment to abolish slavery:[7]

> Slavery or involuntary servitude, EXCEPT AS A PUNISHMENT FOR CRIME, shall not exist in the United States.[8]

An avowed slaveholder,[9] Senator Henderson's resolution was modeled on the prison slavery proviso of the constitution with which Missouri entered the Union. Derived from the prison slavery proviso of the Northwest Territory Ordinance, both the Missouri proviso and Henderson's proposed Amendment preserved America's slaveholding heritage.

Nearly one month after Henderson submitted his resolution and only two days after Sumner submitted his, the Senate Committee on the Judiciary announced acceptance of Henderson's resolution as the basis for the Thirteenth Amendment. In his report to the Senate, Senator Trumbull briefed the Senate on the proposed amendment:

> I will state that the amendment, as recommended by the Committee on the Judiciary, provides for submitting to Legislatures of the several States a proposition to amend the Constitution of the United States so that neither slavery nor involuntary servitude, EXCEPT AS A PUNISHMENT FOR CRIME, WHEREOF A PARTY SHALL HAVE BEEN DULY CONVICTED, shall exist within the United States, or any place subject to their jurisdiction; and also that Congress shall have power to enforce this article by proper legislation. I desire to give notice to the Senate that I shall at an early day, call for the consideration of this resolution.[10]

Most of the proposals submitted to the Senate to alter the proposed amendment were attempts by slaveholding interests to prevent abolition and were subsequently rejected. These attempts were undoubtedly designed to coerce abolitionist forces into compromise

> Senator Garrett Davis of Kentucky was particulary conspicuous by reason of his long and very fiery speeches against the amendment, and the numerous "singular factious amendments" which he presented from time to time, eight in all.... One of these provided that no negro should be a citizen of the United States or eligible to any office under the United States, the other that New England should be divided into two States. The division proposed was very singular, inasmuch as Maine and Massachusetts were to form the State of East New England, [and] the rest of the States, West New England. Thus the latter State would not be formed of con-

> tiguous territory, but of two sections separated by many miles....This was doubtless introduced to show his antipathy to Massachusetts, for he previously remarked that "the most effective single cause of the pending war has been the intermeddling of Massachusetts with the institution of slavery."[11]

Similar to the original compromise made by the drafters of the Declaration of Independence, the Judiciary Committee's wording of the proposed Thirteenth Amendment was an apparent compromise made to protect the slave holding interests of our nation.

On April 8, 1864, Senator Charles Sumner made his final appeal to the Senate to change the wording of the ominous amendment and asked that his proposed joint resolution be accepted as a substitute:

> *Beyond my general desire to see an act of universal emancipation that shall at once and forever settle this great question, so that it may no longer be the occasion of strife between us, there are two other ideas which are ever present to my mind as a practical legislator: first, to strike at slavery wherever I can hit it; and secondly, to clean the statute-book of all existing supports of slavery, so that it may find nothing there to which it may cling for life. To do less than this at the present moment, when slavery is still menacing, would be an abandonment of duty.*
>
> So long as a single slave continues anywhere beneath the flag of the Republic I am unwilling to rest. Too well I know the vitality of slavery with its infinite capacity of propagation, and how little slavery it takes to make a slave State with all the cruel pretensions of slavery....[12]

As well as incorporating the slaveholding principles of the Missouri senator, the proposed amendment closely resembled Article 6 of the Northwest Territory Ordinance of 1787, Section 6:

> There shall be neither slavery nor involuntary servitude in the said territory, OTHERWISE THAN IN THE PUNISHMENT OF CRIMES WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED: Provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor aforesaid.

Sumner then criticized the proposed amendment's resemblance to the old ordinance.

> Let me say frankly that I should prefer a form of expression different from that which has the sanction of the committee. They have selected what was intended for the old Jeffersonian Ordinance [of 1787], sacred in our history, although, let me add, they have not imitated it closely. *But I must be pardoned*

if I venture to doubt the expediency of perpetuating in the Constitution language which, if it have any signification, seems to imply "slavery or involuntary servitude" may be provided "for the punishment of crime." There was a reason for that language when it was first employed, but that reason no longer exists. If my desires could prevail, I would put aside the ordinance on this occasion, and find another form.

I know nothing better than these words:

> All persons are equal before the law so that no person can hold another as a slave; and the Congress shall have power to make all laws necessary and proper to carry this decision into effect everywhere within the United States and the jurisdiction thereof.[13]

. . . . Enough has been said to explain the origin of the words which are now proposed [French Declaration of Rights, 1787]. It will be for the Senate to determine if it will adopt them.

Should the Senate not incline to this form, there is still another I would suggest, as follows:

> Slavery shall not exist anywhere within the United States or the jurisdiction thereof; and that the Congress shall have power to make all laws necessary and proper to carry this prohibition into effect.[14]

Debates in the Senate, April 8, 1864

The following is from the Congressional Globe's report on the Senate debates of April 8, 1864.

> MR. SUMNER. Now, Mr. President, the state of the question is this. The Senator from Missouri [Mr. Henderson] offered a proposition in this form:
>
> > Art. 1. Slavery or involuntary servitude, except as a punishment for crime, shall not exist in the United States. . . .
>
> I make this comment on the proposition which we have before us, that of the Senator from Missouri, in order to explain why I should be against that in the form in which it stands; I am free to say that in some respects I think it better than the article proposed by the committee. It is as follows:
>
> > Slavery or involuntary servitude, EXCEPT AS A PUNISHMENT FOR CRIME, shall not exist in the United States.
>
> It is simpler than the proposition of the committee. . . .
>
> [My] objection to it [the proposition of the committee] is, further, . . . it seems to me the language is not happy . . . I understand that it starts with the idea of reproducing the Jef-

fersonian ordinance. I doubt the expediency of reproducing that ordinance. It performed an excellent work in its day; but there are words in it which are entirely inapplicable to our time. That ordinance I will read. It is as follows:

> There shall be neither slavery nor involuntary servitude in the said Territory OTHERWISE THAN IN THE PUNISHMENT OF CRIMES WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED.

This ordinance, in precisely these words, was reproduced at a later day, in the very important act by which Missouri was admitted into the Union, containing the well-known prohibition which afterwards caused such debate.

There are words here, I have said, which are entirely inapplicable to our time. They are the limitation, "OTHERWISE THAN IN THE PUNISHMENT OF CRIMES WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED." Now, unless I err, there is an implication from those words that men may be enslaved as a punishment of crimes whereof they shall have been duly convicted. There was a reason, I have said, for that at the time, for I understand that it was the habit in certain parts of the country to convict persons or to doom them as slaves for life as a punishment for crime, and it was not proposed to prohibit this habit. But slavery in our day is something distinct, perfectly well known, requiring no words of distinction outside of itself. Why, therefore, add "nor involuntary servitude otherwise than in the punishment of crimes whereof the party shall have been duly convicted?" To my mind they are entirely surplusage. They do no good there, but they absolutely introduce a doubt.[15]

Sumner denied any distinction between slavery and involuntary servitude, saying that the essential nature of slavery was by his time clear and recognizable and that the ordinance confused matters by implying that a difference did exist, creating a doubt of their meaning. His concern was well-founded because, in 1857, before the Civil War, Iowa made use of that doubt. In an attempt to disguise its practice of slavery, Iowa changed its constitution to prohibit slavery and permit involuntary servitude as punishment for crime.

Sumner further argued that

> In placing a new and important text into our Constitution, it seems to me we cannot be too careful in the language we adopt. We should consider well that the language we adopt here in this Chamber to-day will in all probability be adopted in the other House, and it must be adopted, also, by three fourths of the Legislatures of the States. *Once having passed this body, it is substantially beyond correction. Therefore, it seems to me, we have every motive, the strongest inducement in the world, to make that language as perfect as possible.*[16]

Sumner also understood that the real meaning of the proposed Thirteenth Amendment would be camouflaged by its awkward grammar; that the prison slavery proviso of the Thirteenth Amendment as ratified has gone substantially unchallenged and unrecognized, even by constitutional lawyers, for more than a century testifies to Sumner's foresight:

> I say, therefore, that I object to the Jeffersonian ordinance even if it were presented here in its original text. But now I am brought to the point that the proposition of the committee is not the Jeffersonian ordinance, except in its bad feature. In other respects, it discards the language of the Jeffersonian ordinance and also its collocation of words. The language of the committee is as follows:
>
> > Neither slavery nor involuntary servitude, EXCEPT AS A PUNISHMENT FOR CRIME, WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED, shall exist within the United States, or any place subject to their jurisdiction.
>
> The Senate will observe what to my ear is a discord, the introduction of those two "shalls" so near together; but that is not of great importance.
>
> MR. DOOLITTLE. They are both in the Jeffersonian ordinance.
>
> MR. SUMNER. But they are further apart, and the whole effect is entirely different. As I have said already, the language of the ordinance is, "There shall be." Mark the beginning as compared with that of the committee. The committee say, "Neither slavery nor involuntary servitude," &c. The ordinance says, "There shall be" - the word of prohibition coming first, at the outset - "neither slavery nor involuntary servitude in the said Territory otherwise than in the punishment of crimes whereof the party shall have been duly convicted"; whereas the committee say, "Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."[17]

At this point, Sumner urged that if the Senate intended slavery to stand as a punishment for crime, they should state so clearly or remove the proviso entirely. The Senate did neither:

> If Senators desire the Jeffersonian ordinance, I say let us take it in its original form as it appears in that ordinance, and was subsequently reproduced in the Missouri statute; do not let us take it in this modified form, which, while pretending to be the Jeffersonian ordinance, is not the Jeffersonian ordinance except in that feature which I think, if Senators apply their minds to it, they will see is clearly objectionable. I refer to the words "EXCEPT AS A PUNISHMENT FOR CRIMES, WHEREOF THE PARTY SHALL HAVE BEEN DULY CON-

> VICTED." I have already said that for myself I should prefer the form which I have sent to the Chair, and on which the question is now to be taken; but I offer it as a suggestion, and if Senators do not incline to it, I have no desire to press it.
>
> MR. TRUMBULL. Mr. President, at an early stage of the session, the Senator from Missouri introduced a proposition to amend the Constitution of the United States so as forever to prohibit slavery. That resolution was referred to the Committee on the Judiciary. At a later day, a month or two afterwards, the Senator from Massachusetts also introduced a proposition to prohibit slavery. The committee had both those propositions before them. They considered them. There was some difference of opinion in the committee as to the language to be used; and it was upon discussion and an examination of both these propositions, the one originally introduced by the Senator from Missouri, and subsequently by the Senator from Massachusetts, that the committee came to the conclusion to adopt the form which is reported here. . . .[18]

In researching the joint resolution of the Senate, we were unable to locate the minutes of the proceedings in the Committee on the Judiciary. Nor was the National Archives in Washington, D.C. able to help us: the minutes are missing from the records. A letter to us from George P. Perros of the National Archives Legislative and Natural Resources Branch, Civil Archives Division, stated:

> An examination of the records of the United States Senate in the National Archives has failed to disclose the minutes of the Senate Judiciary Committee for the 38th Congress (1863-1865). Nor is on hand any disposition as to the disposition of that document.

It seems as if the Senate did not wish to state its intentions clearly. In addition to hiding their own intentions, some members of the Senate tried to create new evidence to misrepresent Sumner's position.

> MR. DOOLITTLE. If the Senator from Illinois will allow me for a single moment, it is said that men's first impressions are sometimes the best, and it seems that the Senator from Massachusetts when he introduced his proposition used in it the very words of which he now makes such complaint, "otherwise than in the punishment of crime whereof the party shall have been duly convicted."
>
> MR. SUMNER. I beg the Senator's pardon. The first proposition I introduced was a month or six weeks before that; but after the committee made their report, when I examined it and found that they had undertaken to give us the Jeffersonian ordinance, and I saw that it was not the Jeffersonian ordinance, I then prepared that proposition with a view to embody the Jeffersonian ordinance precisely.

> MR. TRUMBULL. I was very much tempted to reply to some of the remarks that have been made in opposition to this proposed amendment, and am strongly tempted also to reply to some of the remarks which have fallen from the Senator from Massachusetts, who in an elaborate argument has attempted to show that no amendment of the Constitution is necessary;* but, sir, if we can have a vote on this subject I will forego making any reply to what has been said, and will content myself with the passage of the resolution, which is the object I have in view, to abolish slavery and prevent its existence hereafter. The language as reported by the committee will accomplish these objects. . . .[19]

Misrepresentation of Sumner's efforts included sabotage of his proposed amendment by Senator Howard, a member of his own Committee on Slavery and the Treatment of Freedmen.

> MR. HOWARD. I believe the proposition now before the Senate is the amendment offered by the Senator from Massachusetts, and on that question I have one word to say.
>
> MR. SUMNER. The Senator will allow me to make a remark. I cannot resist the appeal of my friend, the chairman of the committee [Committee on the Judiciary], and therefore shall not pursue any of the propositions, and I wish to withdraw them. I merely wish to put myself right with my friends. I offered them sincerely with a desire to make a contribution to perfect the measure. I now withdraw them.
>
> MR. HOWARD. I must object to the withdrawal of the amendment, as I have the floor. I desire, as I said before, to say one word on the subject of the amendment offered by the Senator from Massachusetts. The language of it is this, that all persons are free before the law.
>
> MR. SUMNER. "All persons are equal."
>
> MR. HOWARD. Will the Secretary be good enough to read it?
>
> The Secretary read, as follows:
>
> > Sec. 1. All persons are free before the law, so that no person can hold another as a slave, &c.
>
> MR. SUMNER. That is a mistake. It is "equal."
>
> MR. HOWARD. It is written in the handwriting of the Senator from Massachusetts.
>
> MR. SUMNER. It is "equal," and not "free."
>
> MR. HOWARD. I regard it as very immaterial whether the word "free" or "equal" is used in that connection. What I insist upon is this, that in a legal and technical sense that language is utterly insignificant and meaningless as a clause of the Constitution. I should like the Senator from Massachusetts, if

* At no time did Sumner try to show that an amendment to abolish slavery was not needed.

> he is able, to state what effect this would have in law in a court of justice. What significance is given to the phrase "equal" or "free" before the law in a common law court? It is not known at all.
>
> Besides, the proposition speaks of all men being equal. I suppose before the law a woman would be equal to a man, a woman would be as free as a man. A wife would be equal to her husband and as free as her husband before the law.[20]

Senator Howard, a member of the Committee on Slavery and the Treatment of Freedmen, attempted to dismantle Sumner's presentation by both inserting an incorrect wording of Sumner's Senate Bill 24 and by appealing to the masculine insecurities of those Senators who would not wish to see "a woman. . . equal to a man, a woman. . . as free as a man. . . or a wife equal to her husband and as free as her husband before the law."

Its Passage, and the Slavery Abolition Banner Discarded

On April 8, 1864, the Senate passed the Thirteenth Amendment to the United States Constitution:

> Section 1. Neither slavery nor involuntary servitude, EXCEPT AS A PUNISHMENT FOR CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have the power to enforce this article by appropriate legislation.

Since law requires that a proposed amendment to the Constitution pass Congress with a two-thirds majority in each house before it be submitted to the states for ratification, the next step in the amending process was submission of the Senate's bill to the House. Sumner had warned his colleagues that once the bill passed the Senate, it would be "substantially beyond correction." Again, Sumner's analysis was correct: the long debates in the House over the Senate's proposed amendment did not mention the offensive exception.

On January 31, 1865, the House passed the Thirteenth Amendment with the required two-thirds majority - 119 yeas to 56 nays and 8 abstaining. It was then signed by President Lincoln and submitted to the various states for ratification. On December 18, 1865, the Secretary of State certified that the Thirteenth Amendment had become part of the Constitution.

The Senate's refusal to act on Sumner's appeal to delete the exception from the final document was a tragic mistake that would victimize American justice for more than 100 years to come. Slavery remained the destiny of those imprisoned for crime.

The Black Codes

Both the spirit and institution of slavery were far from dead in the war-ravaged and poverty-stricken South. This period of new freedom witnessed marginal enforcement of chattel slavery prohibition measures and full exploitation of the Thirteenth Amendment's special redemption of prison slavery.

At the close of the Civil War, the Bureau of Refugees, Freedmen and Abandoned Lands, better known as the Freedmen's Bureau, was established to provide food, clothing, housing and land to the millions of refugees from slavery. It was given one year and meager funding, little more than $5 million, or $1.25 per capita, to heal the deep wounds of more than two centuries of chattel slavery.[21] The reconstructed states of the South rallied by passing the Black Codes, laws designed to restrict freedmen's opportunities, movement and employment. They penalized the black refugee at every turn by criminalizing vagrancy and defining new crimes to trap the destitute and jobless of the South.

Just as the vagrancy laws of fourteenth through sixteenth century Europe were designed to forestall inevitable socio-economic changes from feudalism to capitalism by incriminating the poor and exploiting their labor through convict slavery, so post-Civil War Black Codes were designed to restore power to former slavemasters. Vagrancy and other violations of hundreds of petty laws recently added to Southern statutes was unavoidable for millions of free, homeless, uneducated and desperately poor blacks confronting a broken and evolving economy which forced both them and the masses of already poor whites into increased competition for fewer jobs. Conviction of vagrancy or any of the other of a growing list of crimes subjected a person to fines or imprisonment.

> To seek more attractive work terms, a freedman would of course have had to leave his old plantation in search of a new arrangement, but the moment he did so, he was liable to charges of vagrancy and a fine. The fine might be paid by any landholder, who could then command the alleged vagrant's services - a form, that is, of involuntary servitude proscribed by the newly effective Thirteenth Amendment. In Florida, any Negro failing to fulfill his employment contract or who was impudent to the owner of the land he worked was subject to being declared a vagrant and punished accordingly. . . . South Carolina, as usual, set the standard of vehemence for the South. No "person of color" was permitted to enter and reside in the state unless he posted a bond within twenty days after arriving, guaranteed by two white property owners, for $1,000 "conditioned for his good behavior, and for his support." Any Negro who wished to work in the state at an occupation other than farmer or servant had to be especially licensed, had to prove his or her fitness for the work, and pay

> an annual tax ranging from $10 to $100. To do farm work, a Negro in South Carolina had to have a written contract, attested to by white witnesses; failure to obtain one before commencing to work was a misdemeanor punishable by a fine from $5 to $50. Contracting Negroes were known as "servants" and the contractors as "masters."[22]

Most ex-slaves who avoided conviction were forced to sign contracts they could not read obliging them to labor as sharecroppers or peons for former slavemasters.

> [The freedman's] access to the land was hindered and limited; his right to work was curtailed; his right of self-defense was taken away, when his right to bear arms was stopped; and his employment was virtually reduced to contract labor with penal servitude as a punishment for leaving his job.[23]

Harsh penalties for misdemeanant crimes were included in the long list of crimes added to state statutes. Mississippi's famous "pig law" for example

> . . . declared the theft of any property valued at more than ten dollars, or of any kind of cattle or swine, regardless of value, to be grand larceny, subjecting the thief to a term of up to five years in the state penitentiary. This [law]. . . was largely responsible for an increase in the population of the state prison from 272 in 1874 to 1,072 at the end of 1877.[24]

With passage of the Thirteenth Amendment in Congress and the many Black Codes throughtout the South, prisons in the South began to fill with recently emancipated slaves. Newly crowded prisons leased out their slaves to contractors who worked them in plantations, lumber camps, swamps, mines and road construction. Prisoners were literally worked to death thereby increasing the effective frequency of execution, the slavemaster's ultimate punishment. In Alabama alone, the prisoner death rate rose to 41 percent in 1869.[25] No longer was it necessary to consider the capital investment in human property since prison slavemasters had a continuous reserve of poor convicted Americans to draw from. Instead, business sense now dictated swift and final punishments to keep the massive labor supply in line.

The Thirteenth Amendment rendered all people free from slavery, *except* any person convicted of a crime. Prison slavery replaced chattel slavery and, again, oppression reigned in the South. "Slavery. . . as a punishment for crime," for the poor and friendless of all races, rerooted itself in the traditions of southern slavemasters.

The Convict Lease System

Big business thrived in prisons where slave labor abounded; prison slavery proved more profitable than chattel slavery, since no financial

loss to the master resulted from the illness or death of a slave. There was no need to buy another slave to make up for the lost labor or procreative power of a disabled slave, as laborers from the new class of offenders refilled the slave vaults of the State.

The postbellum South was ripe for full implementation of the convict lease system. Because the pre-war economy had been rooted in chattel slavery, no labor movement had grown to protest the unfair competition of prison slave products in the free market and there was as yet no free industrialized southern market. The labor movement of the South lagged more than 50 years behind the progress of the already established campaigns of northern workers.[26] Since the impoverished conditions of the war-torn South, coupled with the vindictive Black Codes, crowded southern prisons, the leasing of prisoners to businessmen helped relieve the pressures to build more and costly prisons and provided a new source of cheap labor for former slavemasters and speculating businessmen. At the agreed leasing fee, prisoners were handed over to their new masters to be worked, cared for and disciplined as the lessee saw fit.[27]

The convict lease system was established throughout the South shortly after passage of the Thirteenth Amendment. Both the state and its contracting lessee profited enormously from their convenient business arrangement, while convicts labored heavily for long hours with insufficient food and provisions, subject to the maiming discipline of corporal punishments. There was such

> indifference toward the often shocking neglect and brutality of the lease camps, the cause of such abnormally high death and morbidity rates that official investigators in several states concluded that a convict who survived five to seven years in the camps, or two years in some of the lumber camps, could consider himself fortunate.[28]

The brutal transformation from chattel slavery into prison slavery in the South combined the northern tradition of penal slavery developed under the Auburn plan with prized practice of two centuries of chattel slavery in the South.

The Prison Slave State of Mississippi

There are three basic categories of state constitutional rulings regarding prison slavery: prison slave, involuntary servitude, and no proviso states. *Prison slave states* have specific constitutional rulings which mirror the Thirteenth Amendment; *involuntary servitude states* prohibit slavery and permit involuntary servitude to punish crimes; and *no proviso states* make no mention of slavery in their specific state constitutions and therefore fall under the federal authority of the Thirteenth Amendment.

On the eve of the Civil War, Mississippi could boast that 55.1 percent of its population were slaves.[29] When Mississippi rejoined the Union in August 1865, it agreed to abolish slavery but during the first session of its renewed government rejected the chattel slavery prohibition mandated by the Thirteenth Amendment and adopted measures that indicated "strong sympathy with the former state of affairs."[30] Soon after, Mississippi became part of the Fourth Military District under reconstruction and adopted a new constitution. In Mississippi's Constitution of 1868, Section 15 of Article I abolished slavery except to punish crimes:

> There shall be neither slavery nor involuntary servitude in this State, OTHERWISE THAN IN THE PUNISHMENT OF CRIME, WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED.

Section 15 reaffirmed the federal ruling on slavery and thereby transformed the constitutional status of Mississippi to that of *a prison slave state,* and Mississippi dutifully carried out its prison slave proviso. As Thorsten Sellin's *Slavery and the Penal System* tells us:

> Mississippi's penitentiary, which had been partly destroyed by Sherman's army, was sufficiently repaired in 1866 to permit the leasing of it to J.W. Young and Company for a period of fourteen years; but within a few months the prison was so overcrowded and the convict population increasing at so rapid a rate that the lessee was authorized to employ prisoners lacking mechanical skills and serving relatively short sentences "at any work, public or private, upon railroads, levees, dirt roads, or other works." In 1868, this arrangement was cancelled by the military commander of the Fourth District and the lease given to a rich planter, Edmund Richardson, who, instead of paying for the use of convicts, received $18,000 annually from the state, which also assumed costs of transporting the prisoners to and from Richardson's plantations. "There is little wonder that he came to be known as the greatest cotton planter in the world, with a crop that in one year reached the amazing total of 11,500 bales." Profits persuaded the legislature, in 1872, to establish a system of prison farms operated by the state and ready for occupancy in 1876. In the meantime, the lessee would not be allowed to work the prisoners outside the penitentiary except on public roads, a limitation which was removed in 1876, when a new lease was granted, the farm idea having been scuttled. The new lessee was J.S. Hamilton and Associates, who subleased the prisoners to "planters, speculators, and railroad and levee contractors.... Out over the state, in great rolling cages or temporary stockades, on remote plantations or deep in the swamps of the Delta, the convicts were completely at the mercy of the sub-lessees and their guards." From time to time, the press carried reports of the flagrant abuses to which the convicts were subjected in the camps, but it was difficult

to stir the conscience of a white public that knew that no tax dollars were spent on prisons and that the camps were almost entirely populated by Negroes. "Of the few white men who went to prison at all, a remarkably large percentage... [had] sentences of more than ten years" which had to be served in the penitentiary. In the camps, the few white men were used mostly in clerical jobs or as straw bosses.

Critics of the lease system finally aroused the legislature in 1884. Prodded by a press report that "eighteen convicts, being returned to prison as disabled, proved to be in such a terrible condition from punishment and frost-bite that they had to be smuggled through Vicksburg in a covered wagon," a legislative committee made an inspection of the camps. Its blistering report, partly reproduced in the Raymond *Gazette* of March 8, 1884, stated that the prisoners on

> farms and public works have been subjected to indignities without authority of law and contrary to civilized humanity. Often...sub-lessees resort to "pulling" the prisoner until he faints from the lash on his naked back, while the sufferer was held by four strong men holding each a hand or foot stretched out on the frozen ground or over stumps or logs - often over 300 stripes at a time, which more than once, it is thought, resulted in the death of a convict. Men unable to work have been driven to their death and some have died fettered to the chain gang.... When working in the swamps or fields, they were refused pure water and were driven to drink out of sloughs or plow furrows in the fields in which they labored. One instance of this being on the N.O.N.E.R.R., where owners were unable to get contractors to work at a given point known as Canay Swamps. They hired from sublessees the labor of convicts at $1.75 per head per day. They were placed in the swamp in water ranging to their knees, and in almost nude state they spaded caney and rooty ground, their bare feet chained together by chains that fretted the flesh. They were compelled to attend to the calls of nature in line as they stood day in and day out, their thirst compelling them to drink the water in which they were compelled to deposit their excrement.[31]

Early in 1887, the Gulf and Ship Island Railroad became the sole lessee. Its camps were no better than those of the sublessees. This lease was terminated the following year and, until 1894, the state leased individual convicts to private planters for eight dollars a month for blacks and seven dollars for whites. The death rate of eleven percent in 1888 dropped to three percent in 1889. Mounting public protest finally led the constitutional convention of 1890 to abolish the lease system as of 1894. The legislature was authorized "to estab-

> lish a prison farm" and also to employ convicts "on levees, roads and other public works under state supervision, but not under private contractors." The reason for this action was well-stated by a legislative committee in 1888. "The leasing system under any form is wrong in principle and vicious.... The system of leasing convicts to individuals or corporations to be worked by them for profit simply restores a state of servitude worse than slavery; worse in this that it is without any of the safeguards resulting from the ownership of the slave."[32]

Alabama - from Prison Slave to Involuntary Servitude

Like Mississippi, the Confederate State of Alabama rejoined the Union after approving the Thirteenth Amendment and changing its state contitution to prohibit slavery. Article I, Section 34 of the 1865 Constitution of Alabama gave that state *prison slave* status. Section 34 read:

> That hereafter there shall be in this State neither slavery or involuntary servitude, OTHERWISE THAN FOR THE PUNISHMENT OF CRIME, WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED.

Two years later, in 1867, Alabama wrote a new state constitution which appeared somewhat progressive in its ruling on slavery - all slavery was prohibited and only involuntary servitude was permitted to punish crimes. Section 35 replaced the old Section 34 and read:

> That no form of slavery shall exist in this State, and there shall be no involuntary servitude, OTHERWISE THAN FOR THE PUNISHMENT OF CRIME, OF WHICH THE PARTY SHALL HAVE BEEN DULY CONVICTED.

By replacing prison slavery with involuntary servitude, Alabama became an *involuntary servitude state.* However, Alabama did not differ in its slaveholding practices from *prison slave states.* Ironically, the timing of this "progressive" constitutional change corresponded with its enlarging the scope of its convicts lease system. As Professor Sellin wrote:

> In 1866, the governor of Alabama leased the penitentiary to a contractor who was charged the sum of five dollars and given a sizeable loan. The legislature granted him permission to work the prisoners outside the walls; they were soon found in Ironton and New Castle mines. Appalling treatment and working conditions there and at railroad construction camps were reflected in the mortality rate of the convicts, which rose to 41 per cent in 1869, an all-time high. Envious of the financial profits enjoyed by the lessee, the legislature, in 1874, decided to of-

> fer railroads, iron and coal mining corporations, and planters the opportunity to lease convicts for short terms of from one to five years.... Entrepreneurs quickly took advantage of the offer and numerous camps were established at various work sites.... Most males worked in the mines, while females, children, and infirm males were "leased to lumbering companies, turpentine industries and agricultural operators, whose work was not reckoned to be as 'dangerous' or 'arduous' as that in the mines." The deplorable conditions in some of these camps led the Mobil *Register* of February 15, 1875, to report that the convicts "laboring with manacled limbs in swamps and sleeping in the unwholesome atmosphere...died like cattle in slaughter pens."[33]

Alabama's involuntary-servitude-only ruling attempted to mask its harsh implementation of "slavery...as a punishment for crime". As demonstrated by the following 1882 report, prison slavery in Alabama met with criticism reminicent of the fervor of antebellum abolitionist:

> I found the convicts confined at fourteen different prisons controlled by as many persons or companies and situated at as many different places.... [The prisons] were as filthy, as a rule, as dirt could make them, and both prisons and prisoners were infested with vermin.... Convicts were excessively and, in some instances, cruelly punished.... They were poorly clothed and fed.... The sick were neglected, insomuch that no hospital had been provided, they being confined in the cells with well convicts.... The prisons have no adequate water supply, and I verily believe there were men in them who had not washed their faces in twelve months.... I found the men so much intimidated that it was next to impossible to get from them anything touching their treatment.... The system is a disgrace to the State, a reproach to civilization and Christian sentiment of the age, and ought to be speedily abandoned.[34]

The *involuntary servitude state* of Alabama managed to keep the deplorable practice of the convict lease system lawfully employed longer than any other state.

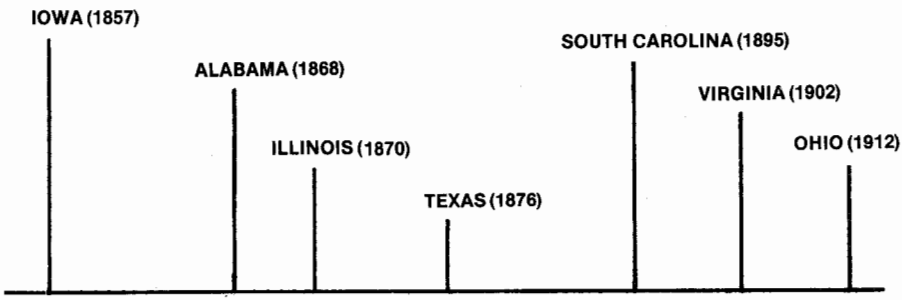
> Alabama abolished the lease in 1928, following the exposure of the death of a young white convict named Knox, who was deliberately scalded to death in a laundry vat at the Flat Top mine operated by the Sloss-Sheffield Steel Co. Prior to the scalding he had been brutally whipped with a steel wire the thickness of a man's finger. After his death the warden who witnessed his death had bichloride of mercury pumped into the body to simulate suicide. He was murdered because he could not perform the amount of work required.[35]

While the prison slave state of Mississippi ended its convict lease system in 1894, it took the involuntary servitude state of Alabama another 34 years to abolish its lease system.

Mirrors of Punishment in Spite of Changes in State Constitutions

When the Thirteenth Amendment became law, no state could legally practice slavery except to punish crimes. The Tenth Amendment of the U.S. Constitution specifically granted each state the power to grant more, but not fewer, rights to its respective citizens than the national document granted. States outside the Confederacy had already implemented rulings against slavery before the Civil War but all practiced some form of prison slavery as permitted by the Northwest Territory Ordinance of 1787 and as later stipulated by the Thirteenth Amendment.

While barbaric conditions faced prison slaves throughout the nation, several states were changing their separate state constitutional provisos regarding prison slavery.



The attitude of all state governments towards the conditions of their prisoners during the decades following the Civil War is illustrated by the following statement of a former Governor of the *no proviso state* of Kentucky:

> Possession of the convict's person is an opportunity for the state to make money. The amount to be made is whatever can be wrung from him, without regard to moral or mortal consequences. The penitentiary which shows the largest cash balance paid into the state treasury is the best penitentiary. In the main the notion is clearly set forth and followed that a convict, whether pilferer or murderer, man, woman or child, has almost no human right that the state is bound to be at any expense to protect.[36]

Illinois: 1870

By prohibiting chattel slavery, Illinois's original state constitution conferred more rights on its residents than existed at the federal level. Nevertheless, slavery and involuntary servitude were permitted as punishments for crime. Article VI, Section I of that state's 1818 Constitution stated:

> Neither slavery nor involuntary servitude shall hereafter be introduced into this State, OTHERWISE THAN FOR THE PUNISHMENT OF CRIMES, WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED.

Illinois was therefore a *prison slave state* until 1870, when, five years after certification of the Thirteenth Amendment, it dispensed with any specific position on slavery, withdrawing Section I of Article VI and becoming a *no proviso state.*

During the intervening years, Illinois had developed its prison system and was contracting the labor of its prisoners to private businesses. In his book *American Prisons,* historian Blake McKelvey noted of this period that Illinois "failed to bring its state prisons within the scope of its board of charities [for inspection and regulation], and its citizens remained ignorant of many evils in these supposedly model institutions."[37] Deleting constitutional reference to prison slavery could only augment public indifference to treatment of prisoners.

Texas: 1876

The 1869 Bill of Rights prohibiting slavery and involuntary servitude, except as a punishment for crime, made Texas a *prison slave state.* Article I, Section 22 of the 1869 document stated:

> Importation of persons under the name of "coolies" or any other name or designation, or the adoption of any system of peonage, whereby the helpless and unfortunate may be reduced to practical bondage, shall never be authorized, or tolerated by the laws of this State; and neither slavery nor involuntary servitude, EXCEPT AS A PUNISHMENT FOR CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED, shall ever exist within this state.

The complete text of Section 22 was omitted from the Constitution of 1876, thereby changing the constitutional status of Texas from *prison slave* to *no proviso.* While the revised Constitution of Texas made no reference to slavery, that state's treatment of its prisoners celebrated exploitation of the exception to slavery within the Thirteenth Amendment. In 1910, the Prison Reform League condemned Texas prison slave practices citing "the following special dispatch to the *Los Angeles Times* from Galveston, Texas, under the date of November 6, 1900:

> 'The legislative committee's investigation of this state's penal institutions and treatment of convicts on the farms, as well as in the prisons, reveals the fact that more than fifty convicts have been killed by cruelties and whippings within a period of three years or less.

> 'The record may be much larger, and presumably is, but the board of inquiry finds it almost impossible to wring the evidence from the convicts whom they examine.
>
> 'The majority of the convicts who could give positive evidence of specific cases are afraid to tell, because they fear they will incur hatred of the guards at the penitentiaries, and on the convict farms and plantations. As illustrating this point, a long term convict with an excellent prison record, before the committee today admitted he witnessed at least three whippings, the victims of which lived but a few days after the punishment, but he begged piteously not to be forced to give the evidence.
>
> '"I have a long time to serve here, and if I testify I must lead a dog's life, and I know I shall be given the limit."'
>
> 'When a guard beats a convict into insensibility the guard's word goes with the superintendent, when the guard merely explains that the convict showed fight or refused to obey orders. The whipping of convicts until their bodies were a mass of bleeding wounds, with leather straps two feet long and three inches wide, numbers more than 400 that the commission has positive evidence of, and the inquiry is not completed.'"[38]

Denials of freedom of speech, imposition of forced labor, and brutal punishment for cooperating with official investigators constitute slavery in its most reprehensible form. While Texas withdrew its specific authorization for prison slavery, the ploy was to defer such authorization back to the Thirteenth Amendment, which sanctions inhuman treatment for prisoners.

Careful examination of the old Section 22 of Texas' 1869 Constitution shows the prohibition of peonage missing in the 1876 Constitution, but, as the following excerpt from an article in the February 13, 1910 edition of the *San Antonio Express* indicates, the practice of peonage continued:

> [Young] white men from different parts of the United States were brought to Austin...to give testimony... in regard to the peonage that they have been made to suffer upon a Texas plantation. Most of these witnesses are under 20 years of age. Some of them only 17 years old when they were subjected to the most horrible cruelties...and when they were permitted to leave the place they were physical wrecks. In most instances these boys are of good families and when they fell into the alleged clutches of the agent of the plantation they were guilty of no offense that would mark them as criminals.[39]

Besides the travelers tricked and stolen into bondage, generations of Mexican-Americans were chained to the land by debts owed to the growing ring of farm lords. Texas had good reason to cover over its practices of peonage for the free but poor and slavery for its poor but

convicted citizens.

The *no proviso state* of Texas has fully exploited its protected authority to make slaves of convicted citizens. In 1870, there was one prisoner for every 1,519 Texans and by 1900 there was one convict slave for every 702. By 1907, Texas had the largest prison population in the country, and in 1981, its prison population passed the 30,000 mark.[40] The following testimony, taken from a letter written by a Texas prison slave in 1980, shows that the slaveholding policies of Texas prison-keepers have not changed significantly:

> Sprawled serpentinely in the rural Gulf Coastal Plains of eastern Texas, between the Blacklands Belt and the Coastal Prairies, lies the megalithic Texas Department of Corrections (T.D.C.), a neo-slavocracy that adamantly refuses to bridge the psychological chasm separating it from the twentieth century.
>
> Dispersed over eight Texas counties and headquartered in Huntsville, T.D.C. comprises 17 maximum security units, with the Ellis Unit (where so-called "hardened criminals" and prisoners sentenced to die are confined) being the most maximizing secured of the maximum security system.
>
> Each prison stands out like a redoubtable monument in the stark country-side surrounding. The brick and glass structures give testament to modern man's attempt to gain total control of the fabric of other human lives.
>
> Each prison was built to accomodate approximately 1,000 prisoners. But with a prison population of 26,832, the largest in the U.S., T.D.C. is overcrowded....
>
> The prison system embodies the naked power and the most brutal policies of the state, and since Philadelphia opened its Walnut Street Jail in 1790, prison officials have been overzealous in their single objective of reducing men and women to animals. Thus, it is important to be firm believers in the Thirteenth Amendment to the United States Constitution: "Neither slavery nor involuntary servitude, *except as a punishment for crime*...shall exist within the United States". It acts as the "patriotic" lever to poison the atmosphere of reform on the one hand, while numbing the senses to the savagery of prison reality on the other.
>
> In manifold ways T.D.C. has instituted profit making methods for draining human energies with mechanical exactness. It bleeds society in general during its yearly begging ritual before the Texas legislature for the appropriation for more and more funding. T.D.C. had recently added a cost of living demand to offset inflation. On the other hand, T.D.C. does not compensate its prisoners for the labor mandatorily demanded of them....Moreover, from the voluntary participation of its slaves in the annual (five Sundays) October prison rodeo, T.D.C. realizes in excess of $500,000 per year on the well-publicized pretension that rodeo profits are spent on "prisoner rehabilitation."

> On a larger and far more profitable scale, T.D.C. has gained a monopolistic hold, nationally, over diverse penal industries by drastically underbidding other state institutions and filing more and more lucrative contracts in its bulging portfolio - a prime example of the fundamental benefit of having a free labor pool readily accessible....
>
> T.D.C. has long been hailed as the "model" institution every prison administration would aspire to head. T.D.C. is emerging yearly as one of the most profitable enterprises (on a small scale, of course) under capitalistic relations, and its books are free of state audits.
>
> And a contract with T.D.C. is more appealing because its docile, but productive labor force is guaranteed and work stoppages are practically nonexistent.... Moreover, T.D.C. has officially instituted the [most] elaborate warning snitch system in the nation, and its inmate collaborators are not only condoned as an "unofficial" guard system, but they are fully sanctioned, protected, and roam unrestrainedly within the prison of their assignment. The inmate collaborators, infamously known as "building tenders," are relegated to a privileged class higher than the slaves they lord it over.
>
> But the calm of T.D.C. is misleading, and stability under fascist relations is a surface phenomenon at best. T.D.C. is headed for a social meltdown because, basically, its authoritarian repressiveness is the profound negation of human rights; and the myriad contractions it spawns manifest in the authoritarian concavity of its odiously primordial repressivism.
>
> When will we regain our humanity?

South Carolina: 1895

Of particular interest in the postbellum period of state constitutional changes is the former Confederate State of South Carolina. In 1895, South Carolina followed Texas in withdrawing its ruling on prison slavery and also becoming a *no proviso state.*

South Carolina's 1869 state constitution attempted to cover over prison slave practices by prohibiting all slavery and only permitting involuntary servitude to punish crimes. That state's earlier *involuntary servitude state* status was conferred by Article I, Section 2 of its Constitution of 1869. Section 2 stated:

> Slavery shall never exist in this State; neither shall involuntary servitude, EXCEPT AS A PUNISHMENT FOR CRIME.

Until 1866, there was no state penitentiary in South Carolina and punishment rested with the counties.[41] The eventual building of its first prison relied on the rationale used in the rest of the reconstructed South.

> According to one state official, the reason for establishing it was that "after the emancipation of the colored people, whose idea of freedom from bondage was freedom from work and license to pillage, we had to establish means for their control. Hence came the penitentiary."[42]

Due to overcrowding and political efforts to turn punishment into a lucrative state venture, the *involuntary servitude state* of South Carolina enforced its constitutional proviso through the convict lease system.

> A few prisoners were leased as early as 1873, but in 1877 the legislature authorized large-scale leasing. One hundred convicts were handed over to the Concord and Augusta Railroad. "By 1878 South Carolina had 221 prisoners working on railroads, in phosphate mines, and on private plantations. In two years' time, 153 prisoners had died - the death rate on the Greenwood and Augusta being 52.52 percent - 82 had escaped, and many of those returned to state custody were so disabled that they could not walk. An investigation showed the prisoners to be suffering from malnutrition, vermin, and beatings, and from living in indescribable filth.[43]

The leasing system in South Carolina ended in 1885.[44] Ten years later, in 1895, the text of Article I, Section 2 was removed from the state constitution. The new document made no mention of slavery or involuntary servitude and South Carolina's status changed from an *involuntary servitude state* into a *no proviso state.* Perhaps, with abolition of the convict lease system, the state government no longer felt the need to justify slavery under the lease system by calling it another name. In constitutional terms, South Carolina abandoned a brutal definition of punishment by calling it involuntary servitude and then returned in 1895 to an accurate definition of its slave punishments by deferring state authority to the federal Thirteenth Amendment.

Virginia, 31 Years After the Case of Woody Ruffin

Virginia, the state which housed the capitol of the Confederacy, abolished chattel slavery in Article I, Section 19 of its 1870 constitution. Section 19 stated:

> That neither slavery nor involuntary servitude, EXCEPT AS LAWFUL IMPRISONMENT MAY CONSTITUTE SUCH, shall exist in this State.

In 1902, Section 19 was omitted from the state constitution and slavery and involuntary servitude were not mentioned, thus transforming the constitutional status of Virginia from *prison slave* to *no proviso.*

When, in 1900, the United States Industrial Commission strongly endorsed abandonment of leasing or contracting prison labor, the State of Virginia was not ready to let go its arrangements with private businesses using convict labor.[45] Virginia's constitutional change to a *no proviso state* may have reflected a hopeful attempt to maintain anonymity to avoid criticism. Virginia's position on prison slavery was made unmistakably clear, however, in the precedent-shaping 1871 decision in the case of *Ruffin v. the Commonwealth.*

During the period of the convict lease system, prison slaves were leased to railroad companies in Virginia, including one Woody Ruffin. Ruffin was leased to the Chesapeake and Ohio Railroad in Bath County, Virginia, but attempted to escape, allegedly killing a company guard. "For this offence he was tried in the Circuit court of the city of Richmond, by a jury selected from a *venire* of said city, and was found guilty of murder in the first degree, and was sentenced by said court to be hung on the 25th day of May 1871."[46]

Ruffin's attorney appealed the decision of the case to a higher court, arguing that the recently incorporated Bill of Rights in Virginia declared, "among other declarations of personal and political rights, 'that in all capital or criminal prosecutions, a man hath a right to a speedy trial by an impartial jury of *his vicinage,* without whose unanimous consent he cannot be found guilty.'"[47] In a sweeping decision, the court gave no credit to Ruffin's claim of having his right to due process violated and declared that

> [1] For the time, during his term of service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State. He is *civiliter mortus;* and his estate, if he has any, is administered like that of a dead man.
>
> [2] *The bill of rights is a declaration of general principles to govern a society of freemen, and not of convicted felons and men civilly dead.* Such men have some rights. . . but not the rights of freemen. They are the *slaves of the state* undergoing punishment for. . . crimes committed against the laws of the land. While in this state of penal servitude, they must be subject to the regulations of the institutions of which they are inmates, and the laws of the State whom their service is due in expiation of their crimes. [Emphasis added.][48]

The Virginia Court of Appeals decision in *Ruffin v. The Commonwealth* transformed prison slavery from the *spirit* of U.S. Constitutional law into literal practice as it confirmed slavery as a legal punishment for crime.

And Into the 20th Century

In the first half of this century, very little changed in the reading of state constitutions regarding slavery. Three states changed their status as already mentioned: Virginia took out its proviso for slavery in 1902 and joined the ranks of *no proviso* states; Ohio joined the ranks of the *involuntary servitude* states in 1912; and Missouri, formerly a *prison slave* state, withdrew its provision for slavery and had *no proviso* to replace the authority of the Thirteenth Amendment.

Ohio, in the seemingly most significant state constitutional change of this period, altered its constitution to authorize involuntary servitude only:

> There shall be no slavery in this state; nor involuntary servitude, UNLESS FOR THE PUNISHMENT OF CRIME.

Ohio changed its label for punishment in 1912 but the brutality which stems from institutionalized slavery continued in that *involuntary servitude state.*

> Dear CAPS,
>
> I am writing to ask you to please consider investigating guard brutality and racist practices at [this prison].
>
> I have personally seen guards beat a man who was already handcuffed and in what represents a continuing practice of brutality, guards savagely beat and injured inmates on [date withheld]. Prisoners Doe, Smith and Jones [names changed] were all beaten so badly that they had to be examined by outside physicians. Doe and Smith were rushed to the hospital on the outside. One man is reported to have sustained a broken neck...The beatings were administered after the men had been escorted to "the hole" area and after they were already in restraint. There is no excuse for the criminal conduct of those who are paid to represent the State of Ohio as caretakers of prisoners. Must the prisoner suffer murder and violence in cruel and unusual punishment? Each fruit bears its own kind and so does brutality.
>
> President Carter has spoken out on Human Rights abroad but what about having it right here in Ohio. The prisoners here suffer inhumane treatment by a staff of all white guards who are both unprofessional and reactionary, in my opinion. Use of Force Reports are security matters not to be reviewed by the public or even outside departmental officials. Even the Ohio Legislative Institutional Inspections Committee cannot gain ready access to the Use of Force Reports and investigate the severity of them without department of corrections road-blocks.
>
> And double celling (forced) is still being used as a daily practice despite a two year old federal court decision holding the practice unconstitutional, but this double celling based

> on race continues while the public is barred from examining the goings on inside its prisons though they must pay the taxes to fund them. Your attention would be a god-send.
>
> Prisoner in Ohio

Regardless of state constitutional provisos and changes in those provisos, every state in this country practiced - and still practices - "slavery . . . as a punishment for crime."

Notes

1. Lerner, p. 305.

2. W.E.B. DuBois, intro. by Herbert Aptheker, *The Souls of Black Folk* (Millwood, N.Y.: Kraus-Thomson Organization Limited, 1973; reprint A.C. McClurg & Co., 1953), p. 111; see also Kluger, p. 51.

3. Carl Schurz, *Charles Sumner* (Urbana: The University of Illinois Press, 1951), p. 48.

4. *Congressional Globe,* 38th Congress, 1st Session, vol. 1, p. 8.

5. Ibid., p. 197.

6. Ibid., p. 521.

7. Ames, pp. 214-215.

8. *Congressional Globe,* vol. 2, p. 1313.

9. Ibid., p. 1461, Henderson concludes a long argument in the slavery debates with:

> There are but two sides to the question. The one is Union without slavery; and another is the immediate and unconditional acknowledgment of the southern confederacy. . . . For the expression of this sentiment I may be called a fanatic. . . . It results not from any sudden abhorrence of slavery, for I have been in its midst all my life. It does not spring from hatred of slaveholders, for, whether in honor or shame, I am a slaveholder to-day.

10. Ibid., vol. 1, p. 553.

11. Ames, pp. 215-216.

12. *Congressional Globe,* vol. 2, p. 1482.

13. Ibid.

14. Ibid., p. 1483.

15. Ibid., pp. 1487-1488.

16. Ibid., p. 1488.

17. Ibid.

18. Ibid.

19. Ibid.

20. Ibid.

21. Kluger, p. 51.

22. Ibid., pp. 45-46.

23. DuBois, *Black Reconstruction,* p. 167.

24. Vernon Lane Wharton, *The Negro in Mississippi, 1865-1890,* (Chapel Hill: University of North Carolina Press, 1947), p. 237; see also Sellin, p. 147n.

25. Sellin, p. 151.

26. DuBois, *Black Reconstruction,* p. 131.

27. See Sellin, pp. 145-146.

28. Ibid., p. 162.

29. Ibid., p. 134.

30. Franklin B. Hough, *American Constitutions: Comprising the Constitution of Each State in the Union, and of the United States...,* vol. 1 (Albany, N.Y.: Weed, Parsons & Company, 1872), p. 743.

31. Sellin, pp. 147-148.

32. Ibid., p. 149.

33. Ibid., pp. 150-151.

34. John W. Bankhead, shortly after he became the Alabama state prison warden, as quoted by George W. Cable, "The Convict Lease System in the Southern States," *The Silent South* (Montclair, N.J.: Patterson Smith Publishing Corporation, 1969; reprint ed. 1889, Charles Scribner's Sons), p. 168; see also Sellin, pp. 151-152.

35. Walter Wilson, *Forced Labor in the United States* (New York: International Publishers, 1933), p. 41.

36. Prison Reform League, *Crime and Criminals* (Los Angeles: Prison Reform League Publishing Company, 1910), pp. 128-129.

37. McKelvey, p. 97.

38. Prison Reform League, pp. 48-50.

39. Clarissa Olds Keebler, *American Bastilles* (Washington, D.C.: Carnahan Press, 1910), p. 26.

40. Clarissa Olds Keebler, *The Crime of Crimes or the Convict Lease System Unmasked* (Washington, D.C.: Pentecostal Era Company, 1907), pp. 22-23; U.S. Department of Justice, *Bureau of Justice Statistics Bulletin,* Prisoners at Midyear 1981 (September 1981), p. 2.

41. Sellin, p. 258; McKelvey, p. 204.

42. Sellin, p. 158.

43. John Samuel Ezell, *The South Since 1865* (New York: Macmillan Company, 1963) p. 367; see also Sellin, p. 158.

44. Sellin, p. 158.

45. McKelvey, pp. 205-206, 249-250.

46. *Ruffin v. the Commonwealth,* 62 Va., 792.

47. Ibid.

48. Ibid., p. 796.

Chapter 6:
Twentieth Century Justice

I know from actual experience what the auction block means. . . . I know from actual experience that the only difference between Cassie [of *Uncle Tom's Cabin*] and me was that Cassie was sold to the highest bidder and I was sold to the lowest.

- Kate Richards O'Hare[1]

Before the Civil War, blacks were rarely imprisoned in the Southern slavocracy because jailing bondservants deprived the master of profits from the labor of their chained human property. Northern cages, already sites for exploitation of labor by private businessmen through the contract labor system, were teaching poor and rebellious workers the submission that competing capitalists demanded. Following certification of the Thirteenth Amendment, this state-administered slavery, developed in the North to punish poor white convicts, was almost exclusively applied against emancipated freedmen in the South. Now lower-class citizens of every color filled slave vaults of punishment while laws continued to incriminate the poor and veil their exploitation by the wealthy.

The Great Abandonment

The United States government made great strides by prohibiting chattel slavery in the Thirteenth Amendment; guaranteeing due process and equal protection to all citizens by the Fourteenth Amendment in 1866 and mandating that no one be denied the right to vote because of race, color or previous condition of servitude by the Fifteenth Amendment of 1869. The Constitution also gave Congress power to enforce these new amendments "by appropriate legislation."[2] From that authority came the Civil Rights Act of 1875, asserting the right of all people, regardless of color, to "the full and equal enjoyment of accomodations. . . of inns, public conveyances on land or water, theaters and other places of amusement. . . ." When, however, Senator Charles Sumner tried to amend the bill to desegregate schools, Congress refused.[3] The reluctance of government to enforce constitutional rights for ex-slaves was foreshadowed in 1870 when the Freedmen's Bureau was shut down.

> It was the most extraordinary governmental effort at mass uplift in the nation's history; not until the New Deal would its like be tried. Yet only a little more than $5 million - $1.25 per capita - was spent to compensate for 200 years of ignorance

> enforced on a whole transplanted people. It was a pitiful amount for a cause of such urgency and magnitude. True, the Freedmen's Bureau schools [4,000 throughout the South, with an attendance of nearly 250,000] had inspired the Reconstitution legislatures of the South to provide for public education programs, but there would be little local or state money to pay for them for decades, and white property owners, hard pressed to hold on, were disinclined in the extreme to be taxed in behalf of their late bondsmen, whose need for learning they found dubious in the first place.[4]

The planter rallied; former slavemasters became new entrepreneurs in the "free market" by renting slave labor from crowded prisons. Many emancipated slaves who avoided falling into imprisonment were bound in some other form of servitude. Some became sharecroppers chained to the land through deepening debts owed the landlords' stores, with their deliberately inflated prices.

Previously unable to compete with the wageless labor of chattel slavery, poor whites could not compete any more successfully with the reinforced servitude of "emancipated" slaves and were now more destitute than before the war. Although exploitation of black workers contributed again in the powerlessness of white workers, many lower-class Southerners still failed to recognize that their best interests lay in complete equality for their black brethren. Racism continued to serve masters well, preventing poor whites from recognizing the true roots of their impoverishment. As they had for more than two centuries before, many southern whites idealized the planter, identifying him as their mentor. W.E.B. DuBois explained:

> It seemed after the war immaterial to the poor white that the profit from the exploitation of black labor continued to go to the planter. He regarded the process as the exploitation of black folk by white, not of labor by capital. When, then, he faced the possibility of being himself compelled to compete with a Negro wage worker, while both were the hirelings of a white planter, his whole soul revolted. He turned, therefore, from war service to guerrilla warfare, particularly against Negroes. He joined eagerly secret organizations, like the Ku Klux Klan, which fed his vanity by making him co-worker with the white planter, and gave him a chance to maintain his race superiority by killing and intimidating "niggers"; and even in secret forays of his own, he could drive away the planter's black help, leaving the land open to white labor. Or he could murder too successful freedmen.
>
> It was only when they saw the Negro with a vote in his hand, backed by the power and money of the nation, that the poor whites who followed some of the planters into the ranks of the "scalawags" began to conceive of an economic solidarity between white and black workers.... But before all this was so established as to be intelligently recognized, arm-

> ed revolt in the South became organized by the planters with the cooperation of the mass of poor whites. Taking advantage of an industrial crisis which throttled both democracy and industry in the North, this combination drove the Negro back toward slavery. Finally the poor whites joined the sons of the planters and disenfranchised the black laborer, thus nullifing the labor movement in the South for a half century and more.[5]

The industrial crisis which DuBois spoke of was the depression of 1873-76. The decade preceding the industrial crash was prosperous for the capitalist; fortunes were made in oil, copper, timber, beef, gold and silver and the railroad stretched from coast to coast.

> [At] the same time millions lived in abject poverty in densely packed slums.... They struggled merely to maintain their families above the level of brutal hunger and want...the great majority [working] such long hours for such little pay that their status was a tragic anomaly in the light of the prosperity generally enjoyed by business and industry.[6]

Money for the farmer and the worker was scarce. Union leader William Sylvis appealed to the need for unity among all workers. Labor needed the black worker, he said:

> The line of demarcation is between the robbers and the robbed, no matter whether the wronged be the friendless widow, the skilled white mechanic or the ignorant black. Capital is not the respector of persons and it is in the very nature of things a sheer impossibility to degrade one class of labor without degrading all.[7]

Through Sylvis's leadership the National Labor Union was formed and women and blacks were admitted as delegates on a strong platform of unity for workers. The demise of the N.L.U. came after six short years and Sylvis's untimely death at age 41. While wages continued to fall to a dollar a day, the union's leadership turned to influencing the government to print more currency rather than working for better wages and benefits for workers.[8]

By 1877, there were three million unemployed workers and only eight or nine trade unions remaining. Union members were blacklisted, charged with conspiracy and locked out of work. As blacklisted workers roamed from city to city and state to state in search of work, men like Andrew Carnegie reaped gold from the suffering nation. "The man who has money during a panic," said Carnegie, "is a wise and valuable citizen." J.D. Rockefeller, Henry Frick and Andrew Mellon were among those "wise and valuable" citizens gobbling up their competitiors to secure the growth of their own burgeoning monopolies.[9]

Workers gathered to demand their just due in demonstrations in Chicago, New York and other great cities, only to meet the flying clubs of armed police.[10] The growing voice of angry workers began to worry industrialists, and, as historians Richard Boyer and Herbert Morais reported, "individuals working within the Republican Party began preparing for a new offensive against the trade union movement."

> [The Republicans'] first move was to gain a new ally for themselves while denying it to labor. They lived in fear that labor, making a common cause with restive farmers, would resurrect the Democratic Party and, in alliance with the South's planters, turn all Republicans out and, worse still, reverse their profit-breeding policies. To avert this they decided to make the Southern planters, stalwarts of the Democratic Party, their allies instead of their opponents. Since 1867 they had given support, however vacillating, to the Negro people in their fight against reenslavement.... They had backed, in short, a revolutionary upsurge in the South that had scored great democratic gains but now, pressed by the new threats of the depression, they were in a mood to make allies of their old opponents to prevent the formation of a new and radical Democratic Party. This they were soon to do in a fundamental realignment of political forces that increased the dangers facing labor.
>
> The army that had garrisoned the South was soon to be withdrawn and thrown against Northern workers on strike against depression wage cuts. The Negroes in the meantime were left to the mercies of their ex-masters. Under the new alliance the Democratic Party in the South became to a large extent an appendage of the Republican Party in the North, at least economically, its platforms usually as conservative and as lacking in menace to the wealthy as those of the Republicans themselves.[11]

Abandoning the cause of freedom in the South took four or five years, climaxing in the Presidential election of 1877. Twenty electoral votes stood between Republican candidate Rutherford B. Hayes and the Presidency. The formal agreement which gave Hayes the White House let conservative southern Democrats do as they wished to blacks in return for support of Hayes and a pledge to aid Northern big businessmen suppress rebellious farmers and workers:

> The Republicans had abandoned the Negroes in the South the better to deal with rising protest in the North - as they did so they took effective action to prevent the Democratic Party from developing into a farmer-labor vehicle of protest. Thus it was that Negroes were being murdered in Columbia and Spartanburg, S.C.; in Livingston, Ala., and Greggs County, Tex., as troops were being called out against Massachusetts textile workers and Pennsylvania miners fighting through the country's severest depression.[12]

Disfranchisement, Murder, and Peonage

The Fourteenth and Fifteenth Amendments now had little practical value based on their original purpose to guarantee due process and black suffrage. At the turn of the century, eight southern states passed poll tax laws depriving nearly 10 million people of their right to vote "either because of their color or because they were too poor to pay for the privilege."[13]

"Due process" is a hollow term to describe the court procedures which sentenced thousands each year into prison-administered slavery. For decades, it would not be uncommon to report a southern court's sentencing a starving worker convicted of stealing a ham to twenty years' hard labor. Racist atrocities grew out of the ignorance and fears of impotent people seeking power in crucifying others even more powerless. The National Association for the Advancement of Colored People (N.A.A.C.P.) in 1911 reported a typically grotesque mob murder:

> *Whereas* the Press Dispatches show that one M. Potter, a colored man, charged with killing a white man, was taken from the jail at Livermore, Ky., last week, and taken to the town Opera House, and tied on the stage, and that an admission fee was charged to witness the lynching, the prices ranging from those usually charged for orchestra and gallery seats, and that a feature of the lynching was that the audience was allowed to shoot at the suspended body of the victim, and, as in the words of the Press reports, "Those who bought orchestra seats had the privilege of emptying their six shooters at the swaying form above them, but the gallery occupants were limited to one shot..."[14]

A decade later, it was reported that of the 2,522 lynchings of black men over a thirty-year period studied by the newly formed American Civil Liberties Union, less than 19 percent of the victims had been even *charged* with a crime.[15]

In New York City during the summer of 1917, a silent march of thousands of Afro-Americans protested these mass killings and demanded justice. The following statement made by the Parade Committee and distributed in leaflet form throughout the city explained that

> We march because we want to make impossible repetition of [the lynchings in] Waco, Memphis, East St. Louis, by rousing the conscience of the country and to bring the murderers of our brothers, sisters and innocent children to justice.[16]

Georgia-born black minister Richard R. Wright, Jr., told the National Conference on Social Work in June of 1919 that local governments could not be expected to protect blacks against mob violence when black citizens were robbed of the power to vote their allies back into office. He said:

> There have been over 3,500 [lynchings] in our country; many of them have been for causes more or less trivial; such as "talking back to a white person," disputing about money, theft, resisting arrest, etc., for which the offender would have received a light sentence if convicted in a court by trial. But a democracy which disfranchises a part of its citizens may expect lynching. Sheriffs are slow to protect those who do not vote for them.[17]

The government officially disapproved of these mob murders but did little to stop them. When government fosters attitudes and policies that encourage oppression of a minority, resulting exploitation of that part of the labor force helps keep all workers at odds with one another, reducing their effectiveness by undermining their unity.

Fostering racist divisiveness made it simple to depress wages. Several decades passed before southern workers crossed racial boundaries to organize effectively for their mutual benefit. Meanwhile, vagrancy laws not only kept government cages filled but also helped provide free laborers through peonage, a form of debt slavery which had been outlawed by an 1867 federal law. In spite of the Supreme Court upholding the constitutionality of that law in 1911, peonage continued for another 30 years.[18] During the early 1900's, W.E.B. DuBois's newsletter, *The Crisis,* was the voice of the young N.A.A.C.P., an organization which has served throughout this century as an effective agent in the protracted struggle for equal rights for blacks. In 1911, *The Crisis* printed a revealing letter about peonage in the South:

> I am not an educated man. I will give you the peonage system as it is practised here in the name of the law. . . .
>
> I am brought in a prisoner, go through the farce of being tried. The whole of my fine may amount to fifty dollars. A kindly appearing man will come up and pay my fine and take me to his farm to allow me to work it out. At the end of a month I find that I owe him more than I did when I went there. The debt is increased year in and year out. You would ask, "How is that?" It is simply that he is charging you more for your board, lodging, and washing than they allow you for your work, and you can't help yourself either, nor can anyone else help you, because you are still a prisoner and never get your fine worked out. If you do as they say and be a good Negro, you are allowed to marry, provided you can get someone to have you, and of course the debt still increases. This is in the United States, where it is supposed that every man has equal rights before the law, and we are held in bondage by this same outfit.
>
> Of course we can't prove anything. Our word is nothing. If we state things as they are, the powers that be make a different statement, and that sets ours aside at Washington and, I suppose, in Heaven, too. . . .
>
> What I have told you is strictly confidential. If you publish it, don't put my name to it. I would be dead in a short time after the news reached here.

> One more word about peonage. The court and the man you work for are always partners. One makes the fine and the other one works you and holds you, and if you leave you are tracked up with bloodhounds and brought back.[19]

In 1907, another newspaper reported on debt slavery in Florida:

> Northern capitalists come South to develop the resources of the country... It is a part of the commercialism of the country, and is a convenient method utilized by capitalists in exploiting labor.
>
> More than three-fourths of the lumber and turpentine operators in the state are Northern men. Most of the camp foremen are Northern men.... In the rush for the almighty dollar all distinctions of creed and color are obliterated.[20]

Eighty-three peonage complaints were pending at the U.S. Justice Department in 1907; in 1908, an investigating committee reported finding a "complete system of peonage in the logging and lumbering industries of Maine"; and a few years later, the Immigration Commission reported that immigrants were in debt slavery throughout the South. Forced labor for unpaid debts turned up at the camps of free labor participating in the building of Attica prison. Even the government was indicted for the practice in December 1931, when it was discovered that the War Department was using forced labor for levee work along the Mississippi River. Throughout the West, Mexicans were in debt slavery on ranches, road construction sites, irrigation jobs and in the salmon canning industries of the Pacific Northwest. At a Congressional Committee hearing, the general solicitor of the Santa Fe Railroad, E.E. McKinnis, admitted hiring over 75 percent of their workers through a California agency supplying free Mexican laborers. The agency furnished the work site commissary where the Mexicans had to buy their supplies at inflated prices from the employment agency to whom they were already in debt.[21]

Tenant farmers often organized to demand fair labor practices. As in earlier labor struggles in this country, it was a slow uphill battle and the courts afforded them little protection. In 1919, a tenants' farm union in Phillipes County, Arkansas, determined to end peonage, was attacked by an armed band of planters and businessmen. The battle resulted in two hundred dead and hundreds of tenant farmers arrested on murder charges. After a 45 minute trial, 67 farmers were sentenced to death. In 1931, a similar attack was made on Alabama tenant union members and resulted in the arrest of 35 sharecroppers.[22]

Exploitation and Rebellion

It took 50 years for workers in the South to begin organizing effectively against exploitation. Northward in industrialized states, organiz-

ed workers were also victims of unequal protection before the law. Like slavery abolitionists before them, labor leaders were called communists by their powerful opponents. This charge, aimed at arousing public patriotism, was proliferated by large newspapers owned by rich businessmen having big profits at heart.

As Republicans sold out Reconstruction, the Pinkerton Detective Agency began a lucrative business serving the best interests of corporate clients. Its founder, Allen Pinkerton, had such a flourishing business that he was able to devote much of his time to a writing career:

> My extensive and perfected detective system has made this work easy for me where it would have been hardly possible for other writers; for since the strikes of '77, my agencies have been busily employed by a great railway, manufacturing and other corporations, for the purpose of bringing the leaders and instigators [of strikes] to the punishment they so richly deserve. Hundreds have been punished. Hundreds more will be punished.[23]

Coal and railroad boss Franklin B. Gowen orchestrated one of the earliest post-war attacks on labor unions, paying Pinkerton a $100,000 retainer in 1873 to spy on coal miner organizers. The Irish Americans proved a particular source of inconvenience for Gowen after 179 of their number died in an 1869 mining accident caused by unsafe working conditions. In 1870, the miners forced Gowen to sign a union contract, much to the vociferous dismay of his stockholders. The Pinkerton spy failed to turn up any incriminating evidence against the strikers and Gowen initiated a new campaign against the miners, spreading the story that their leaders belonged to a communist band from Ireland called the "Molly Maguires." These "Molly Maguires" were nothing but the product of the financier's gifted imagination.[24]

After six years of unrelenting war on the miners, Gowen proved his conviction that "it was sufficient to hang a man to declare him a Molly Maguire." In 1875, the miners went on strike to protest the company's 25 percent cut in their wages. Gowen's campaign of lies alleging arson and murder by the "Molly Maguires" brought public opinion to his side. After six weeks of starvation, miners were forced back to work at a 20 percent wage cut and two of their leaders went to prison for conspiracy to raise prices of vendible comodities in Pennsylvania. His final revenge came a year later, when he had the Pinkerton spy testify in court that union leaders committed several murders. In spite of testimony conflicting with that of Gowen's witnesses, 19 union members were convicted of murder and executed.[25]

While the government sent no troops to protect innocent citizens from mob lynchings, it did not hesitate to send soldiers to shield businessmen from the demands of organized labor. After World War I, the National Association of Manufacturers began a red-bating campaign

aimed at convincing the public that labor was Bolshevik, although only one tenth of one percent of all Americans were Communists. In 1919, steel workers went on strike in 50 cities for higher wages and better working conditions. The U.S. Army, detectives, police, the newly formed American Legion and the U.S. Department of Justice moved to stop them. Many workers were killed, hundreds seriously wounded, beaten and several thousand jailed. Newspapers were filled with reports on Moscow and on America's nationwide search for Communists.[26] As Boyer and Morais's *Labor's Untold Story* reports:

> On the night of Jan. 2, 1920, 10,000 American workers, both aliens and citizens, most of them trade union members and many of them union officials, were hauled from their beds, dragged out of meetings, grabbed on the streets and from their homes, and thrown into prison by the federal police under the direction of Attorney General Palmer and his aid, J. Edgar Hoover. . . . In Boston 400 workers were led through the streets, manacled and handcuffed, clanking with chains. . . .
>
> Almost everywhere prisoners were manhandled and beaten while in Philadelphia, where 200 were arrested, the third degree was used on almost all. In Hartford, Conn., scores of workers were tortured by fierce, unbearable heat in "punishment rooms" while at least one victim had a rope placed around his neck by Justice Department men who said they would hang him if he did not give them the names of other workers.
>
> In Detroit the raid "marked a peak in brutality." Eight hundred men were packed in a narrow windowless corridor on the top floor of the Federal building. They remained there, many ill and without food, for six full days until Mayor James Couzens said the conditions under which they were being tortured were "intolerable in a civilized city." Then they were moved to a deserted army encampment at Fort Wayne where new methods of torture were devised. The wives and children of those imprisoned there were beaten in the sight of the prisoners.[27]

South, west, east and north, the struggle continued, but the choice to resist or not resist oppression presents grim alternatives for poor and working people. Sharecroppers, labor organizers and minority Americans demanding equality have always risked punishment. Victories, bitterly won, take decades, while political prisoners face special punishment for conviction of the most minor offenses. In the early thirties, a newspaper reporter visiting the Allegheny County Workhouse at Blawnox, Pennsylvania, wrote:

> In the workhouse there are many men sentenced to as high as five years, particularly in the case of class-conscious workers. Ordinarily persons sentenced to two to five years are sent to the Western Penitentiary in Pittsburgh. However, this is considered too easy punishment for striking miners and

> they are sent to the workhouse where conditions are much harder and the food much worse.[28]

The vast majority of prisoners have been ordinary people whose primary conscious struggle was day-to-day survival without benefit of sufficient food, shelter, employment, education or opportunities. They, in less careful or thoughful ways, have also rebelled. By reenforcing powerlessness, prison slavery had played an important role in maintaining inequality. Penal philosophy remains as rooted in slave punishments as this previously cited statement implies:

> ...the necessary condition for the prisoners' reëntry into society is unconditional submission to authority, a conclusion which has remained unshaken by reform programs and tendencies up to the present.... Obedience is demanded not so much for the smooth functioning of the prison but for the sake of the convict himself, who shall learn to submit willingly to the fate of the lower classes. That is a difficult task.[29]

It remains a difficult task today. The history of slavery includes a history of rebellion in which untold numbers have died. Few slave rebellions have been won without the committed participation of free citizens, but, throughout history, slaves have voluntarily fought for emancipation. In 1933, Walter Wilson wrote:

> Leased or bound-out prisoners were in most of the revolts of indentured servants, convicts and slaves before the Revolutionary War. Since then they have engaged in many fights. In the period from 1881 to 1900, for example, there are 22 recorded strikes against convict labor in coal mines. Most of them have been forgotten as very few records were kept, or because the whole matter was hushed up by the ruling class at the time it occurred.
>
> Perhaps the most significant of all such revolts was the Coal Creek Rebellion of 1891-92 in the coal mines of East Tennessee. Following a combination lock-out and strike, convict strike-breakers were brought in by the Tennessee Coal, Iron & Railroad Co. (now a subsidiary of the United States Steel Corp.), which leased an average of 1,500 to 1,600 convicts from the State of Tennessee. The company paid to the state an average of $42 a year for the use of an able-bodied worker. Naturally with such cheap labor power huge profits were piled up. It may be said that this company was built upon the trade and exploitation of convict slaves.
>
> The president of the corporation at that time was Thomas C. Platt, Republican boss of New York in the 1890's. Members of the New York Legislature and other northern capitalists owned stock in the company. However, the convicts were bound out to Mr. Platt, the Republican, by the southern Democrat legislature and governor of Tennessee.
>
> The miners, Negro and white, aided by the farmers of East

> Tennessee, drove out the guards, burned the prison stockades throughout East Tennessee and released the convicts who escaped to the hills. Governor Buchanan sent in the militia to subdue the workers. After a pitched battle the entire force of soldiers was captured and driven out after being disarmed and after promising never to return to the mining section. The struggle had begun in earnest. It lasted from July 14, 1891 (Bastille Day), to November, 1892, with a few skirmishes [occurring] as late as 1893. . . .
>
> Negroes and whites, men who fought for the North and men who fought for the South in the Civil War, farmers and miners, convicts and "free" men, stuck together in the face of the entire armed forces of Tennessee. Approximately 10,000 soldiers and members of businessmen's posses were used to crush the revolt. Workers and convicts stormed the forts and cannons and died together. But they died with the knowledge that they had killed a great many more of the common enemy than the enemy had killed of them. Over 500 miners were arrested after the workers had been disarmed.
>
> Before the lease system was adopted in Tennessee in 1889, convicts were worked under contract to private contractors at Nashville. But after the convicts burned the prison on several occasions and with it all the manufactured goods in the place, the employers repudiated their contracts. It was then that the convicts were leased to the coal mines.[30]

Shared Ownership of the Convict Is Attacked

Although the Thirteenth Amendment was supposed to abolish slavery, it merely transferred ownership of the slave to the State. *Ruffin v. the Commonwealth* confirmed this interpretation of the law in 1871, when the Court of Appeals of Virginia dignified the practice of stripping a human being of all rights following conviction of a crime. "He is," the court said, "a slave of the State."[31]

North and South, businessmen shared in profits from prison slavery. The convict lease system put freedmen back on plantations and in the mines and swamps of the South; while in the North, contractors came into the prison to oversee and profit from convict labor. Because southern industries lagged far behind those in northern states, southern convict slaves produced raw products to sell to northern industries. Northern prisoners did more industrial work.

By the turn of the century, the convict-lease and contract labor systems were being widely criticized for their brutality and exploitation. The following, written by a newspaper reporter in 1908, reinforced growing public outrage:

> To see slavery with all its revolting cruelties, it is necessary only to visit one of the convict-operating coal mines. The

> Pratt City mine, near this city [Birmingham, Alabama], is one of these.
>
> It was with an air of pride they showed me through. . . . I saw men, their quarters, what they ate, where they worked and slept; the four-foot leather trace-strap with which they were whipped when their armed, keen-eyed taskmasters said they shirked; the rifle-carrying, square-jawed guards with their packs of bloodhounds kept always ready to track men down - I saw it all. . . .
>
> That leather bludgeon keeps coming to my mind. Each man is assigned his daily task; and if he fails he is strung up and whipped. . . .
>
> There were at the Pratt City mines about 1,000 men. About half were convicts of the state - long term men; the others were the county's men, sent here for misdemeanors. The latter class are leased to private mining companies at an average of $18 per head a month. . . .
>
> Probably the worse feature of convict labor is its continued competition with free labor.[32]

The economic consequences of convict slavery affected the free market, resulting in echos of antebellum complaints about the unfair competition of chattel slave products from the South. The focus of organized labor's complaint, as well as the complaints of some businesses, was the shared ownership of convict labor by businessmen. Ever since the beginnings of the Auburn plan, organized labor had been protesting the sale of prison-made products on the free market. By denying the protections of labor and citizenship rights, slavery creates misery for both bonded and free workers by depressing all prices and all wages. Ambitious businessmen could use the cheap labor available throughout the nation by putting their runaway shops in prisons, thereby avoiding the demands of organized labor for better wages and working conditions. By 1900, even national and state government labor commissions condemned the sale of prison-manufactured products on the free market. New York State was among the first to restrict private businesses' use of prison labor.[33]

The National Committee on Prison Labor, seated in New York, influenced the eventual end of the convict lease and contract labor systems. In his book *Penal Servitude,* E. Stagg Whitin, the Committee's General Secretary, reported the following resolution of November 24, 1911:

> After one year of study the National Committee on Prison Labor found the preponderance of evidence to be in favor of the state use system; after a second year of study and further investigation, the Committee is in a position to declare as prejudicial to the welfare of the prisoner, the prisoner's family and the public, the contract system of prison labor. The Committee therefore declares itself opposed to the contract sys-

> tem of prison labor and to every other system which exploits his labor to the detriment of the prisoner.[34]

In the preface, dated on Lincoln's birthday, Whitin wrote:

> To the members of the Committee... the author makes due acknowledgement, and trusts that the work, which has but just begun, will be continued in the same broad spirit until it can be said with truth that neither slavery nor involuntary servitude, *not even as a punishment for crime, exists within the United States or any place subject to their jurisdiction.* [Emphasis added.][35]

In addition to reporting the barbarities of the contract and lease systems, the study surveyed the use of convict slavery as it existed throughout the United States. Whitin's illustration of exploitation of free workers in a small town in northern New York provides an interesting anecdote: "Fred Slaver," so-labeled by Whitin, controlled the basketweaving industry in Liverpool, New York. Owning the raw material for baskets, Slaver had his willows stripped by prisoners and payed the state nine dollars for every carload of willows the convicts stripped. He then shipped the stripped willows to the nearby town of Salinas, New York, where baskets were woven by his "free" workers. Slaver's monopoly kept many of the town's willow strippers out of work while other "men, women and children worked at starvation wages" weaving baskets. Slaver then shipped his goods westward, where he sold them at wholesale prices, avoiding penalties for violating the New York State law prohibiting sale of convict goods on the free market.[36]

Whitin and the National Committee on Prison Labor made important contributions by promoting the eventual end of the convict lease and contract labor systems, but they failed to extend their work to abolishing slavery in prisons. Whitin's suggested alternative to the private use of convict labor was to place the slave labor of prisoners in the hands of the state, for state use only. He argued that lessee and contracting businesses cared only about profits but that state-hired correctional officers would have reformation of the convict at heart. As the following illustrates, Whitin's rationale for his suggested alternative left much to be desired:

> [The] *warden,* or superintendent, within the confines of his prison is a *czar,* his word is law, his will is supreme.... *The warden lives upon the institution,* his personal wants are first to be satisfied; he usually has the use of a beautiful house connected in some way with the enclosure; his table is supplied with all the luxuries of the season from the prison commissary, prepared by prisoners often under supervision of an accomplished convict chef; convicts serve meals and attend upon his wife and his children, anticipating their every want; the education of his children is in some cases delegated to

> convict tutors, while many of the details of running the institution are deputed to convict clerks, some of whom have executive ability surpassing that of the warden. All reports as to breaches of discipline and the work in the institution are made to the warden on which he is supposed to judge the prisoner, rewarding or punishing. These reports form the basis for the prisoner's release under indeterminant sentence ....In the *supreme paternalism* which exists rest infinite possibilities for the real education and development of the convict toward a better and more useful life, and the consummation of all the evil which human nature can foster up in response to the brutality of the tyrant.[37]

As if the good intent of the slavemaster could negate the disabling effects of denying people citizenship, labor, and human rights! Whitin, we assume unknowingly, used the same defense of slavery championed throughout the South by antebellum plantation owners and their spokesmen in Congress. His suggested uses for convicts by the state included roadwork, farming, mining and manufacturing.[38] All these were already implemented, but the state would now take on complete supervision of profit from prison labor rather than sharing that privilege with the contractor or lessee. Contracting and leasing out of prisoners was eventually forbidden and slavery continued as the sole responsibility of the state.

The National Committee on Prison Labor's suggestions were quite radical for its time and some of its ideas for change would be implemented over the next half century. In addition to replacing private business use of prison labor with the state-use system, the Committee suggested abolishing striped uniforms and the old lock-step march, employing a resident prison physician, hiring women to oversee the women convicts and relieving the prison shop foremen of having to tend to the insane and to women convicts' children. Among the reforms not implemented were developing a prison farm "worked by convicts placed on their honor, the guard replacing his gun by a hoe and adding his labor to the labor of the gang," and establishing a neutral organization to oversee the courts and determine the legality of convictions by examining "the effects of politics and race prejudice upon the courts."[39]

And Slavery Continued...

The convict lease and contract labor systems died slowly. In 1933, leasing of certain classes of prisoners was still practiced in North Carolina, South Carolina, Arkansas, Louisiana, Florida and Kentucky.[40] As noted earlier, the last state to formally abolish the lease system was the "involuntary servitude" state of Alabama, in 1928.

Because southern industry lagged behind that in the North, state-use systems below the Mason-Dixon Line put their convicts to work on

prison farms in the traditional crops of American chattel slavemasters. The following, taken from the July 18, 1908 Atlanta *Georgian* and cited by prison reformer Clarissa Olds Keebler, provides an example of the cruelty which ruled the state prison farms. In the prison farm at Millegeville, Georgia:

> "Guards at the farm receive $25 per month and a house to live in." The *Georgian* tells of the wife of one guard who had to take her children and move away. "She could not allow her children to be reared. . . where the sound of the cruel lash on the backs of convicts and the screams could be heard. The children would run into the house and tell mother how many licks they counted."
>
> "On one occasion it is recounted that she heard the screams of a convict being beaten, and during the beating she counted seventy-two licks of the lash, and there were some before and after she counted. She begged her husband to go and see if the sudden stopping of the screams meant the death of the convict, but the husband knew that inquiry meant the possible loss of his job."[41]

In Louisiana, there were ten thousand recorded floggings from 1929 to 1940; when, in 1941, the governor ordered floggings stopped he was "simply ignored."[42] The whip, however, could be replaced by other instruments of torture:

> When flogging was abolished in Florida in 1923, another form of disciplinary punishment was invented - solitary confinement - but not as this is ordinarily understood. . . . The instrument for this punishment was to be a cell with solid walls and "3 feet wide, 6 feet 6 inches long and 7 feet from the floor to the grating over the top" and "so constructed that it can be divided across in two equal parts, and a convict may be confined in one half of the space in the day time, but shall have the full space in the night time." This cell became known as the sweat box. Its effect on those confined in it caused Dr. W.H. Cox, the state prison physician, to report in 1931 that "if within my power to do so, I would change the mode of punishment. . . . I doubt the constitutionality of the authority to devitalize a man and call it punishment or chastisement."
>
> This observation was dramatized the following year when a New Jersey teenager, Arthur Maillefert, died in the sweat box at the Sunbeam camp in Duval county [Florida]. He was ill and unable to work on the road. The camp captain and his "whipping boss" said he was shamming. After beating him mercilessly, they placed him in the sweat box, locked his feet in clamps, and placed a chain attached to an overhead beam around his neck. He was found strangled to death in the morning. A local justice of the peace pronounced it suicide, but an official investigation led to the indictment of the responsible officers on a charge of murder. They were convicted of manslaughter. The [related] investigation revealed that brutal treat-

> ment of prisoners was commonplace in the camp, as it was in many other Florida camps in spite of rules and regulations.[43]

As Thorsten Sellin wrote:

> With the demise of the lease system, one might assume that when states and counties took full control of convicts, its worst features - the lash, the sweat box, the stocks, the shackles, the ball-and-chain, and the intolerable working and living conditions imposed by bosses whose sole concern was maximum financial profit - would also vanish.[44]

The states proved little better than private entrepreneurs in their kindness as convict masters. The chain gang kept convicts at hard labor and close to death building roads for public transportation. Sellin reported that

> Chains were worn constantly. Only a blacksmith could remove them. At night in the more or less permanent, crowded bunkhouses, the belt chain [a three foot long chain which linked the leg iron to the waist iron by means of a hook]... was attached to a metal rod or long chain which ran the length of the lodging at the foot of the beds.... But the worst of the mobile camps, used extensively in the Carolinas, Georgia, and Florida by the smaller rural counties, was the cage on wheels. In his message to the Florida legislature in 1911, Governor Gilchrist, who hoped to see all state convicts placed on the projected state prison farm at Raiford, indignantly described a visit to a Georgia convict road camp where "the men sleep in a moveable car placed on four wheels, with bars, constructed very much [like] ... a car... in which animals are conveyed [by]... the circuses showing throughout the State, with this exception: in the circus cars there are usually only one or two animals. In the convict cars, there are sometimes ten or twelve convicts. They are shackled and connected with a chain at night." In the 1930's, the typical North Carolina cage was about the size of a small moving van, eighteen feet long and seven or eight feet wide and high. Roof, floor, and ends were of solid steel and the sides "a close network of flat steel bars".... The prisoners often had to stay in these cages from Saturday noon to Monday morning and on holidays or when bad weather halted work.[45]

The chain gang continues today, particularly in the South. The symbols of slavery - ball and chain - were removed after World War II[46] but that did not mean that the carnival of inhumanity ended. Like the seventeenth century galley slaves who purposely maimed themselves so they might outlive their punishment, at Angola prison farm in 1951, 37 white convicts cut their heel tendons

> to attract public attention to the conditions under which they lived and worked... being quartered in filthy and overcrowded

> barracks known as "jungle camps," where hundreds of men sleeping in double and triple-decked beds were jammed into space barely adequate for a hundred men; work in the fields from dawn to dusk with insufficient food and inadequate medical attention, flogging and other brutal punishments for failure to keep up with one's task as well as for disciplinary infractions; the use of armed prisoners as guards; the generally low quality of paid personnel.... Official investigations revealed that these conditions were real, not imaginary. In 1952 the Angola penitentiary was publicized as "America's Worse Prison"...although it was not without competition for that dubious distiction.[47]

Prison slavery still strives to "break" its victims, training them in the servility which exploitation demands - inside and outside prison walls.

Notes

1. Kate Richards O'Hare, *Crime and Criminals,* booklet No. 4 (St. Louis: Frank P. O'Hare, n.d.), p. 13. Socialist Kate Richards O'Hare was sentenced to five years at the Missouri State Penitentiary for a speech she made in Bowman, North Dakota. Convicted of trying to obstruct enlistment into the armed services during World War I, O'Hare's eighteen months imprisonment made her an outspoken critic of the prison system.

2. The Thirteenth, Fourteenth, and Fifteenth Amendments with their enforcement provisions follow:

Thirteenth Amendment (1865)

Sec. 1. Neither slavery nor involuntary servitude, EXCEPT AS A PUNISHMENT FOR CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

Fourteenth Amendment (1868)

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Sec. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole numbers of persons in each State, excluding Indians not taxed. But when the right to vote at any election...is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any other way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of

such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. No person shall. . . hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath [in a federal or state, civil or military office]. . . to support the Constitution of the United States, shall have been engaged in aid of insurrection or rebellion against the same, or given aid or comfort to enemies thereof. But Congress may by a vote of two-thirds of each House remove such disability.

Sec. 4. The validity of the public debt of the United States. . . shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Fifteenth Amendment (1870)

Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Sec. 2. The Congress shall have the power to enforce this article by appropriate legislation.

3. Kluger, p. 50.

4. Ibid., p. 51.

5. DuBois, *Black Reconstruction,* p. 131.

6. Boyer and Morais, p. 34.

7. Ibid., p. 31.

8. Ibid., pp. 35-36.

9. Ibid., pp. 40-41.

10. Ibid., p. 41.

11. Ibid., p. 42.

12. Ibid., p. 43.

13. Ibid., pp. 141n-142n.

14. N.A.A.C.P. Executive Board Meeting Minutes of November 2, 1911, "The Opera House Lynching," Herbert Aptheker, ed., *A Documentary History of the Negro People in the United States,* vol. 2, (1910-1932) (Secaucus, N.J.: The Citadel Press, Lyle Stuart, Inc., 1973), p. 29.

15. William Pickens, "Lynching and Debt-Slavery," in Aptheker, ed., op. cit., p. 325.

16. "The Silent Anti-Lynching Parade," in Aptheker, ed., op. cit., p. 181.

17. Richard Wright, Jr., "What Does the Negro Want in Our Democracy?" in Aptheker, ed., op. cit., p. 290.

18. "From the South," a May 18, 1911 letter sent to W.E.B. DuBois, in Aptheker, ed., op. cit. In a note on p. 31, Aptheker explains:

> The Supreme Court upheld the constitutionality of the anti-peonage law (219 U.S. 191 [1911]: *Bailey v. Alabama*); nevertheless, peonage remained widespread in the South for another thiry years.

19. Ibid., pp. 31-32.

20. Keebler, *American Bastilles,* p. 55 quoting "a correspondent of a Western paper, writing from Jacksonville, Fla., Nov. 30, 1907."

21. Wilson, pp. 101-102, 107-108, 114-115, 116-117.

22. Ibid., pp. 110-113.

23. Boyer and Morais, p. 50n.

24. Ibid., pp. 43-53. On p. 50 Boyer and Morais explain:

> A good number of historians now concede that there was never any organization in Pennsylvania known as the Molly Maguires - although any militant miner might have been called a Molly Maguire after the newspapers had spread Gowen's charge far and wide. But the Molly Maguires in fact were nothing but a fabrication of Reading Valley's leading and most eccentric citizen. There was only the Ancient Order of the Hibernias' usually called the AOH, its oaths and rituals demanding brotherhood and patriotism.

25. Ibid., pp. 51-58, quotation from p. 53.

26. Ibid., see pp. 204-211. On p. 210 is written:

> The red scare made more money than speed-up, increased profits faster than machinery or labor-saving devices. It was ageless and forever new. It had been used against Americans ever since the middle of the nineteenth century when even the Abolitionists had been called Communists.... It divided workers almost as effectively as using white employees against Negro.
>
> The red scare was valuable in that it could be used with or without a Communist Party.... As...two tiny [Communist] parties were organized [in 1919], it was said louder than ever before that revolution was imminent. The newspapers were filled with stories of Moscow gold and Russian spies. Said the *New York Tribune* on June 4, 1919, "Nationwide Search for Reds Begins,".... On Jan. 2, 1920...the *New York Times* proclaimed, "200 Reds Taken in Chicago. Wholesale Plot Hatched to Overthrow U.S. Government."

27. Ibid., p. 212.

28. Wilson, p. 32.

29. Rusche and Kirchheimer, p. 107.

30. Wilson, pp. 63-64.

31. *Ruffin v. the Commonwealth,* 62 Va., 796.

32. Keebler, *American Bastilles,* pp. 52-53, quoting a reporter from *The Kentucky Post,* September 4, 1908.

33. McKelvey, p. 250; E. Stagg Whitin, *Penal Servitude* (New York: Benjamin H. Tyrrell Press, 1912), p. 7.

34. Whitin, p. i.

35. Ibid.

36. Ibid., pp. 11-18, quotation on p. 17.

37. Ibid., pp. 24-25.

38. Ibid., pp. 45-55.

39. Ibid., pp. 110-115. These suggestions are found in the Appendix of Whitin's book and were specifically addressed to the Jessup Board of Managers in Maryland under the title, "Report on the House of Correction, Jessup, Maryland."

40. Wilson, p. 41.

41. Keebler, *American Bastilles,* p. 35.

42. Sellin, p. 171.

43. Ibid., pp. 169-170.

44. Ibid., p. 163.

45. Ibid., pp. 167-168.

46. Ibid., p. 167.

47. Ibid., pp. 171-172, quoting *Report of a Study of the Louisiana State Penitentiary made by Austin H. MacCormick, Executive Director of the Osborne Association, Inc., in July, 1964, at the Request of Governor John J. McKeithen* (New York: The Osborne Association, 1964; mimeo), p. 2.

Chapter 7:
Slavery, Man. . .

The perimeter car circles, our bodies are counted again, and as the nurse's tray squeaks down the hall, I see the girl who swallowed gasoline and stabbed herself with a pin - a long one near her heart. What good is it doing her to be locked back here in solitary, I wonder.

- Marianne Hricko Stewart
California Institute for Women, 1979

LABOR RIGHTS VIOLATIONS

"Involuntary Servitude" Is Misleading

Today, a prison slave can no more control his or her "sale" from one prison to another, often hundreds of miles apart, than could an ante-bellum chattel slave. Cages have replaced cabins, while poor diet and enforced poverty continue. Electric doors and automatically locked passages enforce curfew. Prison watches day and night acknowledge no right to privacy, and prisoners may not convene without the approval or supervision of their keepers. Prisoners cannot assume their rightful responsibilities as parents, since incarceration is most often seen by the courts as proof of "unfitness." Conjugal visits are rarely, if ever, permitted, and the sexual relationship of couples is blighted by the imprisonment of a partner. Prison education programs are inadequate, libaries are skimpily supplied and those captives who teach themselves law and act to protect their rights through the courts are labeled "dangerous" by prison officialdom: A thinking slave is a potentially rebellious slave.

The American prison system combines slavery's three elements: prisoners are held in the complete control and possession of the state; the practices of their citizenship and of their labor rights are denied. As slave punishments have become more sophisticated, so have the arguments that defend and disguise their atrocities. Advocates of contemporary prison slavery call it involuntary servitude - a label which incurs little protest in this enlightened age of "human rights."

Charles Sumner warned in 1864 that the working of the Thirteenth Amendment introduced doubt whether slavery is a condition different and separate from involuntary servitude. On May 18, 1896, a federal court stated in the case of *Plessy v. Ferguson:* "Slavery implies involuntary servitude - a state of bondage; the ownership of mankind as a chattel, or at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property and services."[1] Close examination

of the legal definitions of both conditions reveal their parallel relationship. *Black's Law Dictionary* defined slavery as "the condition of a slave; that civil relation in which one man has absolute power over the life, fortune, and liberty of another." The same source describes involuntary servitude as "the condition of one who is compelled by force, coercion or imprisonment, and against his will, to labor for another, whether he is paid or not."[2] The condition of slavery results in involuntary servitude; involuntary servitude is slave labor - labor devoid of dignity, choice or just and due compensation to the worker. Involuntary servitude is the *labor* relation of slavery, and slavery is the *civil* relation in which a person's practice of citizenship, labor rights and human rights is negated or denied. The civil relations of this "peculiar institution" are designed to guarantee forced and uncompensated labor. Free labor provides the rights and opportunites for workers to choose their jobs, receive just and equitable wages and organize with other workers for better wages, working conditions, employment security, and benefits. No American prisoner has these rights; every American prison exploits convict labor.

The Bottom Line

While racist and classist myths have sought to justify numan bondage, dollars and cents have built its framework. Clinging to antebellum traditions in servitude, several southern states put convicts to work on plantations. Texas, held by many in corrections to be the "model prison system," keeps many of its 31,000 convicts at farm labor and in the cotton fields.[3] As a prisoner in the Texas Department of Corrections (T.D.C.) wrote,

> The purpose of T.D.C. is not to rehabilitate prisoners, but to work them for the profit of the state. Indeed, it almost seems as though the goal of T.D.C. (if it has any specific goals for prisoners) is to make sure they leave prison sufficiently bitter to be a certain recidivist in the near future. There is no meaningful rehabilitation program; nor will there be so long as the state actually loses money by rehabilitating and paroling prisoners.
>
> The reigning philosophy of T.D.C. is that a man costs nothing, so he is worth nothing. He is a convicted criminal and (in the administration's warped, fanatical minds) he is worth nothing beyond what labors the T.D.C. can extract from him for X number of years. If he is injured, crippled or killed working in unsafe surroundings, so what? There will be a replacement along from courts momentarily. Only the fear of public disapproval has removed the brutality and beatings and murder from open admission into clandestine yet still active processes. Now as in earlier centuries, there is no value attached to that which costs nothing. . . .

> To try explaining a system where the dogs are caged in pens with more room per animal than the prisoners, where the cattle have a full time veterinarian while the human prisoner might wait five or six months to receive treatment from a bonafide doctor, where a man [guard] might be fired for whipping his horse, yet only administratively transferred to another unit for killing a human is impossible.
>
> Yet it all has an answer: the bottom line. The profit and loss statement. As long as Texas can realize huge profits from free labor, it will continue building larger and more prisons in order to put to work a larger and larger slave labor force; it will continue to become more and more careless about innocence or guilt in convicting and condemning a person to slave labor, looking only at the bottom line.

As the following statement by the superintendent of a prison in Arizona indicates, involuntary servitude is important prison business:

> Hell, this is big industry we have here. We just sell to state institutions and to the children's colony and university. Yes, this is a *big* business. [He smiled!] A *damn big business.* We have four farms within a distance of seven miles, worked by the male population. There are trustees living on ranches under the foreman. I don't know the number. We also manufacture innerspring mattresses and make all license plates for the state and all the street signs. We have a printing company, a cotton gin mill, a dairy farm, a swine farm, beef cattle and a big chicken ranch. . . . We raise all our own food; everything they eat comes from here. Everything they wear comes from here. They even make the mattresses they sleep on.[4]

A Pennsylvania prisoner wrote that Pittsburgh prison industries produce license plates, street and highway signs, and metal cabinets and furniture, which all sell at a profit; license plates alone bring in over $300 million a year for the Bureau of Motor Vehicles. He reported the Camp Hill prison to have a furniture factory as large as the rest of the prison combined; Gratersford produces textiles; Dallas produces mattresses, textile products, and cardboard boxes; and Rockview produces canned food with the trade name "Pencor" flagrantly printed on the labels. These products are sold outside of the correctional system, and many orders go out of state.

Invasion of the free market with the unfair competition of cheaper prison-made products is only one consequence of the more basic evil: forced prisoner labor for little or no pay. A Florida prisoner at Raiford remarked, "This state can truly afford to pay a prisoner (slave) a reasonable wage." Working on the chicken floor where prisoners killed and dressed 2,000 chickens a day, five days a week, the prisoner had no idea where the chickens went because they did not show up as prison fare. He also reported that the Raiford furniture factory made lockers sold throughout the state, requiring a squad to travel around

fixing them. He understood that this furniture factory was privately owned and that the largest operation at Raiford was the shoe factory, which mass produced work boots and shoes.

When locked away from family and community, a person's labor is most easily exploited. As Maria Lopez wrote from her jail cell in San Diego,

> There are no activities, no open windows or fresh air and sunshine. "Recreation" consists of a concrete box on the roof with a wire mesh top affording a "view" of a small square of sky. The hour per day on the roof mandated for all prisoners works out in practice to maybe twice a week.
>
> That leaves finding a job to fill the time: the highest wages are paid by Federal Prison Industries (UNICOR/ FPI, Inc.), a separate corporation. The four pay scales range from 31¢ to 85¢ an hour. . . .
>
> The four level pay scale for all jail jobs runs from 8¢ to 18¢ an hour. I work as the Education Department secretary and law clerk, and make 18¢ an hour. On the streets, starting pay for an equivalent secretarial position is $10.50 an hour; and a client in a law firm would pay $12.00 to $20.00 an hour for my services. Although I work two separate jobs, due to a lack of skilled persons to fill the positions, I am paid only 18¢ an hour salary. Slave labor.

In the early seventies, Jessica Mitford's *Kind and Usual Punishment* exposed the workings of the California prison machine, where 70 percent of prisoner workers received no pay for their labor and where those who do receive pay, like Maria, are worth many times their wage.[5]

> Furthermore, prisoners say that when there is a heavy production schedule, key workers in the factory who would normally be eligible for parole find themselves mysteriously denied a release date. (This, they say, is true throughout the prison industries - a man with some particular skill, for whom there is no ready placement, will be out of luck when he comes before the parole board, who will tell him: "You're not ready, come back in a year.")[6]

Slavery is still dictated by profit, and it has always been difficult for slaveholders to give up their most productive captives. Promises of emancipation still lure slaves into working hard to expedite their freedom, only to have it denied them year after year.

> Today, Federal Prison Industries, Inc., is far and away the most profitable line of business in the country. Profits on sales in 1970 were 17 percent (next highest is the mining industry with 11 percent) - the average for all U.S. industries is 4.5 percent. The board of directors' annual report summarizes

> the success story: over a thirty-five-year period, 1935 to 1970, the industries grossed $896 million, increasing their net worth by $50 million and contributing $82 million in dividends to the U.S. Treasury - thus, like it or not, we are all shareholders in the proceeds of captive labor. Because the Army is a major customer (the industries supply it with everything from military dress shoes to electronic cable), the war years have been especially good to prison industries. A chart in the report depicts successive peak periods under the headings "WW II," "Korea," "Vietnam," the latter responsible for a spectacular rise in sales from $38 million to $60 million over a seven-year-period.[7]

It seems no strange coincidence that the recent "balancing" of the national budget by cutting social programs for the poor also includes a renewed war on crime and increased military expenditures. Surviving is becoming yet more stressful, government is calling for harsher penalties for crime, and the incarceration rate of people convicted of crime nearly doubled during the first six months of 1981.[8] The National Moratorium on Prison Construction reports that taxpayers collectively pay an average $9,100 a year for each person in prison, in direct costs alone.[9] Where does this money go? Certainly not to pay prisoners decent wages so they can continue to support their families, compensate their victims or receive services that would help them become better citizens. Money which could fund a college education instead maintains human cages. As in attempts to examine the fiscal workings of our well-endowed defense industry, the public is not allowed behind prison walls for "security reasons." While the detailed cost of human bondage is hidden in a maze of red tape, corruption lies but a few layers beneath the public packaging. North Carolina's "showcase prisons," for example, are used to convince the public that taxes are well spent. A North Carolina prisoner told us that state law requires that prison labor help develop skills that will better equip prisoners to return to society. Unlike previous regulations, this law does not restrict prison labor to work not performed by free labor or private industry. He then described how actual prison labor practices misuse public funds:

> The inmates of this camp work forty hours each week. The work done is cutting bushes along the sides of roadways. They use a bush ax. This task involves cutting by hand bushes that are well off the shoulder of the road and, in some instances, which are frequent, erosion controlling growth is cut.
>
> This task is done mechanically in other states, if done at all. And the demand for such labor is non-existent in society. This is a meaningless job that pays seventy cents a day. It is a "volunteer" position which if one decides not to participate he is put in punitive segregation and his chances for a better status are at stake.

> This camp is not a showcase unit such as Bunn, Smithfield or other camps where the road crew does meaningful work. . . . This Catch 22 situation is indeed slavery and on this camp 32 inmates out of a population of 138 are caught by this trap. On Bunn, the closest "showcase" unit, with over 200 men, only ten inmates participate in this type of task and are better equipped.
>
> Besides the 70¢ each day, the men here receive Number 2 gain time [time off their sentences], or four days each month. Kitchen workers here receive $1 per day and Number 3 gain time at eight days per month. Road work is physically and mentally more demanding.
>
> Each county is charged $16.00 per man for this work, which means the taxpayer pays the prison department approximately $133,120 each year to have this non-productive task performed. $5,824 goes to the inmates at 70¢ per day for each of 32 men. And $127,297 goes to pay for guards, gas and tools? What about the $8,000 plus each year the taxpayer pays for one inmate: do these profits go towards that?
>
> This type of *forced, meaningless* labor is not required on any "non-showcase" camp. Upon inquiry, this information will be denied by the authorities and a very attractive picture painted.

Meager convict earnings are further exploited by prison rules that regulate spending. As peons had to make all their purchases through the company store, so must prisoners. Using California as an example, Jessica Mitford wrote,

> [Prison] prices are fixed by the individual canteen manager (there is no central pricing policy), pegged anywhere from 10 to 50 percent higher than those in the supermarket; the canteens realize an average gross profit of over 22 percent and a net of 13 percent, compared with a prevailing 1 percent net that is claimed in the outside market. . . .
>
> Should the prisoner want to order something not in stock, the transaction must go through the canteen, which levies a 10 percent surcharge on a sum compounded of the cost of the merchandise, sales tax, and postage. As one wrote, "When the inmate orders an item (say, a footlocker from Sears for $11.97), he has to pay the initial cost of the item, then add California sales tax, then add the cost of postage from the vendor to the institution, then - and only then - add an additional 10 percent of the entire sum of the above, which purportedly goes to the Inmate Welfare Fund. And the end result of an $11.97 order is in the neighborhood of $15 or $16." What if the prisoner's family wants to make him a present of the footlocker? They are barred from sending it to him, instead must send enough cash, computed as above, through the regular [prison] channels.[10]

An employee of the California Department of Corrections audit division described the Inmate Welfare Fund as "an extortion racket, an illegal use of prisoners' money. It's just another fund for accounting purposes, a euphemism called 'inmate welfare' to make it sound good."[11]

The Texas Department of Corrections is noted for its annual rodeo, advertised as benefiting prisoners. As one prisoner correspondent writes,

> The Modern Gladiatorial Arena is in Texas. Each weekend through the month of October people from around the state flock to Huntsville to watch as convicts are trampled, gored and mutilated for a top prize of around $300. Most of these convicts receive no outside income and this is their only hope of obtaining some money for tobacco and coffee. The prize for the state? A little over one million dollars annually. This money supposedly goes into a "recreation fund" for the prisoners. I will not go into the fraud and embezzlement here or just what happens to the money, but about the only recreation realized is the "recreation" the prisoners get who build the Texas Department of Corrections employees' new party room.

From state to state the corruption continues:

> In New York City, the commissary fund of over $1 million from combined jails somehow filters into the general fund for the city. In San Francisco, [ex-] Sheriff Richard Hongisto said that before he took office, "no one seemed to know where the money had gone to."[12]

Trapped by this mire of exploitive waste are prisoners, who have no means to create change but must continually bow to what is demanded of them. As Pennsylvania prisoner Dorothy Morris writes,

> We, the women at Muncy State Correctional Institution for Women, need all the help we can get. Prison life here is fighting for the right to be treated as human beings. We are forced to work, and if we refuse to work we are threatened with misconducts or solitary confinement. For the work we are forced to do against our will, we are paid ten to twelve or seventeen cents an hour. That is not even enough to buy the personal things we need. We are forced to mop floors, to work on the farm and lift heavy bags of potatoes, etc., and forced to clean the cottages which the prison officials call field day. We are never given a rest. Something must be done. We need all the help we can get. We are worked like runaway slaves. We are put in the fields to pick Massa Hewitt's corn and potatoes; they even force some to pick rocks. We are humans, not slaves, but Massa (Superintendent) treats us like slaves and brings

> the whip out when we refuse to be treated like slaves. Slavery must be abolished and the time is now. Massa forces us to work while he sits back in his chair behind his desk where it's cool but Massa does not get out there in the fields when the hot sun is shining. We need all the help we can get. We are pleading for all the help we can get.

Dehumanization, Punishment, and Alienation

From St. Cloud, Minnesota came this declaration from a prison slave:

> These people here have a lot of nerve. In the "Graystone Gazette" (the administration's newsletter) they are advertising for the pigs to come into B-House (where they house Prison Slaves): Boots 50¢ and shoes 25¢. The concept is that it will go into the house fund, but it is a brave effort on the pigs' part to downgrade the inmates and promote more slavey ("flaunt it in our faces").
>
> We are in a mini-Unit System here on this plantation so it is almost impossible to school the new inmates to the game. I am in the process of trying to shut down the Shoe Shine Stand for what it stands for psychologically. I just hope I can succeed at it soon.

From Angola, a Louisiana prisoner wrote,

> This intitution is programmed through a method that a man MUST work in the fields before becoming classified to a better job; sometimes he may work throughout his sentence in the fields, no matter how lengthy.

A letter from another prisoner states,

> I am a prisoner in the state of Georgia. At the time of this writing, Georgia does not pay its inmates any form of compensation for the work they perform. This practice is very harmful to the inmates, to society, and to the whole rehabilitative process. It is harmful to the inmate to live under very primitive, barbaric conditions. There are inmates here who don't even have deodorant to take care of their personal hygiene. And there are others who go around picking up cigarette butts from the floors, ground, and trash cans in order to smoke.

Slavery is distinguished both by the labor expended and by the conditions under which it is expended. Prisoners who refuse to work receive disciplinary write-ups and negative work reports on which basis the parole board frequently denies parole. Continued work refusal may bring loss of "privileges" (additional denial of rights), forced psychiatric treatment or medication, solitary confinement, beatings,

and constant harassment from their keepers. As reported by a Terre Haute, Indiana prisoner, convict resistance to inhumane working conditions is tragically common:

> I had a friend who was with me in Jackson State Prison, in Michigan, who was killed as a result of being forced to work with defective equipment. When he tried to quit his job because of this he was threatened with losing his parole. So he continued to work. Within a week, they found him with a broken neck, laying in the mud. Officials tried to keep this from the public but I called the Detroit Free Press which did a fine story. But I was placed in the hole for ten months and transferred to Marquette, and never worked the rest of my time. This is only one incident in many.

No matter how legitimate their excuse, those who refuse to work are punished. One Florida prisoner, suffering such severe back problems that any quick or strenuous movement brings on "undefinable" pain, requested a pass to the clinic during working hours to get his medication refilled:

> . . . after threats and a few names which I shall not put down here, I was refused. The exact phrase being, "You're here to do work, not to get sick." So much for that idea. The next day, I decided to commit a great sin here in the Florida Chain Gang: I refused to work. I couldn't get a pass and my back was killing me. Needless to say, the reaction I got from the boss man was instantaneous. I was handcuffed and placed in the "cage" for a period of six and a half hours. Then after being harranged by "officials" for another hour, I was placed on Administrative Confinement where I still am. We are currently putting together litigation concerning the conditions here which are, to say the least, highly unconstitutional. The fetid air is at least 105 to 110 degrees in the cells. The cells themselves are filthy. I could go on for hours, but all you have to do is picture in your mind Slave Punishment quarters. . . .

In addition to work-related injuries, illness, death and the daily degradation of meaningless, wageless labor, involuntary servitude results in alienation which contributes to recidivism. As an Atlanta prisoner put it:

> It should not be necessary to experience slavery (or involuntary servitude) in order to realize its evils and detriments to the subject. Slavery in any manner breeds hatred and contempt for the master and the work performed!
>
> For anyone to appreciate the necessity of work, he/she must enjoy the fruit of his/her labor. To not be allowed to do so causes one to develop a hatred and contempt for work whenever confronted with it. I am positive that you will agree that this is *not* the attitude most people would like to see our kept returned to the streets with.

Getting Worse...

Recent trends in prison labor policy indicate that forced labor is intensifying. A C.A.P.S. member, imprisoned in Delaware, reported that the second session of that state's 1980 legislature passed a law amending Chapter 65, Title 11 of the Delaware Code Relating to Work by Inmates. The new law allows the Department of Corrections to require physically able inmates to work without compensation. When they work more than eight hours in a day or 40 hours in a week, they receive a credit for that overtime, rounded down to the nearest hour. Inmates receive a reduction of sentence at the rate of two hours for every hour of overtime credited, with the exception that nothing can reduce the sentence of persons serving minimum mandatory sentences without eligibility for parole. Prisoners who refuse to work under these terms may have their previously earned time credits revoked as well as endure other disciplinary measures.

A Florida prisoner reported that the national leader in reinstituting executions is breaking other new ground in modern slave punishments. His masters have decided that exploiting prisoners for their labor is not enough:

> The thing that is happening now is some bill has been passed requiring prisoners to pay for being in prison. According to Section 944.0265 of the Florida Statutes, anyone who refuses to disclose revenue to classification officers would be removed from eligibility for parole.

In order to qualify for parole, each Florida prisoner must report any savings or assets he or she may have outside prison so that the state may claim further payment before authorizing release.

Prisoner appeals, celebrated writings exposing the debilitative and oppressive nature of involuntary servitude and a long history of human suffering and political embarrassment from past practices of slave labor have all failed to give impetus to needed change. As a C.A.P.S. member wrote from an Indiana prison,

> In 1977 Indiana...made some radical changes in its new penal reform changes which were designed to arrest increasing crime rates through the threat of more severe punishment. These new changes left the concept of forced labor, hard or otherwise, intact, however, and added provisions which delegate to the Department of Corrections (D.O.C.) the administrative prerogative of imposing additional labor, without just compensation, in a purely punitive sense.
>
> For the first time in its history, the State Legislature delegated to the D.O.C. the unbridled power to use forced labor as a means of disciplining unconforming prisoners. It also codified into law the D.O.C.'s authority to punish those prisoners who refuse to perform assigned work within the prison

setting. Any prisoner now, for example, who "encourages others to refuse to work or (himself) participate(s) in a work stoppage" is subject to be confined in detention for up to six months, be demoted one grade in his respective classification, and can lose up to one hundred eighty days of credit time [time earned towards release] previously earned. He is subject to the very same deprivations for even attempting the above infractions! . . .

A prisoner who may choose not to work is subject to be charged with refusing to work, participating in a work stoppage, refusing to obey an order, unexcused absence from work, violating an institutional rule, and attempting to do each of these. He can be punished consecutively for each of these charges and given up to twenty hours of extra work, not to exceed four hours per day, on each of these charges.

The legislature's prohibition against the D.O.C.'s use of corporal punishment, and its authorizing of that Department's use of forced, uncompensated labor as appropriate punishment is an unmitigated contradiction of purpose and intent. While they seek to prevent official tyranny, they create conditions under which tyranny itself exists. Americans have long felt that our individual labor, and its fruits, and our right to govern its use is prerequisite to individual health and well being. Forcing captives into a state of modern slavery entails no worthwhile values to our society, nor will it contribute to the growth and development of prisoners.

HUMAN RIGHTS VIOLATIONS

Fear

People denied the practice of their rights are subjected to cruelty often in violation of rules established to prevent excessive, cruel, and unusual punishment. In the antebellum South, law forebade the killing of slaves, except under the most rare of circumstances, but law did not stop the murders. One need only look at the 1971 prison rebellion at Attica to ascertain the "unusual circumstances" which result in the massacre of people demanding their rights. Prisoners have some rights, say the courts, but their rights must fall within the security standards of the prison,[13] standards that enforce totalitarian rule.

As slaves were tortured and killed on southern plantations and their masters escaped penalty of law, so today prison slaves are subjected to torture and death. From Mississippi came a prisoner report on one of many slave deaths that receive no public notice:

> John Smith [name changed], approximately 48, wakes up just like any other inmate and eats his grits and soured bologna for breakfast. After breakfast, the clean-up equipment comes around and the [jail] guards make him clean up before he can

> go back to sleep, which is all there is to do since we have no TV's or recreation of any kind.
>
> We clean up and Mr. Smith waits on his medicine to come around, but he's not sure it will come at all because you can't predict when the trustees might want to take your medicine to get them a "little buzzy." But if you're epileptic like Mr. Smith and you really need your phenobarbitol and Dilantin to keep you alive, you wait and hope that they bring your medicine. Mr. Smith waits until 10:00 a.m., and still no medicine. So he lays on his bunk and reads his Bible and eventually drifts off into an endless sleep.
>
> At noon it is time to eat in the cell-block. I come to cell number 4 in which Mr. Smith is sleeping on his stomach and I shake him to wake him for lunch, but it is as I have expected all along. Mr. Smith will never wake up again because he had an epileptic fit and died and the main reason for his death is not receiving his proper medication. The guards turned on the radio to quiet the confusion and the radio announcer informs the world that one John Smith was "unable to make lunch" because he died of natural causes. Since no one challenged it, you will probably go and join "John Smith of natural causes"!
>
> I was an eyewitness to this murder of a prison slave and nothing was ever done about it. Also, Mr. Smith left a "To whom it may concern" in his Bible. It stated that Mr. Smith was being held against his will . . . his time was up and he was not being treated properly. This man knew he was going to die and yet there was nothing he could do about it. Isn't it unreal that such cruelty still exists right here in the U.S. of America. I'm beginning to believe that "U.S.A." stands for the Underprivileged Slaves of America, don't it seem so to you?

Prisoner deaths are common, rarely made public and usually passed off as unexplained, "suicides" or attributed to the criminally violent "nature" of state captives. The ethic of violence, however, belongs within the nature of a system that confines and exploits convicted citizens. The brutality of modern punishment became briefly apparent in the recently publicized testimony of an enforcing slave of the Florida prison system. On the Columbia Broadcasting System's January 11, 1981 television broadcast of *Sixty Minutes,* Johnny Fort told CBS correspondent Dan Rather that he was ordered to beat up twelve people, including a teacher sympathetic to prisoners. Fort led an elite squad of prisoners who performed routine inmate beatings for the staff at Florida's Union Correctional Institution. Among the rewards for carrying out beatings, U.C.I.'s enforcing slaves received the boys of their choice (prisoners for sexual relations).[14] Any system of tyranny needs informants to maintain complete control. Snitches, or rats, as prisoners know them, are enforcing slaves who trade information about prisoners to prison keepers for favors. Since beatings, now unlawful, are still used to keep rebellious slaves in line, prison

keepers often call on enforcing slaves to do their dirty work for them.

The six-foot-one, three-hundred-pound Fort described how he killed sleeping Vertis Graham, found dead in his cell on December 8, 1979. He said that U.C.I. Sergeant Buzz Snyder took Fort across the prison to another dormitory and pointed out the victim through the window of the bunk where he lay sleeping. Fort went into the prisoner's cell, turned to the watching guard and pointed to make sure he had the right victim, and with the guard's renewed assurance, struck Graham on the side of the head with a heavy lead pipe, killing him with one blow. The next day, the sergeant informed Fort that he had killed the wrong man, that Vertis Graham was sleeping in the intended victim's bunk.[15]

A former U.C.I. guard has confirmed goon squad practices, the newly promoted Lieutenant Snyder denies Fort's story, and the Florida Department of Corrections denies all related allegations. In the July 26, 1981, rebroadcast of "Goon Squad", *Sixty Minutes* reported that subsequent official investigation into Johnny Fort's allegations asserts that Johnny Fort did not kill Vertis Graham. Johnny Fort is sticking to his story while the Florida Department of Corrections claims that it has one of the best prison systems in the country.[16]

The "best prison system," a title claimed by several states, usually refers to a prison system that is "secure," safe from prisoner resistance. One such acclaimed state recently lost a federal civil rights case suit to prisoners in *Ruiz v. Estelle.* As reported in the November 11, 1978, *New York Times,* Corrections Department surgeon Dr. Luke Nigliazzo testified at a federal hearing that

> he had examined "hundreds" of inmates who were beaten or otherwise assaulted. He told of one man, captured after an escape attempt, who had been bullwhipped by guards and mauled by dogs and whose scrotum had been grazed by a bullet. The doctor termed it "the worst case of brutality I have ever seen."[17]

The article reported that David Vanderhoff, a Justice Department attorney working in behalf of the prisoners, asserted in his opening remarks at the hearing that security throughout the Texas system was "obtained by fear."[18]

When your keeper makes the rules, just or unjust, that you must live by; when there is no escape from the guns, chains, and special punishments used to enforce the rules; and when you are unarmed, disenfranchised and isolated from any support systems in the free world, fear is an ongoing visceral response that can keep you alive. A prisoner who sent us a petition with forty prisoner signatures from Sing Sing prison in Ossining, New York, attached this note to one of his letters:

> P.S. The police are watching me as though I were about to start something! I got 18+ years and they can kiss my "ass". But if something does go wrong what can I do? Who will help me?

And from Florida, a prisoner who sent us a newspaper report on Johnny Fort's allegations also wrote:

> A number of things have been witnessed here that fear will not allow them to be mentioned - beatings, killings, contract murder, stabbings, etc., all arranged by the prison administration.
>
> By talking to other inmates here, in order to try to find out why so much fear exists, a number of things were made known; the year of the riot here..., well it was stated and went down in record (and I want you to check on this if you can) that no one was killed in that so-called riot.... I have been told that there was a burial of these inmates [killed in the riot] to cover this! These inmates are down on record as escapees. The problem is getting my source to talk. I understand that all but one body was moved from the original burial place under the prison and reburied in the prison grave yard between other graves.
>
> Fear! This is fear's paradise. You are right, prison slavery has taken a great effect - so great that there is no concern for human life.*

Disregard for Human Life

Slavery anywhere has always been known for its complete disregard for human life. Like the reprieves from punishment offered to convicted British subjects who agreed to have their limbs amputated to test the styptic medicines of scientist a few centuries back, prisoners today are coerced into testing new medicines or becoming the subjects of unprecedented experiments. One contemporary scientist said that "criminals in our penitentiaries are fine experimental material - and much cheaper than chimpanzees."[19] In 1963, for example, prisoners

> in Ohio and Illinois were injected with live cancer cells and blood from leukemia patients to determine whether these diseases could be transmitted; doctors in Oklahoma were grossing an estimated $300,000 from deals with pharmaceutical companies to test out new drugs on prisoners.[20]

In 1971, in what was later described as a "totally pointless study" by Dr. Ephraim Kahn of the California Department of Public Health, Dr. Robert E. Hodges experimentally induced scurvy into five Iowa prisoners:

> Among the effects of the experiment recorded in...Dr. Hodges' publication that could be permanent, Dr. Kahn cited heart damage, loss of hair, damage to teeth, hemorrhage into

*We do not know if an investigation has begun or if the purported killings were recorded.

> femoral nerve sheaths - the latter is "terribly painful and could lead to permanent nerve damage."[21]

Medical incompetence and negligence is an important reflection of the institutional abuse of human life that typifies the normal running of a prison. In 1980, we received a letter from a Wisconsin prisoner reporting that a case of meningitis had been discovered where he was incarcerated and, despite danger from the extremely contagious nature of the disease, prison officials were attempting to keep the information from prisoners and the public. At the same time, the Governor of the prison slave state of Wisconsin was attempting to exempt the prison system from state law regarding health care facilities. His Budget Review Bill passed the state legislature and, although another provision of law requires the state to follow American Medical Association standards, Section 405, succeeded in releasing prison infirmaries from the more stringent regulations imposed on state hospitals.

"What such an exemption means," wrote the WCI/Waupun Paralegal Program, "is that it will allow the state prison health care facilities and the personnel to continue on in their affliction of pain and misery on sick persons now incarcerated by the inability of those persons to provide adequate levels of health care, because there will be no laws mandating they do so."[22]

Negligence in medical treatment of prisoners was among the conditions that led prisoners at Indiana State Prison to riot on September 1, 1973, stage a peaceful demonstration on December 15, 1977, and riot again on April 27, 1980: a "spontaneous combustion," in the words of the Prisoners' Commission, resulting from the continued failure of the administration to heed prisoner requests for improved conditions. The *Report from Prisoners Inside Indiana State Prison,* released by the Prisoners' Commission to legal services and the press in an attempt to get outside support, listed dangerous physical conditions in the prison: poor heat, rodent and vermin infestation, danger of fire; poor nutrition and unsanitary food preparation; grievance and appeal procedures which brought no satisfactory attention to prisoner complaints; staff violation of their own rules in treatment of prisoners; lack of due process; racist discrimination towards prisoners and in harrassment of visitors; enforced homosexuality through prohibition of heterosexality; and many more of the same negative conditions which permeate all our nation's prisons. Of improper medical care, the Commission stated:

> There is a prisoner here who, but for the lack of medical attention at the time he requested it, will live out the remainder of his life in absolute darkness. Yes, he is blind! Forever blind because a minor problem was allowed to degenerate into a life-long disability. No prisoner at this prison can watch him struggling with his blindness without experiencing personal

> discomfort, rage, and hatred for a system that refuses to honor our *right* to proper health care. We are all burdened with the knowledge that, but for the grace of God, it could have been me![23]
>
> Complete renovation of medical facilities and an upgrade in personnel will not alleviate the major portion of questionable medical services as long as custody staff are allowed to use questionable security tactics as the cause for inept medical treatment. Overall, adequate medical attention can only come about when society's views/practices on prisons and prisoners has transcended the contemporary stereotyping of "vicious animals who need to be caged. . . ."[24]

Cruel and Usual

Perhaps the most insidious quality of American punishment is how deeply it cuts to the core of its many victims. A young woman imprisoned at the State Correctional Institution at Muncy, Pennsylvania, wrote:

> I'm really upset over the whole thing, cause I was locked behind there [solitary] for nothing. I'm only 19 now, but my nerves are so bad [that] I shake all over when I lay down to sleep. My hands shake constantly. It drives me silly to see my hands shake when I try to do something. I have went through too much hell here. How much longer must I go through this? How can I be sure my mentality will last that long?

The settings of these modern concentration camps can be deceiving, like that of the State Correctional Institutional at Muncy for women, located in Pennsylvania's Pocono mountains, hundreds of miles from any city, and therefore hundreds of miles from most prisoners' families, who are too poor to visit or help. As a Muncy prisoner declared:

> You can have the cleanest spot in the world, but. . . Hitler was clean in appearance, yet he slaughtered people. When the atomic bomb was dropped on Hiroshima and Nagasaki, the perpetrators of that action were clean in appearance. The KKK is clean in appearance - how many lives have been barbarically taken? The Slavemasters were clean in appearance, but were their actions clean when they raped, beat, chained, killed our people?
>
> There ain't nothing clean about being locked in a room twenty-three and a half hours every day. There ain't nothing clean about having your meals searched. There ain't nothing clean about frezzing concrete and steel bars. There ain't nothing clean about matrons who work that don't even answer when you call them for an emergency such as sisters

> setting themselves on fire, sisters hanging themselves, sisters having seizures, sisters being dragged to the hole where there is no clothing, no water, no toilet paper, and sisters being sick, screaming in agony, only to have the door slammed on them. There ain't nothing clean about the treatment of my sisters under the present conditions.

While cruelty has persisted in slavery's methods throughout history, the most frightening forms of force are found in our scientifically sophisticated age, where cruelty is more subtly and deeply inflicted. Unlike the crude punishments of the lash and physical mutilation, new slave punishments employ refined techniques which force submission through psychological and chemical warfare while the victims serve in experiments for the advancement of "science." Brain surgery (psychosurgery), behavior-control medication, electric-shock therapy and behavior modification techniques provide contemporary methods of mutilation - psychogenocide.

Built to replace the country's maximum security dungeon at Alcatraz, the long-term Control Unit at Marion, Illinois is an experimental behavior modification program designed to alter human behavior to meet modern slaveholding criteria. Proponents of the program mask their Auschwitz mentality in the behaviorist jargon of Dr. Edgar Schien, who states:

> I would like you to think of brainwashing, not in terms of politics, ethics and morals, but in terms of the deliberate changing of human behavior and attitudes by a group of men who have relatively complete control over the environment in which the captive populace lives.[25]

Prisoners who demonstrate beliefs, attitudes and behavior deemed thorns in the side of slaveholding practitioners are threatened with being sent to Marion to undergo its mindtwisting programs. Formerly called the Control and Rehabilitative Effort, or "C.A.R.E.," Program, Marion's Control Unit Treatment Program is an experimental behavior modification program based on a system of rewards and punishments. A prisoner who will change his behavior and attitude or give up his values and beliefs, and conform to what the prison administration considers acceptable behavior, may be rewarded by being returned to the general prison population, either at Marion or another prison. As former Control Unit prisoner Alberto Mares explained, prison officials use sensory deprivation, or complete isolation in an attempt to "break" the will of prisoners who do not go along with the program. Being deprived of cultural and environmental contacts tends to bring about degenerative changes which can result in death because cultural and environmental contacts are essential to human survival.[26] Physical and social contact, including contact with families, are minimized. Prisoners confined to the Control Unit are compelled to visit

their families via monitored telephones in a special visiting room where a glass partition separates the prisoner from his visitor.[27]

The Control Unit seeks to alienate prisoners from any possible source of support for their beliefs, punishes independent or "uncooperative behavior," rewards subservience or "cooperative behavior," prevents prisoners from writing home about the conditions of their imprisonment, permits only those reading materials which support the program, systematically withholds mail, uses prisoners to exploit and spy on each other, tricks men into making private statements which are then shown to others, destroys trust, works to destroy meaningful emotional ties, and segregates natural leaders and makes those who are cooperative with the program into leaders.[28]

Physical movement of prisoners in the Control Unit is constrained by automatically locked passageways and maze-like corridors in which every movement is dictated by a loudspeaker. Every crevice of the Unit is watched by electronic or human eyes and recorded in a log book. Men confined in the Control Unit are kept in complete solitary confinement and meet only who, where, and when their controllers dictate. The prisoner's perpetual "sanctuary" is a cell, which, described by Marion prisoner Eddy Griffin:

> contains a flat steel slab jutting from the wall. Overlaying the slab is a one-inch piece of foam wrapped in coarse plastic. This is supposed to be a bed. Yet it cuts so deeply into the body when one lays on it that the body literally reeks with pain. After a few days, you are totally numb. There is no longer intercommunication between the sense organs and the brain. The nervous system has carried so many pain impulses to the brain until obviously the brain refuses to accept any more signals. Feelings become indistinct, emotions unpredictable. The monotony makes thoughts hard to separate and capsulate. The eyes grow weary of the scene, and shadows appear around the periphery, causing sudden reflexive action. Essentially, the content of a man's mind is the only means of defense in terms of his sanity.
>
> Besides these methods of torture (which is what they are) there is also extreme cold conditioning in winter and lack of ventilation in the summer. Hot and cold water manipulation is carried out in the showers. Shock waves are administered to the brain when guards bang a rubber mallet against the steel bars. Then there is outright brutality, mainly in the form of beatings. The suicide rate in the Control Unit is five times the rate in general population at Marion.
>
> At the root of the Control Unit's Behavior Modification Program, though, is indefinite confinement. This is perhaps the most difficult aspect of the Control Unit to communicate to the public. Yet a testament to this policy was a man named Hiller "Red" Hayes. After 13 years in solitary confinement (nearly six in the control unit), he became the "boogie man" of

> the prison system - the living/dying example of what can happen to any prisoner. The more he deteriorated in his own skeleton, the more prisoners could expect to wane in his likeness. He died in the unit in August, 1977.
>
> In essence, the Unit is a Death Row for the living. And the silent implications of Behavior Modification speak their sharpest and clearest ultimatum: CONFORM OR DIE.[29]

One does not have to be confined in a modern hell-hole to be scarred by scientific punishment. As a long-time resident of special punishment wrote from her cell in solitary confinement at the Maryland Correctional Institute for Women:

> I've watched women driven mad enough to set themselves on fire, on several occasions; so many women are being sent to the state insane asylums that two hospitals refused to accept any more "victims," victims of a process utilized to extirpate *all* those qualities that distinguish human-kind from animal-kind. Psychological manipulation, all types of negative reinforces, labeling theories, contingent rewards and all other psychological tactics calculated to break, degrade, modify and produce severe anxiety in a human being, and the deplorable living conditions and psychological damage women are suffering here are the end-product of a long, insidious, complicated and persistent behavior modification program... Though many reasons are given, the main causative factors for this treatment are intrinsic strength of any kind, intelligence, outspokenness and being verbally critical of policies and decisions, and any type of political ideas, beliefs and alliances. People who have never been involved in or concerned about prison issues may wonder if I'm only a gifted liar or perhaps a paranoic... the one sure way to find out is to come and "see," even if you never get to the dungeons. Look at the women walking around drugged, dazed, passive, bloated, *Broken,* and then Think...I'm sure the "Truth" of the matter will penetrate your consciousness.

DENIAL OF CITIZENSHIP RIGHTS

As *Webster's New World Dictionary of the American Language* puts it, "civil rights" are "those rights guaranteed to the individual by the Thirteenth, Fourteenth, Fifteenth and Nineteenth Amendments to the Constitution of the United States and by certain other acts of Congress; especially, exemption from involuntary servitude and equal treatment of all people with respect to the enjoyment of life, liberty, and property and the protection of law."[30] Enforcement of citizenship, civil and human rights prohibit stealing the fruits of another person's labor. Involuntary servitude is ineffective without denial of these rights. As prisoners' labor rights are violated, so too are the protections of their citizenship.

In order to deny any person the right to control his or her labor power, a government must also negate rights to free expression, petition, association, political representation: denial of these rights can be considered cruel and unusual punishment. Call it involuntary servitude, the results are the same: slavery. While it is impossible to describe all the oppressions suffered by prisoners, they can all be subsumed under a simple label: the negative conditions of prison slavery. At the root of the abuse and exploitation of prisoners is their powerlessness, powerlessness guaranteed by withdrawal of their practices of citizenship.

Perhaps the most obvious violation of citizenship is found in denial of the American prisoner's right to vote. Shortly after the 1980 national elections, an imprisoned citizen wrote to C.A.P.S. from solitary confinement:

> I am presently in the Federal Pen at Terre Haute, Indiana. Last October I voted in the national election by absentee ballot. My vote was not accepted because I was a convicted felon. I know that the Constitution says a citizen may have representation. I feel that denying my right to vote is denying me representation. I am wondering if you could assist me in steering me to, or advising me who could help me restore my right to vote.
>
> I am willing to file suit in Federal Court to rectify the situation.

Two years earlier, we received a letter smuggled out of Maryland's Jessup prison from imprisoned Barbara White. In the letter, Ms. White stated:

> Why shouldn't we be allowed to vote into public office those candidates we desire to represent our communities, our families, and ourselves? I feel that we are more apt to choose an uncorrupt individual, or one who is really sincere and has the okay's to help the people. Another very important issue is for residents in correctional institutions to receive at least the minimum wage for work performed on their job. If I earned the minimum wage I would be able to aid in the support of my two children and my mother, if I could.

Like Barbara, we also believe that politicians elected by prisoners might be more responsibly chosen and would be obliged to humanize our systems of punishment. No obligation to prisoners exists on Capitol Hill today, just as there was no political obligation to black Americans before Radical Reconstruction.

Even religious freedom is violated in prison, Muslim prisoners being especially victimized in their attempts to maintain the practices of their faith. In New York, for example, Muslims at Attica have filed a formal complaint of harrassment, citing prison guard disruption of their services, denial of adequate space for worship, administration

refusal to let prisoners use traditional prayer mats, administrative surveillance of their services and being thwarted in their attempts to find out if pork, forbidden to Muslims, was in their food.[31]

Whether idle or at labor, today's slaves are given no voice in determining the rules they must live under. Their mail is subject to censorship and confiscation, and prisoners' personal ties to the outside world are destroyed by institutional isolation and restricted visiting privileges. Many families completely disintegrate as divorce proceedings follow imprisonment, which frequently eliminates a person's ability and eligibility to contest. Not protected from undue search and seizure, prisoners must endure cell "shakedowns" which come without warning or reason, respect no right of privacy, and which often result in confiscation and destruction of personal property. Tried on their keepers' allegations in kangaroo courts where they are allowed no legal counsel or due process, prisoners never know when an insignificant statement or act will be deemed grounds for denying parole or prolonging imprisonment. Their access to the courts limited by indigency and confinement, convicts are left to their own resources to write legal writs of complaint that are ignored or which evoke punishment intended to keep writ writers from becoming a threat to the "efficient" running of the prison. Those who pose a threat to the normal management of slavery are transferred to other prisons - "sold South" - as punishment. Prisoners' protest, strikes and rebellions are violently suppressed and, denied freedom of press, they cannot bring their plight to the attention of the outside world. Their exploitation is perpetuated by lack of outside support.

Prisoner attempts to let the public know what is going on inside are especially thwarted by their keepers. One example was found in a "letter" we received from an Attica prisoner: the contents were missing. After informing him that we had received an empty and unsealed envelope, he replied:

> You must help me. I would never send you an open and empty envelope! I am locked up 24 hours per day. I have access to very few resources. The letter you did not get was full of truth! I am afraid that unless I put some "cosmetics" on what I say, I won't be able to write to you at all.

Another letter came from a C.A.P.S. member imprisoned in Huntsville, Texas, dated September, 1979:

> You will be interested and no doubt "appalled" to know that the Texas Board of Corrections has recently made a rule that prohibits Texas inmates from circulating petitions among themselves or from participating in *"unauthorized"* activities, or from forming unauthorized or unapproved organizations or from soliciting membership in such organizations. According to W.J. Estelle (our slavemaster) this ruling is for the protec-

> tion of the inmates. . . he wants to take away our right to petition for the redress of grievances for our own protection!

From a July, 1979, letter from Somers prison:

> Your material to this prison is being shortstopped, as was your letter of June 13th until I learned of it this afternoon and demanded that it be given to me immediately or returned to sender without delay. They can do pretty much as they please - withholding mail is probably the least of the "rights" I've had violated in my many years of fighting the prison system. As I said in a recent letter to the newspapers: "Leaving the fate of confined men to those who have built a massive industry around them (and stand witness alone to what they are doing and what they need to do to it) is begging the day when almost everyone in this nation will be one or the other."

For six years, the Committee to Abolish Prison Slavery has been circulating a petition, printed in its quarterly *Abolitionist* newsletter, calling for change of the Thirteenth Amendment. The newsletter has been forbidden in several prisons because of the petition. An August 8, 1979, letter from Warden Carl Robinson of the Connecticut Correctional Institution at Somers provides typical reasoning for the denial of the newsletter:

> The publication was found unacceptable on the basis of Section 3 of the Criteria for Rejection of Publications: "Advocates disruption in that it poses a clear threat to the security, discipline, or order of the institution." The Committee [Library Committee at the Somers Correctional Institution] had no objections to the contents of the booklet. Its primary concern was the petition enclosed and its potential for disruption in its being circulated within the institution.

The Petition to Abolish Prison Slavery provides a rare opportunity for prisoners to peacefully and lawfully redress their grievances in coordination with a growing support base in the outside community. It is an educational tool intended to empower prisoners by increasing their understanding of constitutional law and the relationship of law to their daily lives; it is a means whereby prisoners can help to lawfully reclaim their own lives.* When the "security, discipline, or order" of an institution is, in the words of Warden Robinson, *clearly threatened* by practice of constitutionally ordained rights, that institution is based on denial of democratic practices.

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* A copy of this petition can be found in the Appendix.

Another letter from Somers prison explained some of the difficulties facing prisoners who wish to join together to work for their rights:

> Your letter of September 17th, clearly marked *Legal Mail* and opened outside my presence in violation of their own rule, was delivered on the 22nd.... The administration is afraid that you'll educate us to their program of using prisoners to help them dehumanize and defeat prisoners, as much a part of serving time as the walls and bars.
>
> You can appreciate the problem of organizing where a group...is disbanded. Worse, if they see the same men together more than once, they better be gambling, playing sport, talking racial hatred, anything else than trying to become politically conscious. Almost all the men on your mailing list here suffered the harsh penalties meted out following the Sept. '76 sitdown protest and feel, rightly or wrongly, that it served no purpose for 80 men out of 1,000 to demonstrate.

Since slave protest, in any form, is dangerous, it has always been difficult to rally slaves to stand up for their rights in an organized manner. Most prisoner rebellions have been quite, nonviolent attempts to relieve oppression. Those who, in any manner whatesoever, make a stand or express a grievance are seen as threats to the institution to be made an example to others who might follow in their path. For those who file legal complaints or who choose to litigate, there has always been special punishment. Writing from solitary confinement in Texas, where he had been for two years, a prisoner told us that on three separate occasions in nine months

> ...the Classification Committee told me that if I would promise to stop filing complaints and agitating the inmates into filing the same, I would be let out of segregation. I refused to promise because they keep treating us as if we were animals. (I told them.)

As Willy Carns wrote from Memphis:

> I am a federal prisoner and self-styled jailhouse lawyer. For three years I have fought the Bureau of Prisons because of their policy of disrespecting human rights and the inhuman treatment of federal prisoners, all in the name of justice.
>
> If I had been willing to forsake all my values, overlook injustice and join that special breed of animal that would put fellow human beings in a cage, and keep poking them with sticks for years for no useful purpose other than revenge, I could have been released almost a year ago on this five years I'm doing.
>
> I guess what I am trying to say is that I fully support the Committee to Abolish Prison Slavery. I do not have funds or I would gladly share them toward our goal, but I will assist in any way possible.

As has been true with all forms of slavery, rebellions occur every minute and every hour. No matter how small and private the rebellion, whether it be working slow at an assigned job, sneaking food back to a cell, studying by lit matches after "lights out," or hating with whole heart keepers who harrass and order, rebellion is a quest for self-preservation, for an impossible escape from the chains.

> Dear C.A.P.S.,
>
> Although your letter is clearly marked legal mail it was sliced open at the top...it appears someone had tried to steam it open at first and then maliciously tore it...
>
> On January 3, 1979, a T.D.C. official had brought me before him for disobeying one of his officer's orders of "Not to Eat a Biscuit".... When a man is hungry and there is food available he is going to eat. (I was gotten up at 2:00 in the morning and had to walk outside in bitter cold down-pour rain to get to the dining hall in just shirt sleeves.) All the while I was eating, the window was open and bitter cold wind and rain blowing in on us.
>
> When the Captain saw that I wasn't unnerved he told me that I was lucky that it wasn't him that I disobeyed, that there was more of him than there was of me, and that he would have beat me so bad I would have been in the hospital for six months...I told him that would be a violation of my 8th and 14th Amendment rights to be free from cruel and unusual punishment. His reply was, and I quote, "I'll take that right and then we'll see what you can do about it. I don't give a damn about your right! Now put that down in your little book!" Of course I did, as soon as I got the chance....
>
> On the confiscation of my legal material, I told an official that it was a violation of my 1st, 5th, and 14th Amendment rights of access to the courts, due process of law, equal opportunity, and equal protection of the law. My keeper's reply, and again I quote, "I don't go by Constitutional law, I go by T.D.C. Rules and Regulations." He was referring to a rule and regulation that prisoners could not have books or their legal material in Solitary. When in the 20th Century it is a standard rule with the Federal Courts that prisoners in both State and Federal prisons be allowed to have their legal material in Solitary. Not only are inmates of the T.D.C. denied their legal material in Solitary but they are also denied State administrative remedy from forms I-127 and I-128's.
>
> What it all breaks down to is this, you have civil rights in prison if you have courage to stand up to the prison authorites in the face of death and you can endure this treacherous, savage and brutal retaliation.

Even with "the courage to stand up to prison authorities in the face of death," claiming civil rights is a dangerous game in prison. Nearly two years after the above incident, the same prisoner sent us the following message:

> I got off into some real bad shit here in July. I seen an inmate beaten up by prison authorities and I reported it to two federal Judges and the Federal Bureau of Investigation in Houston, Texas and life has been pretty miserable ever since.
>
> We damn ner' had the shit stopped but one day it started all over again like it never stopped at all. So in January and in August there were two nonjudicial murders on this Unit and I feel the way things are going I am going to be number three. But so goes life. But some of us will have to sacrifice in order to accomplish our goal. No change is comfortable on the outside or inside. The only difference that I can see is that prison officials get away with a lot more because of the "exception" in the 13th Amendment. Ever so slight but still there is a little movement forward instead of backward. . .

This prisoner's fears are well-founded, for those who run the Texas prison system have also been named for the following indictments, testified to in a 1978 federal court hearing:

> [A] former prisoner told of losing both his arms below the elbow after he was ordered by supervisors at a state prison farm to feed silage into a threshing machine by hand, a violation of normal safety procedures. . . .
>
> One prisoner, John W. Johnson, serving a three year sentence for possession of marijuana, testified that, after he awakened from a hernia operation in a prison hospital, the attending physician explained that he had accidentally lost a testicle, assuring the patient "You don't need it. You can go through life without it."[32]

From plantation to plantation in the antebellum South, from nation to nation throughout history, the "modus operandi" of human bondage has been distinguished by atrocity. Whenever a people are denied the practices of democratic rights, their sufferings defy description. Until the practices of citizenship, human and labor rights are restored to prisoners, prison reform will continue to apply band-aid solutions to this deep sickness. The cancer of our justice system will only heal when its source - slavery - is cut out root and branch. As California prisoner Ruchell MaGee has written:

> To some degree, Slavery has always been outlawed and condemned by hypocritical mockery of chattering lips, but on the inside of people and prisons, where slavery is imbedded and proudly displayed as a Western Way of Life and a privilege of God Himself, Slavery is condoned on all of its numerous levels.

Notes

1. *Plessy v. Ferguson,* 163 U.S. 537, 542 (1896).

2. Henry Campbell Black, *Black's Law Dictionary,* 5th ed. (1979), s.v. "involuntary servitude," "slavery."

3. On June 30, 1981, there were 30,954 people imprisoned in Texas. This figure includes prisoners under Texas state jurisdiction but not those under "state custody." (U.S. Department of Justice, *Prisoners at Midyear 1981.)* In 1978, 47 percent of Texas prisoners were reported doing agricultural labor, with most prisoners working their first six to eight months in the fields (Kevin Krajick, "Profile Texas," *Corrections Magazine,* vol. 4, no. 1 (March 1978), pp. 11, 13). Controversy over the Texas system is also examined by the March, 1978, issue of *Corrections Magazine* (see Krajick, pp. 5-7, 9-21). On p. 5, Kevin Krajick reports:

> According to its admirers, who are numerous, the Texas prison system is the most successful and efficient anywhere. "They do well all the things that prisons are supposed to do," says C. Paul Phelps, director of the neighboring Louisiana Department of Corrections. "They keep you in, they keep you busy and they keep you from getting killed." According to critics, also numerous, the system is dehumanizing and repressive, *because* of its very orderliness and efficiency. "The Texas Department of Corrections is probably the best example of slavery remaining in the country," says Arnold Pontesso, former director of corrections in neighboring Oklahoma.

See also Danny Lyon, *Conversations with the Dead* (New York: Holt, Rinehart and Winston, 1971), an important photographic essay of prison life in Texas.

4. Katheryn Watterson Burkhart, *Women in Prison* (Garden City, N.Y.: Doubleday & Company, Inc., 1973), p. 286, interview with Arizona prison superintendent Frank Eyman.

5. Mitford, p. 190.

6. Ibid., p. 193.

7. Ibid., pp. 196-197.

8. U.S. Department of Justice, *Bureau of Justice Statistics Bulletin,* "Prisoners at Midyear 1981," opens with:

> The prison population of the United States swelled by more than 20,000 during the first half of 1981, adding more persons to the rolls of the nation's correctional institutions in 6 months than were added during the previous 12 months. On June 30, 1981, State and Federal correctional institutions held nearly 350,000 prisoners, compared with less than 330,000 yearend 1980 and 300,000 yearend 1977. The 6.2 percent increase during the first half of 1981 was equivalent to an annual growth rate of nearly 13 percent compared with increases of 4.5 percent in 1980 and just above 2 percent in 1979 and 1978.

9. National Moratorium on Prison Construction, "Average Maintenance Cost in Prisons and Jails per Prisoner per Year (Based on U.S. Department of Justice

Statistics, Prisoners in State and Federal Institutions on December 31, 1978 and U.S. Department of Justice [LEAA], Census of Jails and Survey of Jail Inmates, 1978, and on U.S. Department of Justice Expenditure Data for the Criminal Justice System, 1978.)" (Washington, D.C.: mimeo). $9,143 is the national average cost per state prisoner, as computed from direct costs ranging from $3,933 (Texas) to $36,944 (Wyoming) per prisoner year. These "direct costs" are limited to staff salaries, supplies, maintenance and other day-to-day institutional expenses. N.M.P.C. staff explain that this estimate of direct costs must be assumed to be lower than actual direct costs, since each state varies in budget items reported to the Justice Department.

The inadequacy of accurate cost analysis available to the public becomes clearer upon examining a 1978 report to the National Council on Crime and Delinquency by accounting and consultant firm Coopers and Lybrand. Entitled "The Cost of Incarceration in New York City," the study indicated that New York City spent $71.87 to imprison one person for one day, or approximately $26,000 per year per prisoner during the year ending June 30, 1976. Direct expenses were $58.12 per day [81% of total, and $21,213.80 per prisoner per year], and daily outside services such as legal, medical and education cost the city $13.75 per prisoner per day [19% of total, or $5,018.75 per prisoner per year]. In addition to these total "out-of-pocket" costs to New York City, the study states:

> We estimate societal costs [such as additional welfare benefits paid to prisoners' dependent families, lost earnings of imprisoned workers, and lost real estate taxes for property used by the city for "correctional" purposes] at $95.2 million per year, or $39.55 per prisoner per day. These costs are not included in the "out-of-pocket" costs outlined above.
>
> In addition to the costs described above, there are a number of other factors that should be considered.
>
> > A 6% inflationary impact on the present cost of incarceration would increase the annual "out-of-pocket costs" to 1.7 billion in 40 years. Expressed on a per prisoner basis, assuming no growth in the prisoner population, the cost per inmate day would be $697.47 and the annual cost per prisoner would be $255,000 in 40 years.
>
> The economic cost of alternative use of funds should also be considered. The impact can be quantified by measuring the cost of these "lost opportunities." For example, a dollar not spent on incarceration could be invested and interest earned; or City debt could be reduced. Using this concept and applying a 6% cost of money (a conservative rate by today's standards) to the out-of-pocket costs of incarceration, would result in a "lost opportunity" cost of $10.4 million for 1976 and an annual cost of $4.0 billion in 40 years. (Coopers & Lybrand, "The Cost of Incarceration in New York City" [Hackensack, N.J.: National Council on Crime and Delinquency, 1978], pp. 5-6.)

10. Mitford, pp. 202-203.

11. Ibid., p. 206.

12. Burkhardt, p. 289, and continues with:

> Hongisto said the commissary profit from San Francisco jails

> alone totaled at least $18,000 a year. He planned to track down the money and start using it to improve direct services for inmates who live in what he called "outrageous and inhumane conditions." Hongisto said that he could only figure the money had been funneled off into private gain, because certainly it hadn't been used for inmate benefits.

13. See Michael Snedeker, "Con Law," *The Outlaw* (San Francisco: Prisoners' Union, 1974), 3: 6, 1-2; *Pell v. Procunier* 41 L. Ed 2nd 935, 504. *Wolff v. McDonnel* 41 L. Ed 2nd 935, 957; *Jones v. North Carolina Prisoners' Union, Inc.* 433 U.S. 119.

In *Pell v. Procunier,* the Supreme Court held that prison regulations banning prisoner interviews with the press did not violate the First Amendment:

> In this case, the restriction takes the form of limiting visitations.... In the judgment of the state correction officials, this visitation policy will permit inmates to have personal contact with those persons who will aid in their rehabilitation, while keeping visitations at a manageable level that will not compromise institutional security.
>
> Such considerations are particularly within the province and professional expertise of corrections officials, and... courts should ordinarily defer to their expert judgment in such matters.

In *Wolff v. McDonnel* regarding due process of law for prisoners in prison disciplinary hearings, the Court stated:

> The operation of a correctional institution is an extraordinarily difficult undertaking. Many prison officials, on the spot and with the responsibility for the safety of inmates and staff, are reluctant to extend the unqualified right to call witnesses; and in our view they must have the necessary discretion without being subject to unduly crippling constitutional impediments.

And in *Jones v. the North Carolina Prisoners Union, Inc.,* the Supreme Court ruled that prisoners' First Amendment rights "must give way to the reasonable regulations of penal management." (This case is examined in greater detail in Chapter 9.)

14. "Goon Squad" produced by Jim Jackson, *60 Minutes,* CBS News July 26, 1981 television broadcast transcript, (CBS, Inc., 1981; original broadcast January 11, 1981) vol. 13, no. 5, pp. 2-8.

15. Ibid.

16. Ibid.

17. John M. Crewsdon, "Inmates Tell of Texas Brutality," *New York Times,* November 11, 1978.

18. Ibid.

19. Mitford, pp. 139-140, as quoted from M.H. Pappanworth, *Human Guinea Pigs* (Boston: Beacon Press, 1968), p. 64.

20. Mitford, pp. 140-141.

21. Ibid., p. 149.

22. WCI Waupun Paralegal Program Sub-Committee on Prison Health, "Request for Assistance," March 25, 1980 (Waupun, Wisc.: memo to members of WCI Program Steering, Advisory and Procurement Committee), p. 1.

23. Prisoners' Commission, *Report from Prisoners Inside Indiana State Prison* (n.p.: *Prisoners' Commission,* 1980; mimeo), pp. 10-11, "April 20, 1980."

24. Ibid., p. 40, "Hospital/Medical Treatment."

25. Dr. Edgar Schein, at a meeting of U.S. wardens and social scientists in 1962, as quoted by Eddie Griffin, *Breaking Men's Minds: Behavior and Human Experimentation at the Federal Prison in Marion, Illinois* (St. Louis: National Committee to Support the Marion Brothers and the Task Force on Behavior Control and Human Experimentation of the National Alliance Against Racist and Political Repression, n.d.), p. 2.

26. Alberto Mares, released from the Control Unit as a result of a federal court order on December 6, 1973, quoted by Prison Research Education Action Project, 1976, p. 49, "Behavior Modification."

27. Ibid.

28. See Griffin, pp. 3-17.

29. Ibid., pp. 17-18.

30. *Webster's New World Dictionary of the American Language,* s.v. "civil rights."

31. Memorandum regarding "Malicious and Unjust Attacks on the World Community of Al-Islam in the West by the Attica Prison's Guards" to Governor of the State of New York, Commissioner of the Department of Correctional Services, Superintendent of the Attica Correctional Facility, et. al., from members of The World Community of Al-Islam in the West, in Attica Correctional Facility, May 5, 1980 (photo-copy).

32. Crewsdon, *New York Times,* Nov. 11, 1978.