


# “A little world within itself”: The South Carolina Penitentiary and the Roots of the Carceral State

Sean Kim Butorac 

Department of Political Science, North Central College, Naperville, USA

## Research Article

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Email: [skbutorac@noctrl.edu](mailto:skbutorac@noctrl.edu)

### Abstract

This article tracks the buildup of the South Carolina criminal legal system between 1867 and 1899 through three eras of its state penitentiary: from the politics of reform to convict leasing to the prison plantation. To track the delayed emergence and unusual trajectory of South Carolina’s criminal legal system, I argue that two approaches became entangled after the Civil War: On the one hand, a modern, nationalized politics of reform, and on the other, a decidedly Southern vision of crime and punishment haunted by the afterlife of slavery. It was the tension between—and variegated blending of—these two approaches that yielded a hybrid carceral project and set the trajectory for the state’s criminal legal system as it entered the twentieth century.

Since the Civil War, police, courts, and prisons have become increasingly potent tools of racial domination. Scholars often highlight the continuities between modern punitive institutions and earlier forms of racial domination like slavery and Jim Crow.<sup>1</sup> Yet Southern criminal legal systems also lacked capacity in the nineteenth century.<sup>2</sup> Three Southern states did not even have their own prison, including South Carolina, which only broke ground on its first penitentiary in 1867, and quickly sought to make the Penitentiary profitable through the labor of its mostly Black prisoners.<sup>3</sup> In the early years, penitentiary officials like Superintendent Lee professed their commitment to crafting a profitable institution that would be “a little world within itself.”<sup>4</sup> Despite that profit motive, and perhaps because of this goal to create an insular world, South Carolina became the second-to-last state to institute convict leasing in 1878. The system was unstable and short-lived. Lawmakers effectively abolished leasing in 1886, while most Southern states leased prisoners well into the early twentieth century. How should we understand this uneven and halting approach to crime and punishment in South Carolina, the “capital of slavery” and “cradle of the Confederacy?”

The delayed emergence and unusual trajectory of South Carolina’s criminal legal system was the product of two approaches that became entangled after the Civil War: On the one hand, a modern, nationalized politics of reform, and on the other, a decidedly Southern vision of crime and punishment haunted by the afterlife of slavery.<sup>5</sup> It was the tension between—and variegated blending of—these two approaches that yielded a hybrid carceral project and set the trajectory for the state’s criminal legal system as it entered the twentieth century.

This article begins with an overview of the literature in American Political Development (APD) and the carceral state to make the case that by viewing the carceral state from the state-level and extending our timeline to the nineteenth century, APD scholars can engage in deeper pattern recognition, identifying how the afterlife of slavery and vision for a modern criminal

<sup>1</sup>David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York, NY: Simon and Schuster, 1997); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press, 2010).

<sup>2</sup>Heather Schoenfeld, “The Delayed Emergence of Penal Modernism in Florida,” *Punishment & Society* 16, no. 3 (2014): 258–84; Henry Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America* (Charlottesville, VA: University of Virginia Press, 2017); Susanne Schwarz, “‘The Spawn of Slavery?’ Race, State Capacity, and the Development of Carceral Institutions in the Postbellum South,” *Studies in American Political Development* 37 (2023): 181–98.

<sup>3</sup>I intentionally use the term “prisoner” throughout this article. In my encounters with currently and formerly incarcerated students, many have said they prefer the term “prisoner,” which connotes an active condition of unjust domination and resistance in contrast to the more clinical and passive language of incarcerated person. While I use the term “enslaved people” in my other work since we have no way today of knowing what term they would use today, I have adopted the term “prisoner” since, at least from my own limited experience, many of those most directly affected by the system use that language. Hence, my departure from the current drift of scholarly convention.

<sup>4</sup>“South Carolina Penitentiary,” January 14, 1868, 127, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868–1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>5</sup>Saidiya Hartman, *Lose Your Mother: A Journey Along the Atlantic Slave Route* (New York, NY: Farrar, Straus and Giroux, 2007).

egal system were entangled. Turning to the history of South Carolina, the second section shows how postwar dynamics around crime and punishment, including underfunding and lack of capacity in local and county jails overcame a tradition of local authority and skepticism toward consolidating state power, bridged partisan interests, and appealed to white anxieties about postwar racial dynamics, creating the conditions for a slow, halting buildup of carceral capacity.

The bulk of the article proceeds in three parts: First, the penitentiary looked to an emerging professional class of prison administrators and the science of incarceration in pursuing a reform model, which they adapted to the racial dynamics of the postwar South. The politics of reform, however, was plagued by the endurance of anti-Black violence and declined in tandem with the broader project of Reconstruction. Second, during and after the collapse of Reconstruction, the penitentiary emerged as a focal point in reinscribing racial hierarchy and rebuilding the postwar economy through convict leasing. However, conflict over how to maximize profits while still disciplining prisoners yielded an unstable and fleeting lease system that, when combined with prison administrators' racially paternalistic concept of reform, persuaded state officials to chart a new course. After the decline of leasing, the penitentiary effectively became a state-owned plantation, a ghost of slavery, that balanced paternalist reform with profit maximization. Taken together, this article demonstrates how the afterlife of slavery and modern prison were co-constitutive, yielding a hybrid criminal legal system.

### 1. American political development and the carceral state

Although its prison population has decreased in recent years, the U.S. still imprisons more people than any other nation. Over 1.9 million Americans are behind bars with another 3.7 million on probation or parole. The racially disparate effects of mass incarceration were, and remain, marked. Black people constitute 12 percent of the U.S. population but account for more than 40 percent of the U.S. prison population.<sup>6</sup> On the one hand, prior scholarship shows how the punitive turn that produced these disparities was a decidedly modern development. Until the mid-twentieth century, the U.S. prison population was comparatively small and stable with its most exponential growth starting in the 1980s. However, in the wake of the Civil Rights Movement, a nationalizing, conservative law and order politics—discursively coined by Goldwater and institutionalized by Nixon—enabled lawmakers to funnel resources into building the state capacity that would eventually balloon the prison population.<sup>7</sup> Ideologically, this coincided with the abdication of rehabilitation as an ideal—which had underwritten the development of a professionalized class of penal administrators and persisted through the 1970s—in favor of a more draconian, punitive ethos.<sup>8</sup>

<sup>6</sup>Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie 2024,” *Prison Policy Initiative*, March 14, 2024, <https://www.prisonpolicy.org/reports/pie2024.html#slideshow/slideshow6/2>.

<sup>7</sup>Stuart Scheingold, *The Politics of Law and Order: Street Crime and Public Policy* (New York, NY: Longman, 1984); Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York, NY: Oxford University Press, 1997); Vesla Weaver, “Frontlash: Race and the Development of Punitive Crime Policy,” *Studies in American Political Development* 21 (Fall 2007): 230–65.

<sup>8</sup>Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York, NY: Cambridge University Press, 2006); Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*.

Yet the carceral state was not simply a backlash to the Long Civil Rights Movement. As Weaver shows, conservatives indirectly destabilized those gains by vesting crime with new salience to achieve issue dominance, enact punitive policies, and solidify a policy monopoly that delimited the horizon of possibilities in defining and addressing the issue.<sup>9</sup> Schoenfeld terms this buildup of state power, carceral capacity, that is, “the resources dedicated to detecting apprehending, processing, and punishing people deemed criminal.”<sup>10</sup> This buildup has included militarizing police forces, bureaucratizing formally racially neutral courts, building new prisons, expanding probation and parole, and enlarging the field of “criminal” behavior subject to surveillance, discipline, and control.<sup>11</sup> Recent scholarship has also widened our view of the carceral state as it has metastasized, revealing how social programs, immigration, and proximal contact now form a racially punitive network of ideas and institutions.<sup>12</sup> By instantiating new ideas of crime and punishment, nationalizing crime policy, and cultivating carceral capacity, lawmakers were able to reshape the political terrain for activists, legal actors, and lawmakers, gradually entrenching the carceral state over the latter half of the twentieth century.

On the other hand, APD scholars have shown how earlier ideological and institutional developments—many undertaken by liberals and progressives—also laid the groundwork for the carceral state. The ideas of Black criminality that conservatives exploited to justify hyper-punitive policies like mandatory minimums were, as Muhammad demonstrates, first modernized by Northern progressives, including academics, journalists, and politicians, who leveraged crime statistics to furnish a “scientific” discourse around race. Likewise, as Murakawa shows, law and order politics was cultivated by Truman era liberals in response to white vigilantism, which they targeted through criminal legal reforms.<sup>13</sup> At the state level, Taylor shows how Sunbelt moderates in pursuit of economic development used law and order to equate civil disobedience with white vigilantism and justify a racially neutral, modern criminal legal system.<sup>14</sup> Drawing a through-line from the war on poverty to the war on crime, Hinton shows how progressive social programs were underwritten by a theory of social pathology that individualized the problem of poverty, yielding punitive social programs preoccupied with reforming “future criminals,” rather than systemic change.<sup>15</sup> Recent APD scholarship has also reoriented the

<sup>9</sup>Vesla Weaver, “Frontlash: Race and the Development of Punitive Crime Policy,” *Studies in American Political Development* 21 (Fall 2007): 230–65.

<sup>10</sup>Heather Schoenfeld, *Building the Prison State: Race and the Politics of Mass Incarceration*, The Chicago Series in Law and Society (Chicago, IL: The University of Chicago Press, 2018), 19.

<sup>11</sup>Loïc Wacquant, “From Slavery to Mass Incarceration,” *New Left Review* 13 (2002): 41–60; Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America*; Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley and Los Angeles, CA: University of California Press, 2007); Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

<sup>12</sup>César Cuauhtémoc Garia Hernández, *Migrating to Prison* (New York, NY: The New Press, 2019); Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2016); Amy Lerman and Vesla Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (Chicago, IL: University of Chicago Press, 2014); Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York, NY: Oxford University Press, 2006).

<sup>13</sup>Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (New York, NY: Oxford University Press, 2014).

<sup>14</sup>Kirstine Taylor, “Sunbelt Capitalism, Civil Rights, and the Development of Carceral Policy in North Carolina, 1954–1970,” *Studies in American Political Development* 32 (October 2018): 292–322.

<sup>15</sup>Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America*, 62.

elite-centered view of political development through a bottom-up approach that shows how those disproportionately impacted by the carceral state have resisted the carceral state through protest, lobbying, litigation, and uprisings.<sup>16</sup> A notable example of this approach in APD, Francis demonstrates how the National Association for the Advancement of Colored People (NAACP) eventually turned to the Supreme Court in *Moore v. Dempsey* (1923) to secure a watershed victory in bringing state criminal court proceedings in line with federal due process protections.<sup>17</sup> Collectively, these works enlarge and extend the timeline of APD scholarship by complicating claims of partisan politics, examining the constitutive role of resistance in processes of development, and locating the ideological and institutional foundations of the carceral state in the early-mid twentieth century.

These accounts, while remarkable in scope, rarely consider the development of the carceral state prior to the twentieth century. Earlier accounts, primarily focused on state criminal legal systems, are largely the purview of historians who treat convict leasing as an extension of slavery.<sup>18</sup> For historical institutionalists who focus on sequencing and pattern recognition to analyze the federal government's development and accumulation of capacity, this relative inattention might seem justified.<sup>19</sup> During the nineteenth century, crime was not yet a national issue, law enforcement was a varied local affair, and many states—particularly in the South—lacked carceral capacity. Given the idiosyncrasy of state criminal legal systems and the relative lack of both state and federal capacity during the nineteenth century, why look to the state-level during this earlier period in locating the roots of the carceral state?

First, most individuals who come into contact with police and prisons do so through a variegated network of state and county criminal legal systems. To understand the trajectory of the carceral state requires us to tend to state criminal legal systems, many of which were expanding and modernizing well before crime and punishment became matters of national concern. As Norton, Pelot-Hobbs, and Schept remind us, county jails are everywhere today—booming, overlooked, and ubiquitous—and at some point, incarcerate nearly every individual who moves through the carceral

state.<sup>20</sup> Of course, these systems are not entirely idiosyncratic. The federal government has considerable power to shape criminal procedure, allocate state and local funding to law enforcement and prison construction, and determine eligibility for federal social programs. As Murakawa argues, “federal crime policy carries light institutional but hefty symbolic weight” in shaping the national discourse around crime and punishment.<sup>21</sup> Yet from pretrial detention to probation and parole, it is a patchwork of local, county, and state institutions that largely comprise the carceral state. Moreover, those most affected by the carceral state rarely have meaningful access to federal—let alone state—lawmakers and are forced to seek out local officials with the fewest resources.<sup>22</sup> In this respect, the punitive boom of the twentieth century was driven by a network of carceral *states* plural rather than a single, unitary system.

Following Gottschalk's observation that “state-level differences are important and a ripe field for further investigation,” APD scholars have begun to fill this gap.<sup>23</sup> As Schoenfeld demonstrates in tracking the buildup of Florida's criminal legal system, “differences in state political institutions and political culture mediate states' use of imprisonment.”<sup>24</sup> This tracks with a range of state-level studies. Gilmore reveals how as rural Californians weathered the fallout of deindustrialization, lawmakers reframed prison-building as an engine of economic restructuring and development.<sup>25</sup> Other studies of California, notably Zimring, et al., emphasize the populist, hyper-punitive public's role in driving “three-strikes” laws, which flourished when experts were locked out of the policymaking process.<sup>26</sup> In juxtaposing elite-driven policymaking in New York to the comparatively democratic process in Washington state, Barker argues that “citizen participation, discussion, compromise, and self-governance” yielded a less punitive approach.<sup>27</sup> Conversely, Lynch demonstrates how Arizona's long-standing conservatism and frontier political culture—which had yielded low incarceration rates—when combined with a law and order turn fueled by conservative politicians and media bureaucratized the criminal legal system, radically expanding the state's carceral capacity and its prison population. In each case, tracking political development at this level demonstrates the importance of state-level factors in shaping punitivity, carceral capacity, and a commitment to rehabilitation (or lack thereof).

In line with this body of scholarship, this account of the South Carolina Penitentiary focuses on the institutionalized interplay between state officials, prison administrators, and private corporations, showing how they acted within and against institutional rules, norms, and structures. Prison administrators who viewed themselves as part of an emergent professional class and struggled to leverage their expertise in convincing state officials to grant them

<sup>16</sup>Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill, NC: University of North Carolina Press, 2016); Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965* (Durham, NC: University of North Carolina Press, 2017); Keeanga-Yamahatta Taylor, *From #BlackLivesMatter to Black Liberation* (Chicago, IL: Haymarket Book, 2016); Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (New York, NY: Pantheon Books, 2016); Hannah Walker, *Mobilized by Injustice: Criminal Justice Contact, Political Participation, and Race* (New York, NY: Oxford University Press, 2020).

<sup>17</sup>Megan Ming Francis, *Civil Rights and the Making of the Modern American State* (New York, NY: Cambridge University Press, 2014).

<sup>18</sup>Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861–1877* (Chapel Hill, NC: The University of North Carolina Press, 1965); Michael Stephen Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767–1878* (Chapel Hill, NC: University of North Carolina Press, 1980); Edward Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York, NY: Oxford University Press, 1984); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York, NY: Harper & Row, Publishers, 1988); Oshinsky, “Worse Than Slavery:” *Parchman Farm and the Ordeal of Jim Crow Justice*; W.E.B. Du Bois, *Black Reconstruction in America, 1860–1880* (New York, NY: The Free Press, 1998); Wilbert Jenkins, *Seizing the New Day: African Americans in Post-Civil War Charleston* (Bloomington, IN: Indiana University Press, 1998); Eric Foner, *Forever Free: The Story of Emancipation and Reconstruction* (New York, NY: Alfred A. Knopf, 2005); Talitha LeFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill, NC: University of North Carolina Press, 2016); Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*; Richard Zuczek, *State of Rebellion: Reconstruction in South Carolina* (Columbia, SC: University of South Carolina Press, 1996).

<sup>19</sup>Karen Orren and Stephen Skowronek, *The Search for American Political Development* (New York, NY: Cambridge University Press, 2004).

<sup>20</sup>Jack Norton, Lydia Pelot-Hobbs, and Judah Schept, eds., *The Jail Is Everywhere: Fighting the New Geography of Mass Incarceration* (New York, NY: Verso, 2024).

<sup>21</sup>Murakawa, *The First Civil Right: How Liberals Built Prison America*, 21.

<sup>22</sup>Lisa Miller, *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control* (New York, NY: Oxford University Press, 2008).

<sup>23</sup>Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America*, 12.

<sup>24</sup>Schoenfeld, *Building the Prison State: Race and the Politics of Mass Incarceration*, 9.

<sup>25</sup>Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*, 87–127.

<sup>26</sup>Franklin Zimring, Gordon Hawkins, and Sam Kamin, *Punishment and Democracy: Three Strikes and You're Out in California*, Studies in Crime and Public Policy (New York, NY: Oxford University Press, 2001).

<sup>27</sup>Vanessa Barker, *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders*, Studies in Crime and Public Policy (New York, NY: Oxford University Press, 2009), 11.



greater discretion and authority, a power they slowly-but-surely cultivated even in the absence of meaningful carceral capacity. Likewise, the criminal legal system changed over time in response to endogenous and exogenous shifts, such as the ascendance of convict leasing, which was shaped by macropolitical changes like the gradual collapse of Reconstruction and ascendance of white Democrats. Moreover, increasing returns—particularly financial gains—produced not only durable change, but also established the penitentiary as an integral part of the modern state in shaping the boundaries and dynamics of the postwar racial hierarchy.<sup>28</sup>

Like other APD scholars, such as Frymer, this article approaches development with an eye toward the ways that “political change is constrained by preexisting government institutions and rules,” and so devotes particular attention to the prior constraints that structured each shift from the politics of reform to convict leasing to the prison plantation.<sup>29</sup> Later institutions like the prison plantation were haunted by slavery and structured by earlier interests underlying the politics of reform, producing a fragmented, hybridized criminal legal system.<sup>30</sup> In locating the roots of this hybrid system, this article shows how the afterlife of slavery was expressed through the criminal legal system. This view of history and continuity is particularly indebted to Hartman, who reminds us that the afterlife of slavery is expressed in the devaluation of Black lives according to “a racial calculus and political arithmetic that were entrenched centuries ago.” This afterlife is reflected in a range of negative outcomes including “skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment,” enduring features of Black life that were entrenched, during and after Reconstruction, through the criminal legal system.<sup>31</sup> In tracing this afterlife, an APD approach centered on change and development enables us to take a long view of preexisting ideas that structure the making of rules, norms, and structures. This article is concerned with—and finds equally revealing—what remains unchanged, or how certain structures and practices may reproduce themselves or echo the past even as they assume a formally modern guise.

Shifting the level of analysis from national to state level also yields a longer timeline of the carceral state, enabling APD scholars to engage in deeper pattern recognition, “the sin qua non of the enterprise.”<sup>32</sup> In looking to the (post)-Reconstruction eras, scholars have illuminated the continuities and disjunctures between slavery and state criminal legal systems that anticipate the modern carceral state. Perhaps most notably, in framing convict leasing as “the spawn of slavery,” Du Bois laid bare that, “the convict lease system is the slavery in private hands of persons convicted of

crimes and misdemeanors in the court.”<sup>33</sup> Oshinsky shows how the development of Black Codes and vagrancy laws followed by the collapse of Reconstruction enabled white Democratic lawmakers to institute convict leasing as a new mode of racialized control that was “worse than slavery,” addressing many of the social, political, and economic exigencies of the postwar South.<sup>34</sup> In tracking the buildup of the Texas criminal legal system, Perkinson shows how the prison plantation model kept “the ghosts of slavery alive and well into the twentieth century.”<sup>35</sup> For Perkinson, understanding the carceral state requires we recognize, “that the history of punishment in the United States is more of a southern story,” borne of the “troubled history of racial conflict and social stratification.”<sup>36</sup> Thus, it is tempting to critique convict leasing as “the spawn of slavery,” designed to adapt racial hierarchy, that is, to reinscribe relations of white authority and Black subordination under the new racial dynamics of the postwar South. Indeed, this was part of the afterlife of slavery in South Carolina: Convict leasing reproduced much of the expropriation of enslavement, creating disposable laborers who were integral to an initial burst of activity in rebuilding and modernizing postwar infrastructure and the economy.

Others, notably Schwarz, have complicated the continuities between slavery and convict leasing given experimentation with leasing in prewar states like Georgia, punitive policies predating leasing, bipartisan support for lease systems, and the minor role of agriculture in convict leasing compared to modern industries like railroads. While police and prisons did emerge as potent tools of racial domination in the postwar South, those aspirations were consistently tempered by a long-standing distrust of consolidated authority and low funding, and consequently, a lack of carceral capacity. In this respect, the development and expansion of convict lease systems—operated with virtually zero state investment—enabled lawmakers to cultivate state capacity while circumventing fiscal and institutional constraints.<sup>37</sup> Like Schwarz’s work, this article shows how if convict leasing were solely or primarily an afterlife of slavery, then South Carolina is a paradox given its deep entanglement with slavery and fleeting experimentation with convict leasing.

During the eighteenth century, South Carolina had one of the largest enslaved populations, second only to Virginia, and over 40 percent of all enslaved people were trafficked through Charleston.<sup>38</sup> By the nineteenth century, the demographics of South Carolina were still closer to Caribbean colonies like Barbados and Jamaica. As Figure 1 illustrates, between 1810 and 1830, while states with the largest enslaved populations stagnated or declined in proportion to the white population, the enslaved population in South Carolina expanded.

Slavery was not only more widespread but more deeply embedded in the social, political, and economic development of South Carolina than virtually any other state.<sup>39</sup> It was South Carolina,

<sup>28</sup>Stephen Skowronek, *Building a New American State* (New York, NY: Cambridge University Press, 1982); Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: The Belknap Press of Harvard University Press, 1992); Paul Pierson, “Increasing Returns, Path Dependence, and the Study of Politics,” *American Political Science Review* 94, no. 2 (2000): 251–67; Robert Lieberman, *Shifting the Color Line: Race and the American Welfare State* (Cambridge, MA: Harvard University Press, 2001).

<sup>29</sup>Paul Frymer, “Law and American Political Development,” *Law & Social Inquiry* 33, no. 3 (2008): 784.

<sup>30</sup>Skowronek, *Building a New American State*; Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (New York, NY: Cambridge University Press, 1991); Orren and Skowronek, *The Search for American Political Development*.

<sup>31</sup>Hartman, *Lose Your Mother: A Journey Along the Atlantic Slave Route*, 6.

<sup>32</sup>Orren and Skowronek, *The Search for American Political Development*, 7.

<sup>33</sup>W.E.B. Du Bois, “The Spawn of Slavery: The Convict-Lease System in the South,” in *Deviance and Social Control: A Sociological Perspective*, ed. Michelle Inderbitzin, Kristin Bates, and Randy Gainey (New York, NY: SAGE Publications, 2020).

<sup>34</sup>Oshinsky, “Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice.”

<sup>35</sup>Robert Perkinson, *Texas Tough: The Rise of America’s Prison Empire* (New York, NY: Picador, 2010), 152.

<sup>36</sup>*Ibid.*, 7–8.

<sup>37</sup>Schwarz, “‘The Spawn of Slavery’? Race, State Capacity, and the Development of Carceral Institutions in the Postbellum South.”

<sup>38</sup>Andrew Fede, *Homicide Justified: The Legality of Killing Slaves in the United States and the Atlantic World* (Athens, GA: University of Georgia Press, 2017), 173.

<sup>39</sup>William Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816–1836* (New York, NY: Oxford University Press, 1966); Eugene Sirmans,

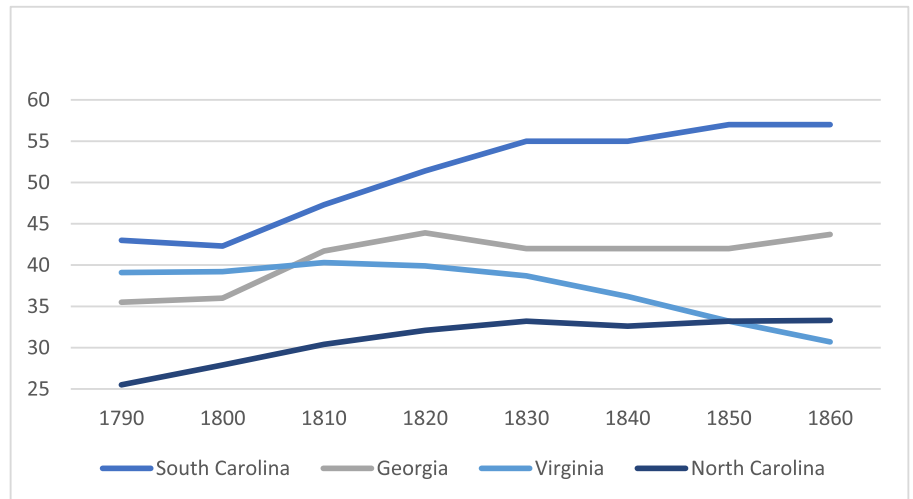


Figure 1. Enslaved Population (% Total Pop.).

“the cradle of the confederacy,” that originated the nullification crisis and first seceded at the outset of the Civil War.<sup>40</sup> After abolition, South Carolina was the second state to institute its own Black Codes—a punitive body of laws designed to surveil and discipline newly free Black people—just days after Mississippi and more than a decade before it instituted convict leasing. In this respect, if convict leasing was intended to fill the gap left by abolition, then it seems likely that South Carolina would have been an early and enduring adopter of convict leasing.

Yet convict leasing in South Carolina was late to arrive, unstable in practice, and short-lived. After Texas, South Carolina was the second-to-last state to institute leasing in 1878, 2 years into the collapse of Reconstruction and well after a number of punitive, racially discriminatory laws were already in effect. By 1879, the number of leased prisoners had already peaked. In less than a decade, the system was effectively killed off in 1886 when lawmakers reinstated a cost-prohibitive law requiring leasers to employ penitentiary guards, knowing that the previous iteration of the law had wiped out the lease system. While some railroad companies continued to lease a small number of prisoners, the end came in 1896 when the Assembly barred those companies from paying in stock, which had made the practice cost effective and a boon for elected officials on company boards. By contrast, most Southern states retained some form of convict leasing well into the early

twentieth century. The slavery-leasing analogy simple does not track with the timing and sequencing of convict leasing in South Carolina, “the capital of slavery,” and yet the state with perhaps the most unstable and shortest lived lease system.

That prison administrators—including a Superintendent and Board of Directors appointed by white Democrats during the collapse of Reconstruction—maintained their own interests, which they leveraged to challenge the corporate interests and alter state officials’ views of convict leasing, further complicates the slavery-leasing analogy.<sup>41</sup> In contrast to the laws of slavery, which prioritized the economic interests of enslavers, prison administrators openly condemned the lax regulation of convict leasing, which they argued was driven by corporations prioritizing profits at the expense of prisoner discipline. Although these administrators were not committed to reform through education and vocational training, they did value discipline and control, which they couched in the language of reform. As this concept of reform moved from Northern models of education and vocational training, the “reformed prisoner” effectively became a proxy for the obedient and productive Black worker. This echoed an earlier racial paternalism, which cast slavery as a “positive good,” reframing racial domination as a source of protection and uplift. In this respect, there were durable ideological linkages between slavery and incarceration, but those connections drove prison administrators away from convict leasing, not toward it.

By invoking this paternalist idea of reform to persuade state officials to abandon convict leasing, administrators sought to institute a prison farm system that mirrored the slave plantation in its hierarchical form and expropriative function. Thus, while convict leasing was not exactly the “spawn of slavery,” it was the move away from leasing that aligned the interests of state officials and prison administrators in moving toward prison farms that mirrored a slave plantation. This account aligns with, and builds upon, Schwarz’s argument that the turn toward convict leasing was conditioned by—and resolved the challenges of—a lack of state capacity. Yet South Carolina’s brief foray into convict leasing does show how leasing was part of the afterlife of slavery, albeit in a more indirect way than prior scholarship often suggests. To jettison the analogy altogether prevents us from recognizing continuities

*Colonial South Carolina: A Political History, 1663–1763* (Chapel Hill, NC: The University of North Carolina Press, 1966); Steven Channing, *Crisis of Fear: Secession in South Carolina* (New York, NY: Simon and Schuster, 1970); John Lofton, *Denmark Vesey’s Revolt: The Slave Plot That Lit a Fuse to Fort Sumter* (Kent, OH: The Kent State University Press, 1983); Richard Waterhouse, *A New World Gentry: The Making of a Merchant and Planter Class in South Carolina, 1670–1770* (New York, NY: Garland Publishing, Inc., 1989); Mary Frances Berry, *Black Resistance/White Law: A History of Constitutional Racism in America* (New York, NY: Penguin Books, 1995); Thomas Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill, NC: University of North Carolina Press, 1996); Peter Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York, NY: W.W. Norton & Company, 1996); Max Edelson, *Plantation Enterprise in Colonial South Carolina* (Cambridge, MA: Harvard University Press, 2006); Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (New York, NY: Cambridge University Press, 2010); Amrita Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston* (Chapel Hill, NC: The University of North Carolina Press, 2011); Edward Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World* (Cambridge, MA: Harvard University Press, 2018); Sean Kim Butorac, *From Slavery to Prisons: Race, Resistance, and the Laws of Slavery, 2022*.

<sup>40</sup> Channing, *Crisis of Fear: Secession in South Carolina*.

<sup>41</sup> On Southern authoritarianism, see: Robert Mickey, *Paths Out of Dixie* (Princeton, NJ: Princeton University Press, 2015).

between slavery, convict leasing, and the prison plantation, which are ultimately part of the same trajectory.

However, even as the South Carolina Penitentiary was part and parcel of the afterlife of slavery, prison administrators also tried to modernize the institution in ways that extend the periodization of penal modernism and complicate the North/South binary between rehabilitative versus punitive prisons. Premised on the idea that punishment is a potent tool of discipline and reform that is best wielded by the state under the guidance of a scientific class of professionals, penal modernism holds that, “individualized evaluation, classification and treatment ... indeterminate sentencing ... probation and parole ... [and] education and treatment programs within prisons, probation and parole” are the practices best suited to that enact that idea.<sup>42</sup> While the prevailing historiography of penal modernism holds that it was dominant from World War II until the 1960s, Schoenfeld shows that penal modernism was slow to take hold in Florida. This delay was attributable to Florida’s decentralized institutional structure, weak bureaucratic capacity during the heyday of penal modernism, and enduring ideas of Black criminality that naturalized punitivity, particularly hard labor, in favor of rehabilitative programs.<sup>43</sup> Nineteenth century South Carolina was closely aligned in these factors: long-standing skepticism of concentrated authority had yielded a relative weak, decentralized state, the aftermath of the Civil War meant there was little carceral capacity at the state level, even in comparison to other Southern states, and Black criminality played a constitutive role in the development of the state criminal legal system.

Yet there was an enduring preoccupation with creating a modern prison in South Carolina that anticipated many ideas and practices integral to penal modernism, even as that modernism would vary, often with major political shifts. During Reconstruction, Governor Orr made a centralized, racially neutral criminal legal system an integral part of his vision for the postwar state. Orr advocated for professionalizing law enforcement, racial neutrality in sentencing, delimiting the death penalty, and reform through labor, education, and vocational training at a state penitentiary. Prison administrators were not only aligned with Orr but their views more broadly aligned with—and were informed by their engagement with—professional organizations like the National Prison Association and events like the National Prison Association Congress. From 1867 until at least 1876, well before crime became a national issue, South Carolina was drawing from—and actively participating in—national and global discourses around the science of punishment. Even after Reconstruction, when state officials and prison administrators abdicated this more expansive vision of reform, administrators remained steadfast in their view that incarceration was a potent tool of reform best wielded by the state under the direction of experts like themselves. They would leverage that view—and their expertise—to challenge convict leasing and advocate for restoring their direct, day-to-day authority over prisoners, who they believed could be reformed through hard labor. To be sure, this was far from the “individualized evaluation, classification and treatment” underwriting penal modernism in the twentieth century, but that difference likely hinged as much on a differing vision of reform as it did on a lack of carceral capacity.

The reformed prisoner in South Carolina was the uneducated, productive and obedient worker, consigned to low skill labor, their

position fixed in the racial capitalist hierarchy. As the penitentiary became more entrenched, administrators cultivated greater authority and discretion, which they leveraged to institutionalize their vision of this “reformed” prisoner. With financial stability, increasing profits, and greater discretion, administrators not only chose to purchase more farmland to grow the prison plantation and maximize profits but also invested in tracking health and mortality, modernizing ventilation and sewage systems, separating “reformable” young prisoners from “hardened” older ones, and establishing public–private partnerships to build prison factories that would vary the agricultural labor most prisoners otherwise performed. In short, even as they effectively (re)cultivated a slave plantation, administrators also continued to institute their vision of a modern prison, which anticipated many features of penal modernism.

Read against the earlier politics of reform, this was not so much a new path as it was a minor pendulum swing back toward an earlier reformist agenda. Of course, this earlier vision of reform differed from reform on the prison plantation, yet they aligned in certain respects, particularly in their disciplinary view of young prisoners as reformable, though that malleability was harnessed toward differing ends. Thus, even as the ghosts of slavery haunted the prison plantation, older modes of racial domination were institutionalized alongside elements of a modern prison that not only aligned with the views of Reconstruction era prison administrators and Northern reformers but that also anticipated elements of penal modernism.

The point is not to overstate these similarities or valorize the reformist commitments of prison administrators. Rather, South Carolina’s criminal legal system exhibited features that anticipated many of penal modernism’s key ideas and practices including a state-centered view of punishment oriented toward uniformity through discipline and an emerging class of professionals who viewed reform as a scientific undertaking. In this respect, penal modernism, as Schoenfeld argues, *was* slow to emerge and be durably institutionalized. Yet it is also the case that during Reconstruction in South Carolina, the politics of reform, and in the late nineteenth century, a paternalistic vision of reform were animating in both principle and practice even as many were adapted to the use of punishment as a tool of racial domination. That many ideas and practices integral to penal modernism were part of the project of Reconstruction, only to become submerged, periodically resurface, and then eventually become entrenched in the early twentieth century, points toward a contrapuntal, ongoing struggle and occasional reconciliation between reform and punitivity.

In South Carolina, that struggle—far from a zero-sum conflict—yielded a hybrid system underwritten by the afterlife of slavery and elements of a modern prison. That ratio, so to speak, was driven by macropolitical changes, such as the collapse of Reconstruction, as well as the diverging and converging interests of state officials and prison administrators over issues like reform and profit maximization. In this respect, elements of the modern carceral state were taking shape in the nineteenth century, even as they were often suffused with racial punitivity borne of slavery and constrained by a lack of capacity in many Southern states. Thus, the postwar criminal legal system in South Carolina was, from the outset, a peculiar hybrid of what are often framed as quintessentially “Northern” and “Southern” forms of punishment. That reformist discourses and projects, both during and after Reconstruction, were adapted to—and reconciled with—white supremacist commitments to racial hierarchy, complicates any stark juxtapositions of “the North, the birthplace of rehabilitative

<sup>42</sup>Schoenfeld, “The Delayed Emergence of Penal Modernism in Florida,” 260.

<sup>43</sup>Ibid, 260–64.

penology” with “the South, the fountainhead of subjugationist discipline.”<sup>44</sup> It also ought to give pause to the valorization of rehabilitation often implicit in such juxtapositions. Ultimately, the development of South Carolina’s criminal legal system, a quintessentially Southern state, simply does not conform to this regional binary.

Taken together, this article advances APD scholarship by showing how a centralized criminal legal system—hamstrung between slavery and the modern prison—was taking shape in South Carolina at the turn of the twentieth century. This hybrid system, far from exonerating the past, enlarges our view of the carceral state and facilitates a sharper critique of the present. Consider the differences today between state criminal legal systems—largely reducible to regional variation—that are most pronounced in comparing the Northeast, “with strong progressive roots ... highest level of rehabilitative services ... and the lowest number of sentenced prisoners” to “Southern states ... with strong punitive traditions ... the lowest levels of funding for prisoner services and the highest imprisonment rates.”<sup>45</sup> A longer view of the criminal legal system in South Carolina shows this racist punitive tradition was repeatedly interrupted by—and blended and reconciled with—national-global rehabilitative approaches to punishment. The ideas shaping state and local criminal legal systems were not wholly idiosyncratic nor were they clearly bifurcated between Northern and Southern, or rehabilitative and punitive, commitments. Situated on this longer timeline, the eventual rise and fall of penal modernism becomes only one episode in an ongoing struggle in which the punitive turn of the late twentieth century was neither entirely novel nor was its eventual dominance so assured.

## 2. The South Carolina Penitentiary, 1865–1867

Unlike most Southern states, South Carolina—along with North Carolina and Florida—had no state prison before the Civil War.<sup>46</sup> The state had only a patchwork of local and county jails, many of which were destroyed during the Civil War, leaving behind temporary prisons that were chronically underfunded and increasingly overcrowded.<sup>47</sup> Except for Charleston, which had established a proto-police force after the Vesey Uprising, law enforcement was still a variegated local affair overseen by sheriffs with tremendous discretion.<sup>48</sup> Yet as Kamerling notes, the state criminal legal system was becoming a potent tool of racial control: “In the immediate aftermath of the war the tools of law enforcement—police, grand juries, court system, local jails, and state prisons—quickly developed into arenas where whites and blacks struggled to redefine their legal relationships to one another.”<sup>49</sup> While jails had previously incarcerated mostly white prisoners, a rapidly growing segment of Black prisoners raised the question of how to manage a multiracial population. Local law enforcement, despite long favoring local authority over centralized state power, were underfunded and understaffed. Caving to these challenges, many converged in supporting a state prison to alleviate overcrowding and reduce

operating costs. The idea was similarly popular among the white public who “saw the institutionalization of state authority as a necessary tool to control the newly freed black population.”<sup>50</sup>

To that end, criminal law remained deeply racialized. In 1865, the Assembly established a dual system of punishment with whipping, banishment and incarceration for Black people and monetary fines and imprisonment for whites. The law contained racially differentiated crimes, including felonies without benefit of clergy for Black people who engaged in “willful homicide unless in self-defense,” and conjuring the specter of the Black male rapist, “commit[ting] an assault upon a white woman with manifest intent to ravish her.”<sup>51</sup> For those crimes that were not racially differentiated, the law held that “no punishment more degrading than imprisonment shall be imposed upon a white person for a crime not infamous.”<sup>52</sup> Punishments for simple larceny and theft were left to the Court’s discretion, ensuring that “degrading” punishments were applied only to Black people.<sup>53</sup> Extending a long tradition of anti-Black violence, the most extreme forms of carceral violence were, from the outset, reserved for Black prisoners who were hyper-policed and differentially punished.

The tide turned in favor of a consolidated state criminal legal system in 1865 with the election of a conservative Republican, Governor Orr. On November 27, 1866, Orr addressed the Assembly, urging lawmakers to delimit the death penalty, professionalize law enforcement, engage in procedural reform, implement racially neutral sentencing, and construct a state penitentiary. In advancing his agenda, Orr deftly blended racial neutrality, fiscal conservatism, and the specter of Black criminality. Acknowledging the task was unprecedented, Orr conceded:

We are thrown upon novel times, and all our legislation to meet our new situation is purely experimental ... No human wisdom is equal to the task of giving a perfect system of Courts and Law, when an ancient system must be revolutionized, to correspond with radical changes in social, domestic, industrial and political relations.<sup>54</sup>

Under these conditions, Orr framed a centralized criminal legal system as an integral part of the modernizing postwar state. Pointing to the many crimes punishable by death, Orr proclaimed, “the extreme penalty attaching to many of these felonies is revolting to humanity.”<sup>55</sup> In place of the death penalty, and in line with Northern reformers, he insisted most cases should be punishable by hard labor at a state penitentiary. Likewise, Orr found fault with local law enforcement, pointing to “the gross neglect of duty, on the part of some of the Sheriffs and Jailors in this State in allowing prisoners to escape from their custody” and called on the Assembly to simplify the procedure for removing those officials. Abridging a long tradition of local authority and discretion, Orr demanded that sheriffs and prison officials “act with more vigilance and fidelity” or the criminal legal system would never effectively enforce the law to “suppress crime.”<sup>56</sup>

<sup>50</sup>Ibid, 31–32.

<sup>51</sup>*The Statutes at Large of South Carolina: Containing the Acts from December, 1861, to December, 1866*, vol. XIII (Columbia, SC: Republican Printing Company, State Printers, 1875), 246.

<sup>52</sup>Ibid, 247.

<sup>53</sup>Ibid.

<sup>54</sup>*Journal of the House of Representatives of the State of South Carolina, Being the Regular Session of 1866* (Columbia, SC: F.G. DeFontaine, State Printer, 1866), 16.

<sup>55</sup>Ibid, 17.

<sup>56</sup>Ibid, 18.

<sup>44</sup>Perkinson, *Texas Tough: The Rise of America’s Prison Empire*, 8.

<sup>45</sup>Schoenfeld, *Building the Prison State: Race and the Politics of Mass Incarceration*, 15.

<sup>46</sup>Schwarz, “‘The Spawn of Slavery’: Race, State Capacity, and the Development of Carceral Institutions in the Postbellum South,” 185.

<sup>47</sup>Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*, 30.

<sup>48</sup>Butorac, *From Slavery to Prisons: Race, Resistance, and the Laws of Slavery*, 124.

<sup>49</sup>Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*, 23.



In seeking to consolidate state authority over crime and punishment, Orr struck an ambivalent tone. On the one hand, Orr acceded to the federal government in reforming the state's criminal legal proceedings, emphasizing that the Civil Rights Act of 1866, "must be respected and obeyed until pronounced unconstitutional by the Supreme Court of the United States."<sup>57</sup> Yet even as he advocated for racial neutrality in sentencing and professionalizing law enforcement, Orr invoked the enduring specter of Black criminality to delimit voting rights, questioning their readiness for the franchise: "Do sensible, fair and just men at the North desire that these people, without information or education—steeped in ignorance, crime and vice, should go to the polls and elect men to Congress who are to pass laws taxing and governing them?"<sup>58</sup> To combat the threat of "crime and vice," Orr insisted on the construction of a state penitentiary as a site of discipline and reform while leveraging fiscal conservatism to emphasize the prison's utility in minimizing costs and rebuilding the postwar economy. Redoubling his critique of local jails and sheriffs, Orr lamented,

There are many convicts who find themselves comfortably housed and well-fed, and who, exempt from all labor, do not regard imprisonment as a punishment. They are vicious, depraved non-producers; and the effort to punish them is really a punishment to the honest tax-payer, whose labor, in part at least, is given to support them in indolence.<sup>59</sup>

In lieu of this "comfort," Orr placed hard labor at the center of imprisonment, which he saw as a means of discipline and reform. Orr also emphasized the economic utility of a state prison, which he believed could become a self-sustaining, if not profitable institution given its proximity to railroads, a ready source of granite, ample workable land, and a canal that could be dammed to generate power. The attractiveness of this site was enhanced by its central location in the city of Columbia, which would enable prison officials to secure the facility with a smaller guard staff, lowering operating costs compared to a rural location.<sup>60</sup> Taken together, Orr had laid out a vision for a modern, centralized criminal legal system that temporarily bridged partisan interests and remained in-line with the project of Reconstruction by promising both discipline and fairness, reform and racial neutrality, control and cost-neutrality.

### 3. The politics of reform, 1867–1876

Convinced by Orr's appeal and reassured by public support from law enforcement, white citizens, and even many Black Republicans, a bipartisan group of lawmakers allocated funding for the state's first penitentiary. Construction broke ground on November 17, 1867, and in the first year, construction costs totaled more than \$72,000, or \$1.25 million today. Costs would have been far higher if construction had not been undertaken by prisoners—86 percent of whom were Black—living in improvised cells. Beyond cutting costs, state officials, constrained by a lack of tax revenue and federal support, were eager to make the penitentiary profitable or at least

cost neutral. Reassuring Governor Orr, engineer, architect, and acting Superintendent Lee declared that the penitentiary, "if properly managed, [will] not only be of no expense to the State, but a source of income. The convicts of our Courts will no longer be idle in jail, but be made to labor for their support, and remunerate the state for the expense of protecting society."<sup>62</sup> By the year's end, more than 200 prisoners had worked to complete about 100 cells.<sup>63</sup> While the penitentiary's financial model was predicated on racial exploitation, prison administrators repeatedly expressed a commitment to reform through work, vocational training, and religious worship, which dovetailed with much of the Black tutelage model pursued by the Freedmen's Bureau and endorsed by Republicans. In this respect, even as the penitentiary yielded racially disparate outcomes in incarceration, it was not, from the outset, entirely in tension with the project of Reconstruction, which bent toward expanding infrastructure, investing in education, and demonstrating the merits of Black suffrage and officeholding.<sup>64</sup>

This vision of reform tracked with national and global trends in modernizing prisons. Since the early 1800s—building on the Enlightenment tradition of thinkers like Montesquieu, Mill, Bentham, and later even Jefferson—Northern penal reformers had advocated for delimiting corporal punishment in favor of confinement. Their logic was largely twofold: First, punishment must be made proportional to the crime, and unlike corporal punishment, the indeterminacy of sentencing in incarceration struck this balance.<sup>65</sup> Second, an entrenched, disciplinary concept of reform held that through hard labor and vocational training overseen by penal professionals, prisoners could be rehabilitated and reintegrated into society.<sup>66</sup> Prison administrators who pursued this reform model, including those in South Carolina, understood themselves to be part of an emergent, global professional class engaged in the science of punishment and reform. From 1870 onward, prison administrators and reformers convened through the National Prison Association Congress, which convened delegates from the United States, Canada, and Europe to professionalize and systematize reform as the animating principle of punishment. South Carolina was an outlier in regularly attending the conference, joined only by North Carolina as the only non-border Southern states to send delegates.<sup>67</sup> Together, this emphasis on proportionality, state control, and professionalization through the science of incarceration in a modern prison constituted "the politics of reform."

During this period, state officials and prison administrators were earnestly committed to the politics of reform, and since South Carolina had no prison before 1867, they looked to other states whose example they could emulate and adapt. Governor Orr himself conceded that, "A Penitentiary is an entirely new institution in South Carolina, and little is known by our people of its

<sup>62</sup>"South Carolina Penitentiary," January 14, 1868, 80, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868–1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>63</sup>Ibid, 122–23.

<sup>64</sup>Schwarz, "'The Spawn of Slavery'? Race, State Capacity, and the Development of Carceral Institutions in the Postbellum South," 194.

<sup>65</sup>Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America*, 74–75.

<sup>66</sup>Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York, NY: Vintage Books, 1995).

<sup>67</sup>Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*, 118.

<sup>57</sup>Ibid, 17.

<sup>58</sup>Ibid, 33.

<sup>59</sup>Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*, 28.

<sup>60</sup>*Journal of the House of Representatives of the State of South Carolina, Being the Regular Session of 1866*, 26.

<sup>61</sup>On the experience of free Black people in urban centers see: Jenkins, *Seizing the New Day: African Americans in Post-Civil War Charleston*.



management, arrangement, or discipline.”<sup>68</sup> Drawing on examples from other states, state officials authorized vocational programs as well as a chaplaincy with both Black and white ministers tasked with reforming prisoners. Prison administrators and state officials were aligned in prioritizing reform through education and vocational training. Carlos J. Stolbrand, a former Union general was appointed Superintendent in 1868 and would later serve as vice president of the National Prison Association Congress.<sup>69</sup> In 1869, William Beverly Nash, a Black state senator, was appointed to the Board of Directors. Nash was joined in 1873 by another Black state senator, Henry E. Hayne.<sup>70</sup> Black Republicans rallied behind Superintendent Stolbrand, who argued that the prison too often became “a receptacle” for prisoners and failed to address the social conditions driving crime.<sup>71</sup> Officials were attuned to the challenges of this radical undertaking but maintained that “every effort is made to induce the convict to preserve his self-respect; he has his own clothing, bedding, cell, and is not required to hang his head like a dog. Where self-respect is gone, then we can never expect reformation.”<sup>72</sup>

In looking to Northern reformers and an emerging global discourse, officials sought to establish a modern prison that emulated and improved upon those examples. Governor Orr sent Superintendent Lee on an investigation across the North to “obtain the largest experience on the subject of penitentiaries.”<sup>73</sup> The state also procured a comprehensive report on prisons across the United States assembled by a commission in New York. Officials standardized punishments by first looking to examples in New York, Indiana, Kentucky, Massachusetts, Michigan, Missouri, Rhode Island, Vermont, and Connecticut.<sup>74</sup> They did not simply mirror these disciplinary systems but sought to improve upon them. Among those foregone punishments, officials noted that “solitary confinement was, in their opinion, not a merciful or prudent punishment under the circumstances.”<sup>75</sup> This decision to forego solitary confinement fell squarely in-line with the national trend toward the Auburn System with its emphasis on militant discipline, total silence, and laboring efficiency in large workhouses.<sup>76</sup> Within a year, officials also stopped replacing meals with bread and water—a punishment still enacted in Connecticut, Maine, Massachusetts, Michigan, and Vermont—deeming it “ineffectual.”<sup>77</sup>

<sup>68</sup>“South Carolina Penitentiary,” January 14, 1868, 130, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868–1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>69</sup>Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*, 118.

<sup>70</sup>Ibid, 36.

<sup>71</sup>“South Carolina Penitentiary,” November 12, 1870, 257, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868–1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>72</sup>“South Carolina Penitentiary,” January 14, 1868, 128, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868–1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>73</sup>Ibid, 117.

<sup>74</sup>Ibid, 125.

<sup>75</sup>Ibid, 117.

<sup>76</sup>Ashley Rubin, *The Deviant Prison: Philadelphia’s Eastern State Penitentiary and the Origins of America’s Modern Penal System, 1829–1913* (New York, NY: Cambridge University Press, 2021).

<sup>77</sup>“South Carolina Penitentiary,” January 14, 1868, 124, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868–1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

**Table 1.** Frequency of Pardons by Race, 1867–1872

| Race  | Pardon | No pardon | Total | Frequency   |
|-------|--------|-----------|-------|-------------|
| White | 108    | 44        | 152   | <b>0.71</b> |
| Black | 642    | 463       | 1105  | <b>0.58</b> |

**Table 2.** Incidents of Violent Punishment

|                        |     |
|------------------------|-----|
| Tying up by the thumbs | 39  |
| Buck and gag           | 42  |
| Standing on post       | 152 |
| Blind march            | 410 |
| Minor punishments      | 141 |

Yet even as state officials and prison administrators expressed a racially neutral commitment to the politics of reform, incarceration was a potent tool of racial domination. Between 1867 and 1872, Black people accounted for, on average, 88 percent of the prison population despite making up less than 50 percent of the state’s population. Not only were Black people incarcerated at rates disproportionate to whites, but they were also less likely to be pardoned. Utilizing an original data set compiled from 5 years of penitentiary registers, **Table 1** demonstrates that white prisoners were more likely to receive pardons:

Read against the disproportionality in incarceration and pardoning rates, the politics of reform was already struggling to maintain the commitment to racial neutrality that Governor Orr had laid out in his vision.

The politics of reform was further complicated by the usage of violent punishment, which prison administrators used alongside positive incentives like better rations and reduced sentences for good behavior.<sup>78</sup> Recognizing that too much violence might hinder reform and limit laboring productivity, officials crafted a strict schedule of punishments. These were scheduled and administered according to severity: “First—tying up by the thumbs, from three to sixty minutes; second—bucking and gagging, from one to six hours; third—standing on a post, blindfolded, from one to nine hours; and fourth—the blind march, from one to one and a half hours.” In line with the politics of reform, punishments were to be proportional to the offense, but the Superintendent had the discretion to amend those rules to ensure “proper enforcement.”<sup>79</sup> These punishments, officials insisted, were not only “less exacting and less severe” than other penitentiaries but comparable to disciplinary practices in the U.S. military.<sup>80</sup> During the penitentiary’s first year of operation, these punishments were inflicted 784 times across a population of 215 prisoners, 86 percent of whom were Black.<sup>81</sup> **Table 2** provides a breakdown of these incidents of violent punishment:

Although 60 percent of prisoners were violently punished, between thirty and fifty prisoners were the primary targets with one prisoner punished twenty-nine times in 1 year.<sup>82</sup> Prison officials interpreted this targeted violence as an indicator of success since for many prisoners, “cruel punishment” had been replaced with

<sup>78</sup>Ibid, 87.

<sup>79</sup>Ibid.

<sup>80</sup>Ibid, 124.

<sup>81</sup>Ibid.

<sup>82</sup>Ibid.

“unceasing vigilance.”<sup>83</sup> It was the example and threat of violence that would create the conditions for reform.

Yet the material reality diverged from this aspiration. Guards worked under stressful conditions for low wages, which led to high turnover rates, and with experience and training in short order, violence proliferated. The matter quickly came to a head in 1868, when Black citizens circulated a petition condemning prison administrators. Invoking a language of rights still fresh in their mouths, they demanded that state officials act, insisting, “Nothing but a deep interest in the cause of equal rights, and the welfare of our race, would cause us to ask you to investigate the nefarious treatment of our race in the prison.” The petitioners argued that prisoners’ “treatment would be a disgrace to any Government, even in the dark ages.”<sup>84</sup> Shortly thereafter, state officials opened an investigation into the prison, culminating in 10 days of testimony by former prisoners, prison administrators, and state officials. Contrary to a breadth of testimony, the state commission tasked with investigating these accusations found that “the charges of harsh and cruel treatment” were “unfounded,” and instead praised the Superintendent and prison officials for being so “humane and efficient,” given their challenging work.<sup>85</sup>

Despite its biases, elements of the report are illuminating as to the anti-Black violence that prison administrators had couched in the aspirational language of reform. Testimony by former prisoners revealed the brutality and regularity of punishment. One recalled a scene in which prisoners were “bucked and gagged” and forced to stand blindfolded on posts “during the heaviest rain I mostly ever saw.”<sup>86</sup> When blindfolded prisoners fell from these posts, “three or four feet from the ground,” guards would beat them with their guns to force them back on the posts.<sup>87</sup> Another recalled a scene in which prisoners were “bucked and gagged, balled and chained . . . marched in bling gangs from twenty-five to thirty in a gang over ladders, wheel-barrows, ditches, and sometimes holes,” while guards jabbed them with bayonets and struck them with rifles.<sup>88</sup> These damning findings likely played a role in punishments going unpublished in the next three decades of penitentiary reports.

While attempts were made at delimiting violent punishments, they largely fell short. In January 1869, a newly appointed Superintendent Stolbrand banned the most severe punishments: “the tying up by the thumbs, the blind march, the spread eagle, the flogging of prisoners, and the shower bath.”<sup>89</sup> The ban was not consistently enforced, and on June 25, 1871, a Black prisoner named Davis Brown was murdered in the shower bath after exhibiting “disobedience and obstinate abusiveness.” Brown was locked beneath a perforated iron plate, through which “four to six buckets” of water were dumped onto his restrained face.<sup>90</sup> Brown

struggled to loosen his head but was forced back by the guards who mortally wounded him in the struggle. “Brought back into the box, by the assistance of a rope,” Brown was pummeled with another “five to eight buckets of water,” until he was pronounced dead moments later.<sup>91</sup> Brown’s murder laid bare the contradictions of a politics of reform that purported to be racially neutral but disproportionately impacted Black citizens. On the one hand, this might suggest that reform was simply an ideological and discursive ruse that was not substantively implemented in practice, which was perhaps the case for white Democrats, but less obviously the case for Republicans, particularly Black elected officials like Senators Nash and Hayne. Perhaps more tenably, Brown’s murder revealed that crafting a modern prison system centered around the politics of reform can—and did—coexist with draconian anti-Black violence.

Yet even as racial violence complicated the politics of reform, Superintendent Stolbrand remained steadfast. In 1869, Stolbrand insisted upon the importance of purchasing “small farm, say of 100 acres or more of land” to be worked by prisoners serving less than a 1-year sentence.<sup>92</sup> The farm’s small size reflected Stolbrand’s goal to limit incarceration for minor crimes, which he urged the Assembly to amend, “to prevent so many persons being sent to the State prison for the small offences.”<sup>93</sup> Those with longer sentences—most of them farmers—would be retrained in more skilled and lucrative trades, including, “carpentry, cabinet-making, spinning and weaving.”<sup>94</sup> For Stolbrand, vocational training was both in-line with the broader project of Reconstruction and essential to the penitentiary’s mission: “the State owes the convict, first, to awaken in him an ardent desire to earn, honestly, his bread, and secondly, to put him in possession of the power to do so after his liberation, by proper preparation during his confinement.”<sup>95</sup> Without these programs, Stolbrand warned, incarceration would produce only “increased viciousness in the old offender, and greater insecurity to the community,” producing a cycle of recidivism and deepening immiseration.<sup>96</sup>

The politics of reform was further complicated by budgetary shortfalls. After posting a profit in its second year, the penitentiary lapsed into a pattern of unfulfilled funding and mounting debt. By 1872, Superintendent Dennis revealed that the State Treasurer had repeatedly failed to disburse funds appropriated by the legislature for the penitentiary. To feed and clothe prisoners, the Superintendent and Board of Directors had not only exhausted every source of private loans but had begun to procure loans on their personal lines of credit.<sup>97</sup> Chronic underfunding had left the penitentiary in disrepair. Five-year-old buildings were “greatly out of repair” and one had begun “tumbling down.”<sup>98</sup> The hospital

<sup>83</sup>Ibid, 125.

<sup>84</sup>Ibid, 129.

<sup>85</sup>“South Carolina Penitentiary,” January 14, 1868, 126, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868–1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>86</sup>Ibid, 105.

<sup>87</sup>Ibid, 106.

<sup>88</sup>Ibid, 102.

<sup>89</sup>“Report of the State Penitentiary,” October 31, 1869, 265, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868–1900, Regular Session 1868/69, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>90</sup>“Report of the State Penitentiary,” January 15, 1871, 266, ST 0774 (AD 652), Reel 3, South Carolina reports and resolutions, 1868–1900, Regular Session 1868/69, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>91</sup>Ibid, 267.

<sup>92</sup>“Report of the State Penitentiary,” November 12, 1870, 244, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868–1900, Regular Session 1869/70, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>93</sup>Ibid, 254.

<sup>94</sup>Ibid, 260.

<sup>95</sup>Ibid.

<sup>96</sup>“Report of the State Penitentiary,” February 14, 1871, 132–33, ST 0774 (AD 652), Reel 3, South Carolina reports and resolutions, 1868–1900, Regular Session 1870/71, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>97</sup>“Report of the State Penitentiary,” November 9, 1872, 153, ST 0775 (AD 653), Reel 4, South Carolina reports and resolutions, 1868–1900, Regular Session 1871/72, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>98</sup>Ibid, 115.

lacked “bedsteads, mattresses, bed clothing or hospital clothes” and even the prisoners themselves were scarcely clothed, lacking shoes, hats, and blankets.<sup>99</sup> By April 1873, the penitentiary’s debt exceeded \$50,000, or more than \$1 million today.<sup>100</sup> Officials still struggled to implement the politics of reform, advocating for a brickmaking yard, a new bookkeeping system to prevent fraud and waste, and a “reformatory” to house and educate the penitentiary’s youngest prisoners. The chaplain also continued to lobby for funding to create a library and Sunday school, citing “ignorance” as “the mother of a large proportion of crimes.”<sup>101</sup>

Remarkably, even as the penitentiary’s financial woes mounted, the interests of prison administrators and state officials remained aligned in their commitment to reform. Despite seeking to make the penitentiary cost-neutral, if not profitable, they did not follow the example of other states that were turning to convict leasing. In an 1873 message to the Assembly, Governor Moses—a secessionist-turned-Republican—warned lawmakers that convict leasing posed a great threat to “the labor of the honest mechanic and laborer,” was “offensive to society,” and had a “demoralizing influence” upon prisoners. Instead, Moses maintained that prisoners should engage in “constant, continuous hard labor” while receiving religious and vocational instruction, as well as positive incentives like shortened sentences and pardons. Only this mixture of opportunity and discipline would engender the “sentiment of hope ... mingled with despair,” that yielded reformed prisoners.<sup>102</sup> In 1874, acting on Moses’ recommendation and in the face of a massive budget shortfall for the penitentiary, the Assembly enacted a ban on convict leasing.<sup>103</sup> Anyone who violated the law would be fined up to \$1,000 and be imprisoned up to 6 months, making South Carolina an outlier among other Southern states where convict leasing was becoming common practice.<sup>104</sup> South Carolina’s commitment to reform—even over the promise of profits from convict leasing—had proven remarkably durable.

The politics of reform finally declined in tandem with Reconstruction. This decline began in the mid-1870s with Governor Chamberlain—an abolitionist from Massachusetts—who betrayed the trust of Black Republicans. As Fitzgerald argues, Chamberlain held that, “freed people’s misdeeds, rather than white racists, were South Carolina’s outstanding public problem.”<sup>105</sup> By this logic, it was Black criminality, rather than discriminatory policing and sentencing that drove racial disparities in incarceration. The penitentiary was framed as a neutral apparatus of control, the effects of which were only incidentally racial. These

troubles were compounded by the collapse of Reconstruction, namely a campaign of violent terrorism, voter suppression, and mass fraud by whites during the 1876 elections that culminated in the excise of Republicans. Incarceration surged during this campaign with the penitentiary population ballooning from 350 to nearly 600 prisoners.<sup>106</sup> The election results were devastating, all but eradicating the gains of Black citizens in South Carolina who had elected twenty-nine Black state senators and 210 state representatives, at least 130 of whom were formerly enslaved.<sup>107</sup> Both chambers of the Assembly were reclaimed by Democratic majorities, their agenda all but assured with the inauguration of Governor Hampton in April 1877.

#### 4. Convict leasing, 1877–1889

Energized by the ouster of Republicans, Democrats began to roll back the gains of Reconstruction, and the penitentiary quickly became a focal point in this undertaking. In 1877, conceding that the penitentiary “is but in its infancy, the building in an incomplete state, and no system adopted for a practical and remunerative employment of convict labor,” the Board of Directors began charting a new course. They sent Superintendent Parmele to tour “the best managed institutions of the country, with a view of informing himself as to their management and obtaining such data as might enable the Board to bring the Penitentiary up to a fair standard, compared with other institutions.”<sup>108</sup> Reporting on his findings, Parmele endorsed a state-operated model of simple, hard labor to discipline prisoners and maximize profits.<sup>109</sup> Displacing the politics of reform, this new system of shops and industries within the prison would employ “unskilled convict labor” in a single industry that required no “previous training as mechanics.” In the interest of maximizing productivity, these new industries would employ only the most “capable men” and leave the “common” labor for “drones,” those prisoners “who, by physical unfitness and mental incapacity, cannot make profitable return for their time.”<sup>110</sup>

In proposing this system, Parmele sought to maintain direct control over prisoners, which he was unwilling to cede to private corporations. Citing the “large proportion of escapes, which are unavoidable,” Parmele, with the support of the Board, refused to institute a lease system.<sup>111</sup> Although convict leasing was poised to help rebuild and modernize postwar infrastructure and the economy, prison administrators clung to the idea of a centralized prison in which administrators maintained discretion and authority. The struggle was short-lived, as Governor Hampton was determined to institute the lease system, insisting that, “the labor of the convicts in the penitentiary could be made profitable.” The following year, a new Board Chairman reported his disappointment that

<sup>99</sup>“Supplemental Report of the State Penitentiary,” November 9, 1872, 527, ST 0775 (AD 653), Reel 4, South Carolina reports and resolutions, 1868–1900, Regular Session 1871/72, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>100</sup>Ibid, 526.

<sup>101</sup>“Report of the State Penitentiary,” December 21, 1874, 158, ST 0776 (AD 655), Reel 5, South Carolina reports and resolutions, 1868–1900, Regular Session 1873/74, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>102</sup>*Journal of the Senate of the State of South Carolina for the Regular Session of 1873–74* (Columbia, SC: Republican Printing Company, State Printers, 1874), 117.

<sup>103</sup>*Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Special Session of 1873 and Regular Session of 1873–74* (Columbia, SC: Republican Printing Company, State Printers, 1874), 601.

<sup>104</sup>For example, Georgia had leased its entire prison population to the Georgia and Alabama Railroad as early as 1868. See: Schwarz, “‘The Spawn of Slavery’? Race, State Capacity, and the Development of Carceral Institutions in the Postbellum South,” 193.

<sup>105</sup>Michael Fitzgerald, *Splendid Failure: Postwar Reconstruction in the American South* (Chicago, IL: Ivan R. Dee, 2007), 197.

<sup>106</sup>“The Result in South Carolina,” *The Atlantic*, January 1878, <https://www.theatlantic.com/magazine/archive/1878/01/the-result-in-south-carolina/308773/>.

<sup>107</sup>Foner, *Reconstruction: America’s Unfinished Revolution, 1863–1877*, xvi.

<sup>108</sup>“Report of the State Penitentiary,” October 31, 1877, 85–86, ST 0777 (AD 656), Reel 6, South Carolina reports and resolutions, 1868–1900, Regular Session 1876/77, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>109</sup>Ibid, 89.

<sup>110</sup>Ibid, 91.

<sup>111</sup>“Report of the State Penitentiary,” October 31, 1877, 90, ST 0777 (AD 656), Reel 6, South Carolina reports and resolutions, 1868–1900, Regular Session 1876/77, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.



Superintendent Parmele “was not in sympathy with the majority of the Board of Directors and would not cooperate with us,” culminating in his resignation.<sup>112</sup>

With Parmele removed, South Carolina became the second-to-last Southern state to adopt a lease system and a new penitentiary administration worked quickly to resolve its capacity and budgetary issues by leasing prisoners. On June 8, 1877, the Assembly passed “An Act to Utilize the Convict Labor of the State,” authorizing the Board of Directors to begin advertising for and negotiating contracts to submit to the Assembly. Prisoners serving the longest sentences for violent crimes—murder, rape, arson, and manslaughter—were excluded from leasing.<sup>113</sup> However, between 1876 and 1877, only fifty-eight individuals had been convicted of those crimes, accounting for just 13 percent of prisoners received at the penitentiary in that period. That same day, the legislature required the Superintendent to enlist prisoners to repair the State House.<sup>114</sup> In 1878, during the first year of leasing, nearly two-thirds of all prisoners were leased to work phosphate mines, build railroads, produce bricks, and dig out canals to begin rebuilding South Carolina in earnest.<sup>115</sup> By the following year, the number of leases had doubled.<sup>116</sup> In its first year, the lease system returned over \$2,100 in profits to the penitentiary, and this increased to \$3,700 by 1879.<sup>117,118</sup> Unleased prisoners would labor on a state-owned farm and construct public buildings, including the Penitentiary, State House, and State University.<sup>119</sup>

Even as they instituted convict leasing, which prioritized profit maximization, state officials still invoked the concept of reform, albeit in largely instrumental ways. In an 1878 address to the Assembly, Governor Simpson held the lease system had enabled the state to harness prisoner labor in service of the “public good.” Modifying earlier figurations of hard labor as integral to reform, Simpson jettisoned the prison cell and administrator from this dynamic, casting leasing on its own as “a more sensible, humane and effective punishment ... than the immuring of [prisoners’] bodies in cells and dungeons.”<sup>120</sup> In this respect, even as Democratic state officials jettisoned any substantive commitment to reform, the language of reform retained its ideological utility

in justifying the lease system. These institutional changes coincided with a broader ideological shift. With the ongoing collapse of Reconstruction and ascendance of authoritarian Democratic rule, the “traditional association between blackness and criminality reasserted itself as the dominant view, undercutting the reform impulse in prison discipline.”<sup>121</sup> Black criminality, once produced through overtly racial discourses and laws, would now be reinscribed through a criminal legal system that traded in the racially neutral language of reform.

As interest in leasing grew, lawmakers revised the system to (1) expand the leasable laboring pool, (2) maximize state profits, and (3) favor their own business interests. First, revisions to the penal code increased the sentences for nonviolent property crimes like livestock theft, which formed the backbone of the leasable prison population.<sup>122</sup> In the following year, arrests for livestock theft increased by nearly 500 percent. As state officials extended the sentences of leasable prisoners, they also reduced the population of “violent” prisoners who could not be leased by expanding the death penalty to include arson and rape.<sup>123</sup>

Second, in expanding the prison population, legislators sought to maximize state profits. The Assembly obligated the Board of Directors to select the “highest responsible bidder,” ensuring that the state would collect the largest possible profit from prisoners’ labor. To limit inefficiencies in negotiating leases, the Assembly ceded sole discretion over the lease system to the Board of Directors.<sup>124</sup> The Assembly also cut costs and further abandoned the politics of reform by abolishing the penitentiary school established during Reconstruction.<sup>125</sup>

Finally, the lease system was expanded to include more industries while favoring those closest to Democratic lawmakers’ own interests. Existing lease laws were amended to allow for convict leases in agriculture, an industry previously barred from the system to limit competition with free labor.<sup>126</sup> The Assembly also made special exceptions for the booming railroad industry by permitting owners to lease prisoners using certificates of stock in the company.<sup>127</sup> This development united corporate and state interests, since the number of railroad companies was surging, and many Democratic lawmakers sat on their boards. In this respect, as Foner argues, the law “was redesigned to encourage the free flow of capital and enhance the property rights of corporations.”<sup>128</sup>

<sup>112</sup>“Report of the State Penitentiary,” February 31, 1878, 475, ST 0778 (AD 658), Reel 7, South Carolina reports and resolutions, 1868–1900, Regular Session 1877/78, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>113</sup>*Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1876–77* (Columbia, SC: Republican Printing Company, State Printers, 1877), 262–63.

<sup>114</sup>*Ibid.*, 318.

<sup>115</sup>“Report of the State Penitentiary,” February 31, 1878, 475, ST 0778 (AD 658), Reel 7, South Carolina reports and resolutions, 1868–1900, Regular Session 1877/78, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>116</sup>“Report of the State Penitentiary,” October 31, 1879, 291–295, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868–1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>117</sup>“Report of the State Penitentiary,” February 31, 1878, 482, ST 0778 (AD 658), Reel 7, South Carolina reports and resolutions, 1868–1900, Regular Session 1877/78, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>118</sup>“Report of the State Penitentiary,” October 31, 1879, 308, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868–1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>119</sup>*Ibid.*, 503.

<sup>120</sup>*Journal of the House of Representatives of the State of South Carolina for the Regular Session of 1878* (Calvo & Patton, State Printers, 1878), 19.

<sup>121</sup>Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*, 132.

<sup>122</sup>Under these new laws, burglary was punishable by lifetime imprisonment and livestock theft punishable up to 10 years. In increasing the punishment for livestock theft, South Carolina joined other Southern states in passing “pig laws,” which established property crimes that were used to disproportionately target Black citizens. *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877–78* (Columbia, SC: Republican Printing Company, State Printers, 1878), 631–32.

<sup>123</sup>*Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877–78*, 631. Although death penalty data is not available, we can make some inferences from incarceration rates. Over the next 10 years, even as the population grew, the number of prisoners sentenced for arson decreased by more than half, suggesting some convicted of arson were instead executed.

<sup>124</sup>*Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1878–79* (Columbia, SC: Republican Printing Company, State Printers, 1879), 727.

<sup>125</sup>*Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877–78*.

<sup>126</sup>*Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1878–79*, 721.

<sup>127</sup>*Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877–78*, 393.

<sup>128</sup>Foner, *Reconstruction: America’s Unfinished Revolution, 1863–1877*, 381.



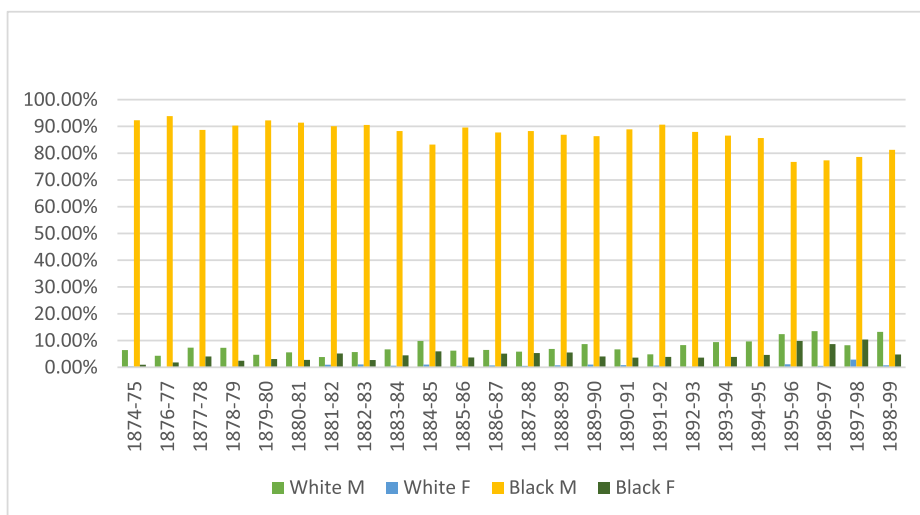


Figure 2. Population by Race and Gender.

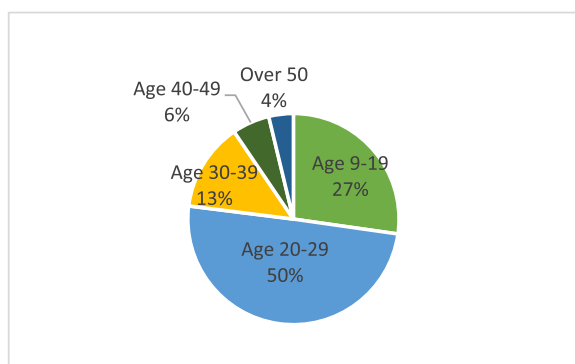


Figure 3. Prison Population by Age.

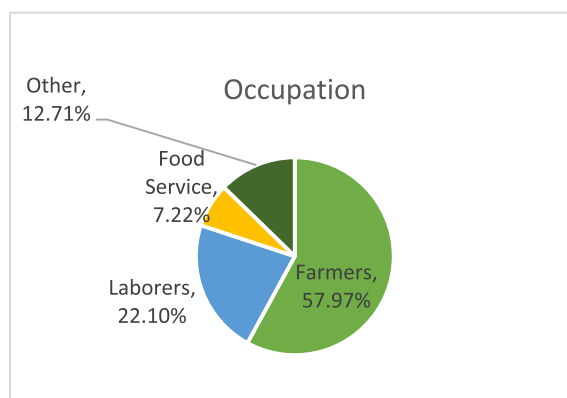


Figure 4. Prison Population by Occupation.

The expansion of the lease system compounded the penitentiary’s disproportionate impact on Black citizens. From the outset, the penitentiary’s population was—and remained—mostly young Black men who had worked as farmers or laborers and were convicted of minor property crimes. Drawing on an original dataset of penitentiary records, Figure 2 illustrates the race and gender disparities in the penitentiary population over a 25-year period.

During this period, Black men accounted for, on average, 88 percent of the population, while the next largest group, white men, accounted for 7 percent, making them twelve times more likely to be incarcerated than their white counterparts. Although few women were incarcerated, the proportion of Black female prisoners steadily grew.<sup>129</sup> Together, Black men and women constituted, on average, 92 percent of the population, while Black people in 1880 accounted for 60 percent of South Carolina’s population.

Under convict leasing, many born into slavery and newly emancipated were forced to remain in the same occupation and in some cases returned to their former enslaver. Figures 3 and 4 illustrate the age and occupation demographics for prisoners during this period.

Individuals under thirty accounted for 77 percent of all prisoners, and most had previously worked as farmers or laborers.

Most were also arrested for property crimes, including nonviolent offences like livestock theft and larceny that yielded the shortest sentences. In the first year of leasing, 81 percent of all new prisoners were found guilty of a property crime. Those arrested for crimes against persons, less than 20 percent of the population, received much longer sentences. Figure 5 illustrates the distribution of sentences between 1877 and 1889.

Prisoners serving less than 2 years accounted for 54 percent of the penitentiary population, forming a labor pool to which contractors owed no long-term responsibility. Companies leased able-bodied prisoners and refused all others but did not return them in good health. Conditions were brutal and mortality rates skyrocketed: 152 prisoners died under the lease system in less than 2 years, ten times higher than the preceding 2-year period.<sup>130</sup> The penitentiary physician described how prisoners would return with untreated wounds, viruses, or other diseases and die weeks after returning because, “They were in a complete state of exhaustion

<sup>129</sup>In contrast to their Black counterparts, white women never accounted for more than 1 percent of the prison population.

<sup>130</sup>“Report of the State Penitentiary,” October 31, 1879, 296, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868–1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

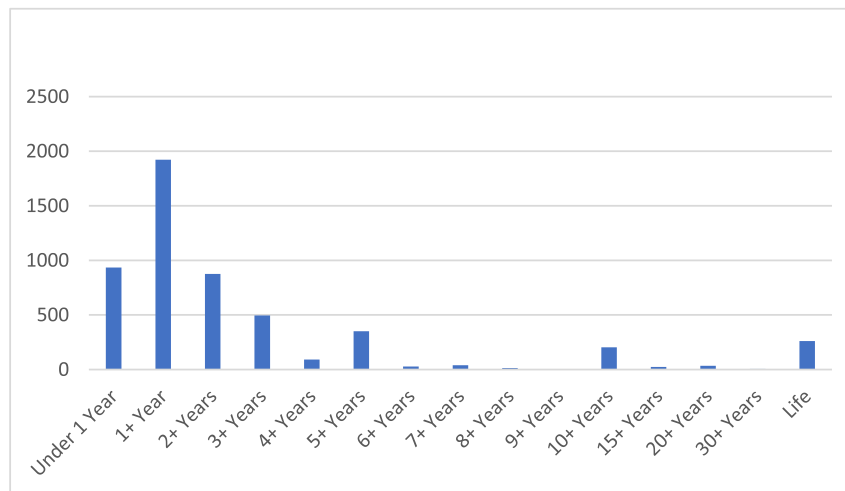


Figure 5. Sentencing Distribution, 1877–1889.

... their systems were so enfeebled that they could not assimilate sufficient food to restore them to health.”<sup>131</sup>

The worst abuses occurred in the Greenwood and Augusta Railroad camps. Rumors were so egregious that the Senate required Superintendent Lipscomb to investigate. Lipscomb’s report outlined in gruesome detail the conditions that prisoners endured.<sup>132</sup> The doctor examining the prisoners described “the stench” as “sickening to the uttermost extent,” such that prisoners had to be brought outside for examination.<sup>133</sup> Their quarters were so overcrowded and dirty that most prisoners had developed respiratory problems.<sup>134</sup> Prisoners drank from dirty water supplies and ate a diet that caused digestive problems, diarrhea, and scurvy. Venereal diseases, scurvy, and swollen limbs from overwork and shackles were all rampant.<sup>135</sup> Even white prisoners were “rotten” with syphilis.<sup>136</sup> Thin straw mattresses were provided for the sick, while others slept in their work clothes without bedding.<sup>137</sup> Nearly all of the injured prisoners had gone untreated, and were left chained up, “covered with vermin and fleas,” so many that Lipscomb became ill and had to walk away.<sup>138</sup> Sick prisoners were forced to continue “light work,” ensuring a slow or nonexistent recovery.<sup>139</sup> In less than a year, the Greenwood and Augusta Railroads killed 130 prisoners, roughly 45 percent of their leases. Responding to poor surveillance—few guards were employed to maximize profits—another thirty-eight prisoners escaped. After twenty-four discharges and pardons, only forty-three of more than two hundred prisoners originally leased were returned to the penitentiary.<sup>140</sup>

Even as evidence of abuse mounted, the potential fallout evidently paled in comparison to the financial gains and expansion of

state capacity that convict leasing yielded. Between 1878 and 1886, the state received \$15,000—nearly half a million dollars today—in payment for convict leases from railroad companies, while those companies reaped even greater profits from a ready supply of disposable laborers.<sup>141</sup> Even more crucially, because leasers were responsible for the costs of incarceration, states like South Carolina were able to expand their punitive reach and prison populations with minimal investment.<sup>142</sup> Yet there remained a fatal tension: The lease system, with its lax regulations and oversight, had enabled corporations to single-mindedly prioritize profit maximization and enact a brutal system that created a growing financial burden for the state, eroded discipline, and inspired resistance.

In visiting the camps, Superintendent Lipscomb was troubled by the brutality of leasing, particularly its “extraordinary mortality,” which he argued “would have been less frequent if the convicts were property, having a value to preserve; then the contractors, having more interest in their lives and services, would look after them with greater zeal, and not leave them, as they have too often done, to the ignorance, inattention or inhumanity of irresponsible hirelings.”<sup>143</sup> In contrast to slavery, wherein enslaved people were animate capital and long-term investments, convict leasing furnished an altogether disposable laboring population. Lipscomb complained that among the prisoners who were lucky enough to survive “fully one-third” returned from leasing “more or less disabled,” unable to labor.<sup>144</sup> The lease system subjected prisoners to brutalities akin to slavery without even the minimal protections perversely afforded some

<sup>141</sup>“Report of the State Penitentiary,” October 31, 1886, 288, ST 0787 (AD 679), Reel 15, South Carolina reports and resolutions, 1868–1900, Regular Session 1885/86, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>142</sup>This dynamic tracks with the observation of scholars like Schwarz, who argue that convict leasing enabled states like Georgia to cultivate and exercise its punitive power without using its limited resources to invest in capacity and institution building. See: Schwarz, “‘The Spawn of Slavery?’ Race, State Capacity, and the Development of Carceral Institutions in the Postbellum South.”

<sup>143</sup>“Report of the State Penitentiary,” October 31, 1879, 296–97, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868–1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>144</sup>“Report of the State Penitentiary,” October 31, 1884, 643, ST 0784 (AD 676), Reel 13, South Carolina reports and resolutions, 1868–1900, Regular Session 1883/84, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>131</sup>Ibid, 353.

<sup>132</sup>“Report of the Superintendent of the Penitentiary, Together with Other Papers, In Regard to the Condition and Treatment of Convicts Employed on the Greenwood and Augusta Railroad,” 885–947, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868–1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>133</sup>Ibid, 891

<sup>134</sup>Ibid, 926–27.

<sup>135</sup>Ibid, 890.

<sup>136</sup>Ibid, 905.

<sup>137</sup>Ibid, 891.

<sup>138</sup>Ibid, 889.

<sup>139</sup>Ibid, 925.

<sup>140</sup>Ibid, 890.

enslaved people as animate capital. Even as leasing was integral to rebuilding infrastructure and modernizing the postwar economy, yielding vast profits for corporations, and to a lesser extent, the state and some lawmakers, the calculus was less clear for prison administrators. Leasing might temporarily alleviate overcrowding and enable the state to punish without investing in carceral capacity but what happened when prisoners were returned, physically destroyed and unable to work? Administrators feared that the penitentiary would become a receptacle for those unable to labor and cover the cost of their incarceration, let alone furnish a profit.

Moreover, prison administrators argued that leasing prioritized profit maximization at the expense of discipline, threatening the penitentiary's mission and public safety. Contractors were not only reckless with the lives of prisoners, but they also did little to maintain discipline.<sup>145</sup> In one camp, prisoners had been permitted to "dress in citizen's clothing and go frolic in the neighborhood." For Lipscomb, these incidents proved "the utter impracticability of maintaining any discipline among convicts leased outside the prison and away from the supervision of state officers."<sup>146</sup> To reduce costs, supervision was so minimal that contractors often relied upon prisoners to maintain order. This trustee system was particularly popular among contractors, who tasked "trustee" prisoners with overseeing their fellow laborers.<sup>147</sup> These practices, which maximized profits, eroded discipline among prisoners who seized their opportunity for escape.

Responding to brutal conditions and poor security, escapes nearly tripled in the first year of leasing, and by the end of the second year, eighty-two leased prisoners had escaped.<sup>148</sup> The lease system also eroded stability within the penitentiary. From 1874 to 1899, 80 percent of violent escapes in the penitentiary occurred during convict leasing. In October 1880, six prisoners disarmed the guards, took their guns, and escaped down the river. Four drowned in the river while the other two were never found. Blaming a negligent guard, the Superintendent had him arrested and prosecuted.<sup>149</sup> The following year, in August 1881, five prisoners attempted to overpower the guards, but they opened fire. Two were injured and captured, one was killed, and the remaining two escaped.<sup>150</sup> The largest attempt occurred in September 1885 after a massive earthquake damaged the prison. Seizing their opportunity,

thirty prisoners had conceived a "well concocted plan of escape" to take control of the gates while returning from laboring in the canal and brickyard. A massive escape would have ensued, but the guards managed to suppress "the boldest of the ringleaders" without fatalities.<sup>151</sup> Finally, in 1887, two prisoners on the Broad River overpowered a guard and took his weapon, knocking him into the river and making their escape by boat, never to be recaptured.<sup>152</sup> Prisoners, no longer enslaved for a lifetime, now faced a different calculus in choosing to resist and had clearly been emboldened by the lease system.

In each case, there were no fatalities among prison officials, and only one official was prosecuted for negligence.<sup>153</sup> Nonetheless, as escapes surged, prison administrators feared violent resistance and lobbied the legislature for new weapons and fortifications. The state asylum, they argued, was more secure than the penitentiary, "where a wave of the hand, or a word, may be the signal for revolt."<sup>154</sup> These troubles were compounded by high turnover among prison guards. In 1880, Superintendent Lipscomb reported with mounting anxiety that, "I have found it extremely difficult to maintain an efficient guard at the low rate of pay and have had during the year thirty-six resignations among my most efficient men."<sup>155</sup> Administrators, eager to regain authority, made an example of prisoners by making "escape or revolt ... a penal offense, on proof which the convict so attempting should serve his entire sentence over again."<sup>156</sup> In response to increasing escapes, the Assembly instituted a \$25 reward for capturing an escaped prisoner and reimbursed transportation costs for return to the penitentiary, mirroring earlier laws targeting escaped enslaved people. Employing an escaped prisoner also became a misdemeanor punishable by a combination of fines and incarceration at the judge's discretion.<sup>157</sup>

For prison administrators, the lease system and penitentiary were increasingly at odds. Incarceration, once couched in the racially neutral language of reform now single-mindedly favored profit maximization, which had eroded discipline, inspired resistance, and created a grim economic forecast for the penitentiary.

South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>145</sup>"Report of the State Penitentiary," October 31, 1886, 286–87, ST 0786 (AD 679), Reel 15, South Carolina reports and resolutions, 1868–1900, Regular Session 1885/86, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>146</sup>"Report of the State Penitentiary," October 31, 1887, 58, ST 0787 (AD 680), Reel 16, South Carolina reports and resolutions, 1868–1900, Regular Session 1886/87, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>147</sup>There is ample evidence, supplied across multiple penitentiary administrations, to support this inference and little reason to believe that officials concealed such widespread acts of violence to preserve their own positions or the reputation of the institution. Officials kept meticulous escape records, consistently noting when violence occurred against officials and even when they died from causes unrelated to the penitentiary itself.

<sup>148</sup>"Report of the State Penitentiary," October 31, 1877, 90–91, ST 0777 (AD 656), Reel 6, South Carolina reports and resolutions, 1868–1900, Regular Session 1876/77, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>149</sup>"Report of the State Penitentiary," October 31, 1880, 10, ST 0780 (AD 660), Reel 9, South Carolina reports and resolutions, 1868–1900, Regular Session 1879/80, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>150</sup>"Report of the State Penitentiary," October 31, 1877, 92, ST 0777 (AD 656), Reel 6, South Carolina reports and resolutions, 1868–1900, Regular Session 1876/77, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>151</sup>*Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1881–82* (Columbia, SC: Republican Printing Company, State Printers, 1882), 952–53.

<sup>145</sup>This lack of discipline was further facilitated by the leasing system's laws, which held that contractors were only liable to repay the state if they failed to "use due diligence" in preventing prisoners from escaping. This made it virtually impossible to enact penalties that might have incentivized contractors to improve surveillance. See: "Report of the State Penitentiary," October 31, 1880, 10, ST 0780 (AD 660), Reel 9, South Carolina reports and resolutions, 1868–1900, Regular Session 1879/80, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

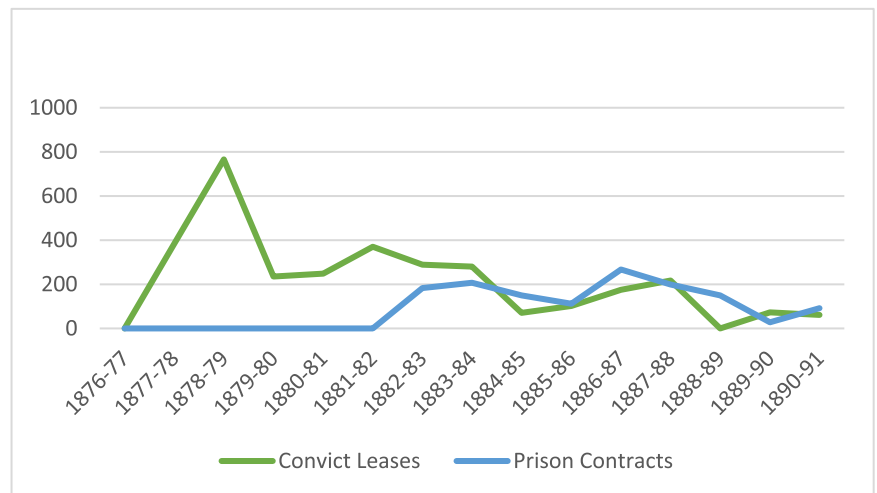
<sup>146</sup>"Report of the State Penitentiary," October 31, 1883, 642, ST 0783 (AD 675), Reel 12, South Carolina reports and resolutions, 1868–1900, Regular Session 1882/83, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>147</sup>"Report of the State Penitentiary," October 31, 1882, 475, ST 0782 (AD 672), Reel 11, South Carolina reports and resolutions, 1868–1900, Regular Session 1881/82, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>148</sup>"Report of the State Penitentiary," October 31, 1879, 296, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868–1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>149</sup>"Report of the State Penitentiary," October 31, 1881, 76, ST 0780 (AD 658), Reel 9, South Carolina reports and resolutions, 1868–1900, Regular Session 1880/81, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>150</sup>"Report of the State Penitentiary," October 31, 1882, 478, ST 0782 (AD 672), Reel 11, South Carolina reports and resolutions, 1868–1900, Regular Session 1881/82,



**Figure 6.** Leases Vs. Partnerships, 1876–1891.

While state officials sought to address the fallout from leasing, administrators were pursuing alternative practices that appeared financially viable. Having abandoned vocational training, prison administrators had continued working unleased prisoners on a state-owned farm. Between 1878 and 1879, 130 prisoners produced \$18,000 worth of goods, yielding a budget surplus of \$10,000 for the penitentiary.<sup>158</sup> Expanding its use of prison labor on public works, the legislature had also authorized the Columbia Canal, which by 1882, had 243 prisoners working on its construction.<sup>159</sup> To address the disciplinary issues of leasing while opening new revenue streams, officials also began collaborating with companies to build factories within the prison. Supervised by prison guards and subject to stricter surveillance, these prisoners produced shoes, hosiery, saddles, and harnesses for private corporations.<sup>160</sup> These public-private partnerships alleviated disciplinary concerns among penitentiary administrators while ensuring that prisoner labor still furnished profits for both the state and corporations.

Experimentation with prison farms, public works, and public-private partnerships all contributed to the penitentiary's growing annual surpluses. Between 1878 and 1888, the penitentiary yielded almost \$300,000 in profits, or \$8 million today.<sup>161</sup> Profits would have been higher, but the lease system proved volatile. By 1879, just 2 years after the lease system was instituted, the annual number of leases had peaked. *Figure 6* shows how the number of convict leases and public-private partnerships eventually converged between 1876 and 1891.<sup>162</sup>

<sup>158</sup>“Report of the State Penitentiary,” October 31, 1879, 9–10, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868–1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>159</sup>“Report of the State Penitentiary,” October 31, 1883, 635, ST 0783 (AD 675), Reel 12, South Carolina reports and resolutions, 1868–1900, Regular Session 1882/83, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>160</sup>Ibid.

<sup>161</sup>“Report of the State Penitentiary,” October 31, 1888, 59, ST 0788 (AD 683), Reel 17, South Carolina reports and resolutions, 1868–1900, Regular Session 1887/88, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>162</sup>Leases were often for less than a year and some prisoners were leased multiple times in a year, causing the number of leases to exceed the total penitentiary population.

The number of leases initially surged but rapidly declined, even as the penitentiary population grew. When the number of leases stabilized, this was largely attributable to persistent demand for labor from the phosphate and railroad industries.

By 1883, with leases stagnating and alternative models appearing increasingly viable, penitentiary administrators redoubled their use of the language of reform to persuade Democratic lawmakers to chart a new course, one that would vest them with greater discretion and authority. This vision of reform no longer made reference to vocational training and education that would improve the prospects of prisoners who were still primarily laborers and farmers. Reform was linked to keeping prisoners as farmers and laborers, who through hard labor under “bearable” conditions could be transformed into “good citizens capable of making support for themselves and families.” By this logic, punishment was a form of uplift. Prisoners could be disciplined and transformed into “a more useful class, if they were reformed.”<sup>163</sup> In figuring the penitentiary as a site of reform, administrators blended a paternalist concept of uplift with a republican ideal of self-rule through economic independence. These ideas, however, were not aligned with material reality. In South Carolina, widening inequalities and shrinking opportunities meant that, as Foner argues, “While the region’s new upper class of planters, merchants, and industrialists prospered, the majority of Southerners of both races sank deeper and deeper into poverty.”<sup>164</sup> With few prospects for subsistence, let alone economic independence, republican self-rule was aspirational at best. More likely, this discourse lent credibility to a paternalistic vision of reform that had little concern for the tenability of those ideals for Black prisoners, and to a lesser extent, poor whites.

This paternalistic reform, underwritten by a promising new business model, united the interests of administrators invested in discipline and control with those of state officials committed to profit maximization and racial domination. Through reform, administrators could reestablish their authority and address the disciplinary issues created by leasing. Reform was therefore a twofold process: To reform prisoners, state officials would have to

<sup>163</sup>“Report of the State Penitentiary,” October 31, 1883, 64, ST 0783 (AD 675), Reel 12, South Carolina reports and resolutions, 1868–1900, Regular Session 1882/83, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>164</sup>Foner, *Reconstruction: America’s Unfinished Revolution, 1863–1877*, 596.



vest administrators with greater discretion and resources, which would create the conditions for transforming the penitentiary itself. Reform, backed up by the financial viability—and comparative stability—of prison farms, public works, and public–private partnerships appealed to Democratic lawmakers. That reform through hard labor fostered economic dependence and racial domination by ensuring that prisoners left as they had entered—with job prospects that were dependent on and furthered white elites' economic interests—was likely similarly appealing. In this respect, reform, as it emerged from the shadow of the lease system, effectively remained a proxy for dependence, obedience, and productivity. Prisoners, reformed through hard labor at a profit to the state, were transformed into “good,” obedient and dependent, citizens. Like earlier forms of racial paternalism, this new paternalism cast itself as disciplinary for the sake of redeeming prisoners, concealing the fact that reform was an instrument of oppression and exploitation, not liberation and empowerment. As the state began to chart a course away from convict leasing, this paternalistic concept of reform, echoing claims of racial uplift underwriting slavery, would furnish much of the ideology underpinning the penitentiary moving forward.

By 1884, as paternalistic reform gained renewed currency, the lease system's troubles were compounded by a restrictive new law that required all leased prisoners be supervised by “a sworn officer and guard appointed by and responsible to the Superintendent of the penitentiary.” Guard salaries and rations were added to each lease, dramatically increasing the cost.<sup>165</sup> Unable to cut costs to maximize profits, companies did not to renew their contracts and the lease system all but evaporated within a year. In 1885, a distraught Board of Directors reported they had only been able to negotiate a single contract and that no prisoners had been put to work by a railroad company. The result was overcrowding and mounting costs as the penitentiary hemorrhaged profits.<sup>166</sup> That year the physician reported 10 percent of prisoners had died due to “exposure to cold,” as many cells were still exposed to the elements, “and the depressing influences of over-crowding.”<sup>167</sup> Describing rampant overcrowding, with two or three prisoners packed in a cell for one, Superintendent Lipscomb plead, “How can men be reformed unless their physical wants are supplied? Can I persuade a convict that the State desires his reformation when he is starved or otherwise abused?”<sup>168</sup> Although the population plateaued, partly in response to these conditions, requests to expand the cell blocks went largely unheeded as state officials struggled to keep the institution cost neutral while lease profits evaporated.

With pressure mounting from businesses to cut leasing costs, after less than a year later, the Assembly repealed the act on December 22nd, 1885.<sup>169</sup> Although the number of leases eventually recovered over the next 3 years, the system's days were numbered.

In the interim, citing the “more than ordinary difficulties” posed by the 1884 law, the Board of Directors had alleviated overcrowding by leasing three farms, each with its own camp. Although the additional farms were likely intended as a temporary stop-gap, their profitability in tandem with the lease system's volatility enabled penitentiary officials to persuade lawmakers to endorse a new course, and by extension, restore administrators' authority. Pointing to their successes with farms and factories, penitentiary administrators suggested empowering the Superintendent to purchase additional land and expand the growing system of public–private partnerships by negotiating contracts for prisoner labor “at a profit to the institution.” There was evidence to support these contracts, which had already established hosiery and shoe factories within the penitentiary. By 1885, the Superintendent had already discovered new uses for prisoner labor, having established brick production in privately-owned yards. In the first year alone, prisoners at two brickyards had produced nearly 3 million bricks, half of which belonged to the state and were used for public works.<sup>170</sup> As these industries expanded, the prospect of a state-centered model that empowered administrators while balancing profit maximization, discipline, and reform appeared increasingly viable to lawmakers. By 1886, citing the profitability of public–private partnerships, the Board of Directors proclaimed the penitentiary was not only operating at lower costs than ever before but was more cost effective than “any other similar institution in the land.”<sup>171</sup>

The Assembly endorsed this new course and restored the authority of administrators, authorizing the Superintendent and Board to use excess state funds to purchase land for more farms. Unlike the lease system, which targeted only able-bodied men, the farming system enabled “the management to work to advantage all classes of convicts, male and female, and the weak as well as the strong.”<sup>172</sup> In 1886, the Board of Directors, with the Assembly's support, reinstated the required presence of penitentiary guards to supervise prisoners laboring outside the institution.<sup>173</sup> Leases again evaporated with none between 1888 and 1889, and in subsequent years, only a handful went to railroad companies, which only pursued leasing because it could be made profitable by paying with company stock. Other industries were effectively barred from the lease system because it was no longer cost effective. In 1889, the Assembly forbade “the hiring or leasing of convicts to be employed in phosphate mining.”<sup>174</sup> The end of convict leasing was effectively finalized in 1896, when the Assembly required that payments for convict leases be made monthly in “legal tender cash,” ending the practice of accepting company stocks and shutting out

<sup>165</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1883–84* (Columbia, SC: Republican Printing Company, State Printers, 1884), 815.

<sup>166</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1884–85* (Columbia, SC: Republican Printing Company, State Printers, 1885), 538.

<sup>167</sup> *Ibid.*, 604.

<sup>168</sup> “Report of the State Penitentiary,” October 31, 1883, 644, ST 0783 (AD 675), Reel 12, South Carolina reports and resolutions, 1868–1900, Regular Session 1882/83, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>169</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1885–86* (Columbia, SC: Republican Printing Company, State Printers, 1886), 74–75.

<sup>170</sup> “Report of the State Penitentiary,” October 31, 1886, 278–79, ST 0786 (AD 679), Reel 15, South Carolina reports and resolutions, 1868–1900, Regular Session 1885/86, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>171</sup> *Ibid.*, 281.

<sup>172</sup> “Report of the State Penitentiary,” October 31, 1887, 436, ST 0787 (AD 680), Reel 16, South Carolina reports and resolutions, 1868–1900, Regular Session 1886/87, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>173</sup> “Report of the State Penitentiary,” October 31, 1887, 436, ST 0787 (AD 680), Reel 16, South Carolina reports and resolutions, 1868–1900, Regular Session 1886/87, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>174</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1888–89* (Columbia, SC: Republican Printing Company, State Printers, 1889), 320.

railroad companies.<sup>175</sup> Instead, the penitentiary would chart a new path that balanced profit maximization with discipline by mixing public–private partnerships with a farm system evocative of the slave plantation.

### 5. The prison plantation, 1889–1899

With convict leasing in freefall, prison administrators advocated for a system of state-owned prison farms with renewed urgency. On December 23rd, 1889, lawmakers endorsed this course by allocating \$40,000 for farmland.<sup>176</sup> It is difficult to convey the scale of this undertaking. The Board complained the allocated funds would secure only 3,000–4,000 acres, which was “not enough,” as they desired “to carry out plans, to work, say 600 hands, which would require about ten thousand acres of land,” 100 times more than Stolbrand’s original recommendation for a 100-acre farm in 1869.<sup>177</sup> Despite limited funding, the growth was staggering. Before 1885, the penitentiary had operated only one small farm, and since then, officials had leased three farms. In less than 3 years, the number of state prison farms quadrupled, and the share of prisoners farming rocketed from 30 to 82 percent. Administrators were desperate to maximize their farmable land. In 1892, the Captain of the Guard reported the land adjoining the “burying ground has been put in a condition to be of great value to the institution by being rendered available for cultivation. It is now sowed in oats.”<sup>178</sup> This was the same land that Superintendent Lipscomb had described as “so full of graves that there is scarcely enough ground left to dig new ones.”<sup>179</sup>

By 1894, the state penitentiary owned 4,712 acres of land between just three farms, which administrators estimated had already increased in value by 25 percent.<sup>180</sup> In a given year, prisoners would produce crops valued at over \$66,000, nearly \$2 million today. Prisoner labor now supported the entire cost of running the penitentiary, as administrators proudly reported, “We have been very economical in the management of the affairs of the Penitentiary and have thereby reduced the average cost per month for running expenses to \$4,662.97,” or 17 cents per prisoner each day.<sup>181</sup> With the Columbia Canal completed, the penitentiary also produced its own electricity in excess, selling the difference to local

railways and power companies.<sup>182</sup> In less than 5 years, the penitentiary had become a self-sustaining institution, cloaked in the garb of modern penalty and industry that emulated the structure and economy of a slave plantation. The shift had also reconciled the interests of state officials and penitentiary administrators by alleviating disciplinary issues raised by leasing, restoring administrators’ sole authority over prisoners, and securing the penitentiary’s profitability.

As the penitentiary came to resemble a plantation, authority was consolidated with the Superintendent, who the Board repeatedly deferred to and vested with greater discretion. The Superintendent could now unilaterally purchase land and supplies, create and amend policies, and negotiate new public–private partnerships. To that end, Superintendents were selected based more on their business acumen than their knowledge of punishment and were regarded more as businessmen than bureaucrats.<sup>183</sup> The extent of these changes was exposed in 1895, when a board member submitted a minority report to the Governor. Noting the level of accumulated discretion, he proclaimed that the Superintendent now exercised “entire control” over the “vast amount of supplies of all kinds needed for the Penitentiary, its farms and camps.”<sup>184</sup> Because of this discretion, the penitentiary no longer operated according to “sound business principles” and had lapsed into “glaring extravagance.”<sup>185</sup> Yet the report yielded no investigation or change, and Superintendent Neal remained in his position another 3 years. Through board deferral and legislative authorization, the Superintendent had become the master of a plantation that transformed prisoners into ‘good’ citizens by making them obedient and productive workers.

Yet even as the prison came to evoke the slave plantation, there were resurgent elements of modernity first evident in administrators’ reticence to work prisoners exclusively on farms. Instead, they sought to cultivate discipline and maintain productivity by individualizing and varying prisoners’ labor. Although most prisoners labored as farmers, they were rotated between farms, factories, and public works. This range of industries would also ensure that “all classes of convicts” were utilized. Equally crucial, administrators believed that changing the character of labor provided prisoners with “relief from the continuous toil with pick and shovel, the whole year round, which, necessarily, affects the health of many of the convicts thus employed.”<sup>186</sup> In short, varying labor would promote obedience and productivity by delimiting restlessness.

The issue of monotony was acquiring new salience for prison administrators as more prisoners were serving longer sentences on the plantation. **Figure 7** illustrates how as the plantation system became more entrenched, the number of prisoners serving sentences under 3 years declined and eventually converged with the number of prisoners serving longer sentences.

<sup>175</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 189–596* (Columbia, SC: Republican Printing Company, State Printers, 1896), 199.

<sup>176</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1888–89*, 320.

<sup>177</sup> “Report of the State Penitentiary,” October 31, 1889, 45, ST 0789 (AD 684), Reel 18, South Carolina reports and resolutions, 1868–1900, Regular Session 1888/89, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>178</sup> “Report of the State Penitentiary,” October 31, 1893, 96, ST 0793 (AD 688), Reel 22, South Carolina reports and resolutions, 1868–1900, Regular Session 1892/93, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>179</sup> “Report of the State Penitentiary,” October 31, 1879, 297, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868–1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>180</sup> “Report of the State Penitentiary,” October 31, 1895, 727, ST 0795 (AD 695), Reel 24, South Carolina reports and resolutions, 1868–1900, Regular Session 1894/95, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>181</sup> “Report of the State Penitentiary,” October 31, 1892, 404, ST 0792 (AD 687), Reel 21, South Carolina reports and resolutions, 1868–1900, Regular Session 1891/92, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>182</sup> *Ibid.*, 401.

<sup>183</sup> “Report of the State Penitentiary,” October 31, 1892, 401, ST 0792 (AD 687), Reel 21, South Carolina reports and resolutions, 1868–1900, Regular Session 1891/92, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>184</sup> “Report of the State Penitentiary,” October 31, 1895, 728, ST 0795 (AD 695), Reel 24, South Carolina reports and resolutions, 1868–1900, Regular Session 1894/95, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>185</sup> *Ibid.*, 727.

<sup>186</sup> “Report of the State Penitentiary,” October 31, 1888, 54, ST 0788 (AD 683), Reel 17, South Carolina reports and resolutions, 1868–1900, Regular Session 1887/88, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

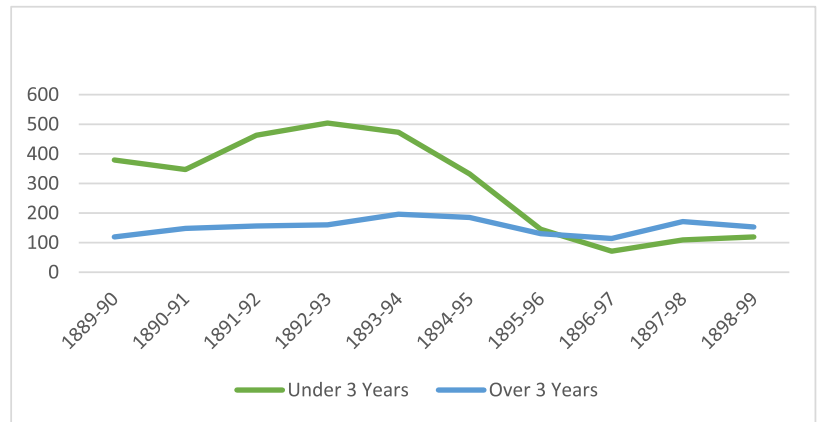


Figure 7. Short Vs. Long Sentences, 1889-1899.

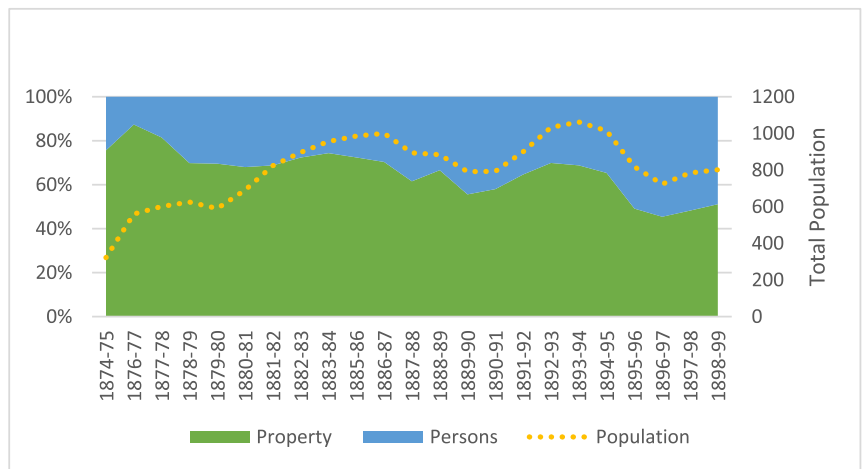


Figure 8. Proportion of Offences, 1874-1899.

Sentencing shifts were largely attributable to a decline in prisoners incarcerated for property crimes and a growing share of prisoners sentenced for crimes against persons. Although property crimes still accounted for the greatest number of offences, that share decreased in tandem with the expanding prison plantation. As Figure 8 shows, this rate of incarceration for property crimes effectively predicts how the prison population expanded and contracted as convict leasing emerged, declined, and was supplanted by the prison plantation.

Between 1877 and 1885, as convict leasing drove demand for prisoner labor, the prison population grew to meet that demand, furnished mostly by property crime convictions. As leasing stagnated, the prison population decreased almost directly in proportion to the rate of incarceration for property crimes. Similarly, as penitentiary officials purchased land to grow the nascent plantation system, the proportion of arrests for property crimes once again increased and the population grew in tandem. As the plantation system became settled and routinized, and the legislature furnished no further capital to purchase land, the proportion of prisoners incarcerated for property crimes once again fell, and the total population decreased with that shift.

Although fewer prisoners were incarcerated for property crimes at the penitentiary, it is unlikely that fewer people were being incarcerated in South Carolina. Rather, prisoner labor was being exploited by town and county chain gangs. Looking to the example of convict leasing, town and county officials had sought to establish their own systems. However, it took nearly a decade for the chain gang system to take shape. On March 12, 1878, the Assembly

amended the criminal code, vesting circuit judges with the discretion to send prisoners to county jails or the state penitentiary.<sup>187</sup> This law acquired new salience in 1885 when the Assembly also empowered judges to “impose the condition of hard labor for a period not exceeding ninety days.” Prisoners previously sent to the state penitentiary for short sentences could now remain in town and county jails where they would “perform hard labor upon the public highways, roads, bridges and other public works.”<sup>188</sup> As towns and counties reaped the benefits of lower public works costs, in 1892, the Assembly expanded the system by removing the 90-day sentence limit on hard labor in county and municipal chain gangs.<sup>189</sup> In 1898, the Assembly delegated even greater authority to city and town councils, empowering them to create their own criminal codes. Officials could now create laws “respecting the roads, streets, markets, police, health and order ... [or] any subject as shall appear to them necessary and proper for the security, welfare and convenience of such cities and towns, or for preserving health, peace, order and good government within the same.” Individuals found guilty of violating these new laws could be fined up to \$100 or sentenced to 30 days imprisonment, during which

<sup>187</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877-78*, 453.

<sup>188</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1885-86*, 125.

<sup>189</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1891-92* (Columbia, SC: Republican Printing Company, State Printers, 1892), 22.

time they would labor on various public works in those towns and counties.<sup>190</sup>

The result was a two-tiered criminal legal system: At the town and county levels, prisoners served relatively short sentences for a variety of artificial new property crimes, and at the state level, a growing share of prisoners served longer sentences for crimes against persons. Like the lease system, chain gang managers would routinely “refuse all of those prisoners sentenced to work on the County roads who are unfit, by reason of sickness or injury, to do hard labor,” while “the rejected ones” were sent to the penitentiary.<sup>191</sup> Town and county officials, eager to quickly extract the maximum value from prisoners, forced them to labor under brutal conditions. Once prisoners were exhausted, injured, or otherwise unable to work, they were sent to the penitentiary hospital for treatment. As the surgeon reported, few survived: “Our death rate is increased yearly from the disabled and sick prisoners being sent to the Institution from the County chain gangs, some of which only live a few days.”<sup>192</sup> Chain gang survivors remained at the prison, “broken down in health” and “unfit to do anything but the lightest kind of work.”<sup>193</sup> Penitentiary administrators also complained that in addition to the chain gang system, “In many instances we get prisoners from the Courts who are unable to work, and often having diseases from which they never recover.”<sup>194</sup> With the ascendance of chain gangs, penitentiary officials were not only forced to contend with a population of prisoners serving long sentences, but once again, a growing contingent of prisoners unable to labor and furnish a profit for the institution.

At the turn of the century, the penitentiary was becoming a receptacle for the state’s Black citizens who had been exploited by the criminal legal system and were now ill, injured, or disabled. The penitentiary warehoused and concealed the aftermath of carceral violence from public view but this threatened profits. Eager to reduce the ballooning population of prisoners unable to work, administrators lobbied the Assembly to commute the sentences of prisoners serving life sentences for arson and burglary, which were no longer punishable for life.<sup>195</sup> The demographics for prison administrators were now qualitatively different as they grappled with a growing population of prisoners serving longer sentences, many of whom were unable to labor. The dynamics of control had to change to fulfill the penitentiary’s multiple roles as a profitable plantation, a site of reform, a locus of racial violence, and a receptacle for the aftermath of chain gangs. For administrators, the challenge was to institute a system that addressed health and

well-being to maintain able-bodied workers, maximized profits while maintaining discipline, and yielded reformed (e.g. obedient and productive) prisoners.

To manage the aftermath of chain gangs, administrators modernized the penitentiary with an eye toward the “health and comfort” of prisoners.<sup>196</sup> Condemning convict leasing and chain gangs while valorizing the prison plantation, Superintendent Neal held, “Prisoners ... should be treated as prisoners, but we have no right to so treat them as to make them physical wrecks when discharged.”<sup>197</sup> This concern with health extended a commitment to paternalistic reform, which regarded the reformed prisoner as an obedient, productive, and by extension, able-bodied worker. Administrators carefully tracked mortality rates and causes of death, instituted solutions that included new heating and sewerage systems and a new hospital (the old one had been condemned by the Board of Health).<sup>198,199</sup> Between 1893 and 1898, the mortality rate decreased 50 percent and over \$100,000 was invested to ensure prisoner health and the penitentiary’s economic prospects.<sup>200</sup> The Board reported with great satisfaction that, “In the future we feel certain that the institution will be able to turn over to the state, in cash, a nice sum annually.”<sup>201</sup> In the shift from prison to plantation, the valuation of Black life turned on a paternalistic vision of reform and the penitentiary’s economic interests. Reinscribing racial hierarchy through reform and maintaining profits necessitated healthy prisoners who could become obedient, productive, and able workers. Health, while perhaps also a moral or ethical concern, appeared to function as a matter of economy, an axis of hierarchy and capital that measured the sustainability of racial exploitation and domination.

At the turn of the twentieth century, the prison plantation was becoming an increasingly profitable and durable institution. In 1898, Superintendent Neal proudly reported that, “the institution is on a firm and permanent basis.”<sup>202</sup> The institution’s economic prospects were, however, not yet reflected in its infrastructure. Despite improvements to heating and sewage, poor sanitation and ventilation continually yielded epidemics of tuberculosis and spinal meningitis, leading Neal to declare that the penitentiary was “not at all a healthy and comfortable one.” To address these concerns, Neal lobbied the legislature for an additional \$10,000 “to build a modern prison for her convicts—one that is roomy, comfortable, and safe.” In a pendulum swing, this modern prison

<sup>190</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1897–98* (Columbia, SC: Republican Printing Company, State Printers, 1898), 820.

<sup>191</sup> “Report of the State Penitentiary,” October 31, 1897, 797, ST 0797 (AD 697), Reel 26, South Carolina reports and resolutions, 1868–1900, Regular Session 1896/97, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>192</sup> *Ibid.*, 742.

<sup>193</sup> “Report of the State Penitentiary,” October 31, 1891, 142, ST 0791 (AD 686), Reel 20, South Carolina reports and resolutions, 1868–1900, Regular Session 1890/91, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>194</sup> “Report of the State Penitentiary,” October 31, 1893, 94, ST 0793 (AD 688), Reel 22, South Carolina reports and resolutions, 1868–1900, Regular Session 1892/93, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>195</sup> “Report of the State Penitentiary,” October 31, 1899, 731, ST 0799 (AD 698), Reel 28, South Carolina reports and resolutions, 1868–1900, Regular Session 1898/99, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>196</sup> “Report of the State Penitentiary,” October 31, 1887, 436, ST 0787 (AD 680), Reel 16, South Carolina reports and resolutions, 1868–1900, Regular Session 1886/87, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>197</sup> “Report of the State Penitentiary,” October 31, 1898, 283, ST 0798 (AD 697), Reel 27, South Carolina reports and resolutions, 1868–1900, Regular Session 1897/98, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>198</sup> *Ibid.*, 269.

<sup>199</sup> “Report of the State Penitentiary,” October 31, 1889, 47, ST 0789 (AD 684), Reel 18, South Carolina reports and resolutions, 1868–1900, Regular Session 1888/89, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>200</sup> “Report of the State Penitentiary,” October 31, 1898, 283, ST 0798 (AD 697), Reel 27, South Carolina reports and resolutions, 1868–1900, Regular Session 1897/98, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>201</sup> *Ibid.*, 269.

<sup>202</sup> “Report of the State Penitentiary,” October 31, 1898, 269, ST 0798 (AD 697), Reel 27, South Carolina reports and resolutions, 1868–1900, Regular Session 1897/98, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.



would include a wing for young prisoners to ensure “that the young and oftentimes harmless and helpless convicts can be separated from the old and hardened criminals,” a policy that administrators during Reconstruction had themselves attempted.<sup>203</sup> For both groups, young prisoners were “harmless” or yet reformable in contrast to their older, “hardened” counterparts, but who were they to become?

At the turn of the twentieth century, even as administrators sought to modernize the institution, plantation life was the overarching condition of imprisonment. Apart from a daily Sabbath and weekly Sunday School, other forms of education and vocational training—once a centerpiece of the politics of reform—were altogether absent. The Captain of the Guard also conceded they had once again “resort[ed] to corporal punishments,” while insisting that violence was used sparingly without recording or publishing any such counts.<sup>204</sup> Time and again, it was this tension between officials’ aspirations to create a modern prison and the afterlife of slavery—borne out through racial violence and paternalism—that set the penitentiary’s trajectory. The modern prison was underwritten by a paternalistic reform that took obedience and productivity as its ideals, echoing the racial paternalism underwriting enslavement. Figurations of the Black criminal once integral to the laws of slavery were now submerged beneath a common law tradition of rights and protections, the racially disparate abridgment of which was purportedly incidental. State officials and business interests converged to institute new modes of repression that aspired to adapt and reinforce racial hierarchy by maximizing obedience and productivity, thereby institutionalizing a paternalist vision of reform. The result was, in short, a mixture of disciplinary and paternal power, which administrators sought to wield in layering elements of a modern prison onto a prison plantation haunted by slavery.

## 6. Conclusion

This article has charted the trajectory of the South Carolina Penitentiary from the politics of reform to convict leasing to the prison plantation. Under the politics of reform, officials engaged in a nationalizing science of reform to institute modern vocational and education programs. Yet the politics of reform was haunted by the afterlife of slavery in the prevalence of anti-Black violence, which yielded a fragmented, often contradictory politics. As Reconstruction collapsed, a new coalition of white Democrats seized the penitentiary, instituting convict leasing to maximize profits at the cost of staggering deaths and eroding discipline. Penitentiary officials, eager to restore discipline and regain their authority over prisoners, succeeded in instituting a system of prison farms that balanced profitability with a paternalistic vision of reform, echoing plantation life under slavery. In each era, administrators and officials cultivated their own ideas of crime and punishment, and each sought to craft the institutions best suited to those ends. Yet they all sought to institute—and took seriously—their vision for a modern prison while making recourse to the ideas and institutions that underwrote slavery.

<sup>203</sup>“Report of the State Penitentiary,” October 31, 1899, 751, ST 0799 (AD 698), Reel 28, South Carolina reports and resolutions, 1868–1900, Regular Session 1898/99, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

<sup>204</sup>Ibid, 789.

Of course, such periodization is only meant to convey how institutional priorities and ideological commitments shifted in significance and were entangled in differing combination. An emphasis on profit maximization during leasing did not entirely displace discipline, nor did a return to racial paternalism altogether replace profit maximization as an institutional priority. This approach to periodization eschews sharp breaks in favor of excavating the layers of ideas and structures that underwrote the modern criminal legal system in South Carolina. In doing so, this article has revealed how, from the outset, the making of a modern criminal legal system—including a commitment to reform and rehabilitation—was haunted by the ghosts of slavery.

Today, rehabilitation and profitability remain integral to South Carolina’s criminal legal system, even as the prison population has shrunk from 24,000 to 16,000 due to budget shortfalls. The state still operates three prison farms that cultivate the sweet potatoes, eggs, lettuce, grits, and milk that prisoners consume, making the daily cost of feeding a prisoner just \$1.51.<sup>205</sup> In 2010, the state quadrupled its cow herd, making the prison dairy farm the largest in the state. State officials argue that selling the excess milk to consumers fills an important production gap: “We invest in programs that we think are going to benefit the taxpayer most. It’s looking through that lens that we decided to expand our dairy, because South Carolina is an import state where we don’t produce enough milk to supply the needs of the citizens.”<sup>206</sup> In 2023, the state announced a partnership with AmplifiedAg, Inc. to create a vertical farming facility and training program for female prisoners at the Camille Griffin Graham Correctional Institution. Prisoners will produce an estimated 48,000 pounds of lettuce annually, training and working at every stage of the process, “including horticulture, farming (seeding, growing, harvesting), technology, and food processing and packaging.” Couched in the modern language of reform, the project was hailed as an “innovative” program that will provide “meaningful job training and a healthy work environment to incarcerated people, helping them learn the importance of farming,” thereby “improv[ing] our prison system and keep[ing] the public safe by helping reduce recidivism.”<sup>207</sup> The state omits from these press releases that Black people still make up 58 percent of its prison population and 53 percent of its jail population while accounting for 27 percent of the state population.<sup>208</sup>

While the precise nature of these continuities is beyond the scope of this work, these modern policies nonetheless reveal how anti-Black racism and violence, the afterlife of slavery, continues to be couched in the language of cost-neutrality, profit-maximization, and reform, even as it is filtered through a purportedly liberal, racially neutral criminal legal system. Situating these contemporary developments within this longer history also enables us to recognize how the punitive turn and abdication of reform, which

<sup>205</sup>Seanna Adcox, “South Carolina’s Largest Dairy Will Be at Prison,” *The San Diego Union-Tribune*, November 10, 2010, <https://www.sandiegouniontribune.com/sdut-south-carolinas-largest-dairy-will-be-at-prison-2010nov12-story.html>.

<sup>206</sup>“Prison Farm Expanding Into Largest Dairy Farm in South Carolina” (The South Carolina Radio Network, November 15, 2010), <https://www.wrhi.com/2010/11/prison-farm-expanding-into-largest-dairy-in-sc-9590>.

<sup>207</sup>Brian Sparks, “South Carolina Women’s Prison Brings Vertical Farm to Inmates,” *Greenhouse Grower*, October 27, 2023, <https://www.greenhousegrower.com/production/south-carolina-womens-prison-brings-vertical-farm-to-inmates/>.

<sup>208</sup>Incarceration Transparency, “South Carolina,” accessed April 8, 2024, <https://www.incarcerationtransparency.org/southcarolina/#~:text=Approximately%2016%2C000%20of%20those%20people,are%20held%20in%20local%20jails.&text=While%20the%20state%20is%2064,and%20jails%20are%2053%25%20Black>.

many scholars locate in the mid-twentieth century, was not so much a departure as a pendulum swing. State officials and prison administrators have long struggled to square their reformist commitments with a fundamentally racist, punitive institution. Yet each moment illuminates a continuity in those officials' commitment to incarceration as one of the preeminent modes of racialized discipline and punishment.

Taken together, while APD scholars have done remarkable work in enlarging our view of the carceral state, this account of the South Carolina Penitentiary shows how the afterlife of slavery and the modern prison were entangled in the nineteenth century. During and after Reconstruction, officials looked to the criminal legal system to devise new means of racialized control while also building a modern prison system that emulated and adapted Northern models of reform. In this respect, reformist elements of the seemingly modern carceral state are not so modern. The point, though, is not to reduce the criminal legal system to an outgrowth

of slavery. There are many carceral ideas and practices grounded in comparatively recent developments like crime statistics and a centralized federal bureaucracy. However, there are continuities in the ways that the afterlife of slavery has naturalized incarceration and punishment as integral features of the state, even as they are increasingly submerged in the racially neutral language of proceduralism and reform. This predisposes us to believe that police and prisons are inevitable, rather than the product of an ongoing struggle against racial hierarchy, corrupting our sense of reality and constraining our visions for the future. To begin liberating ourselves from this conceptual bind we must reckon with the deep roots of these ideas. We must recognize that the ideas and the institutions designed to surveil, police, and punish Black criminality are squarely the afterlife of slavery even as they were and remain entangled with modern visions of crime and punishment.

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