

# “The Spawn of Slavery”? Race, State Capacity, and the Development of Carceral Institutions in the Postbellum South

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## Research Article

**Cite this article:** Schwarz S (2023). “The Spawn of Slavery”? Race, State Capacity, and the Development of Carceral Institutions in the Postbellum South. *Studies in American Political Development* 37, 181–198. <https://doi.org/10.1017/S0898588X22000281>

### Keywords:

slavery; criminal justice policy; incarceration; carceral state; convict leasing; Southern politics; state public finance; state capacity

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## Abstract

The end of the Civil War brought freedom to 3.9 million formerly enslaved people. Yet, almost immediately following the war, Southern states started to incarcerate freedpeople at unprecedented rates in an effort to reinstate racial hierarchies in the post-Emancipation era. Not before long, Southern states introduced new carceral institutions, most notably the convict-lease system, under which prisoners were leased out as laborers to private contractors for the duration of their sentence. The emergence of convict leasing has often been portrayed as a programmatic attempt by the Southern whites to find an alternative to antebellum chattel slavery.<sup>1</sup> Paying special attention to the sequencing of political events during Reconstruction, I revisit this story by highlighting the role that state capacity and public finance played in the introduction of the policy. As conviction numbers swelled after Emancipation, the carceral capacity of Southern penitentiaries was quickly overwhelmed, prompting Reconstruction legislatures and governors to search for alternatives to conventional imprisonment. I argue that convict leasing emerged from these capacity challenges as a cost-effective solution that initially enjoyed broad bipartisan support. Over time, leasing grew more profitable, both for the state governments and the lessees, and abolition efforts were stalled for decades, even when the system became increasingly abusive. Using a range of archival materials, I illustrate these carceral developments in an in-depth case study of the origins of convict leasing in Georgia.

## 1. Introduction

When the Confederate army surrendered to Union troops in April 1865, ending one of the bloodiest wars the world had seen to date, approximately 3.9 million African Americans, who were formerly enslaved in the American South, found their freedom. However, their “moment in the sun,” as W.E.B. Du Bois famously put it, was short-lived.<sup>2</sup> Following Emancipation, white Southern elites began to alter legal and political institutions to curtail personal freedoms of freedmen and freedwomen, and by the time the Reconstruction era had ended in the mid-1870s, hopes for a racially egalitarian South were buried for decades to come. The criminal justice system in particular has been recognized by historians as one of the instruments that was used to exert control over African Americans and reinstate racial orders in the postbellum South.<sup>3</sup>

Almost immediately after the war, Southern elites began to alter penal laws to facilitate the large-scale incarceration of freedmen and, though to a lesser extent, freedwomen. In the decades that followed, tens of thousands of African Americans were convicted all over the South, often on dubious grounds and for trifling matters. Under the newly created convict-leasing system, however, prisoners in the South were no longer confined within conventional prison walls. Instead, governments started to lease out their prisoners to private individuals and companies for a fee, removing most of the state’s oversight of prisoner treatment and care. Those private entities—not the states—were responsible for providing prisoners with housing, food, and clothing, as well as medical care. In return, prisoners were coerced to

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<sup>1</sup>For example, W. E. B. Du Bois, “The Spawn of Slavery: The Convict-Lease System in the South,” in *Race, Crime, and Justice: A Reader*, ed. Helen Taylor Green and Shaun Gabbidon (New York: Routledge, 2005); Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863–1877*, updated ed., New American Nation Series (New York: Harper Perennial, 2014); Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866–1928* (Columbia: University of South Carolina Press, 1996); David M. Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996)

<sup>2</sup>W. E. B. Du Bois, *Black Reconstruction: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860–1880* (New York: Harcourt Brace, 1935).

<sup>3</sup>For example, Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th Century American South* (New York: Oxford University Press, 1984); Douglas Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2009); Du Bois, *Black Reconstruction*; Christopher Muller, “Freedom and Convict Leasing in the Postbellum South,” *American Journal of Sociology* 124, no. 2 (September 2018): 367–405; Oshinsky, *Worse Than Slavery*.

work for their lessees for the duration of their sentence—on railroads and plantations, in coal mines and lumber camps, and at brickyards all over the South.

The emergence of convict leasing as the dominant carceral institution in the postbellum South may seem puzzling at first. Following major carceral reforms in the North in the early 1800s, Southern states had only just spent considerable resources on constructing state-of-the-art penitentiaries in the decades before the Civil War. Why did almost all ex-Confederate states abandon penitentiary imprisonment so readily and abruptly after the war, switching instead to convict leasing during Reconstruction? Existing historical accounts have often portrayed the convict-lease system as “the spawn of slavery”<sup>4</sup> because labor practices in leasing camps closely resembled those that were common under antebellum slavery.<sup>5</sup> Indeed, the exploitative and oppressive nature that the system took on is undeniable, and over time, the demand for cheap, reliable labor led to the expansion of the lease system in many states. At the same time, conceptualizing the origins of convict leasing as merely a “programmatic” attempt of white Southerners to reinstate alternative forms of coerced labor after Emancipation gestures too easily toward “neo-slavery” as an explanation—without paying sufficient attention to the underlying political processes and institutional conditions that produced the policy.

In this article, I therefore revisit the origins of convict leasing, asking in particular what political and fiscal conditions led to its introduction in the years following the Civil War. In particular, I challenge the popular notion that convict leasing was initially introduced with the intent of finding a substitute for antebellum chattel slavery after Emancipation. Rather, I argue that the policy was first born out of fiscal and institutional constraints that arose when Southern governments took a punitive turn after the Civil War. When states began to scale incarceration but lacked both the carceral infrastructure and the resources to build it, leasing initially provided a cost-effective short-term alternative to conventional penitentiary confinement while simultaneously solving the problems of prison overcrowding. Over time, however, leasing grew more profitable, in particular for “New South” industrialists who benefitted from cheap convict labor. Thus, as demand for convict labor increased post-Reconstruction, the system got further entrenched—despite its increasingly abusive nature.

This article advances this argument by paying closer attention to the temporal ordering of events that led to the introduction of the policy during Reconstruction.<sup>6</sup> In doing so, I show that growth in incarceration was not initially driven by the objective to supply alternative slave labor to the planter class through the convict-lease system. Instead, incarceration growth reflected a broader shift in penal rationales in the post-Emancipation South as governments found in their penal system an instrument to exercise control over the freedmen population. This “programmatic” turn in punitiveness was chiefly reflected in sweeping changes to penal codes that occurred during Confederate Reconstruction (1865–1866). Importantly, the growth in

convictions that resulted from these legal changes *preceded* the decision to abandon penitentiary confinement and thus *conditioned* the introduction of convict leasing in important but underexplored ways.

Specifically, by focusing on the temporal sequencing of political events during Reconstruction, my analysis reveals underexplored institutional factors that influenced the decision to introduce the convict-leasing system as the new locus of punishment. In an effort “to bring the state back in,”<sup>7</sup> I show that the states’ lack of carceral and fiscal capacity were major considerations in the policymaking process during the Reconstruction era. Cash-strapped and with much of their infrastructure destroyed by the end of the war, Southern states were unable to provide the prison facilities necessary to accommodate the rising number of prisoners that resulted from the punitive turn the states took immediately after the Civil War. The convict-lease system, I argue, hailed from these challenges, as privatizing carceral functions<sup>8</sup> ultimately allowed states to pursue their desired policy of carceral expansion—*despite* their limited institutional and implementation capacities.<sup>9</sup>

To illustrate these dynamics, I concentrate on the events that led to the introduction of leasing in Georgia (circa 1811–1880), which was one of the first states to pioneer convict leasing after the Civil War. However, as suitable, I draw comparisons to other cases from the South to highlight both commonalities and exceptions. My analysis relies on an array of primary materials, including nineteenth-century administrative records, newspaper coverage, and government reports that I retrieved during extensive visits to state archives in the South. Where applicable, I draw on quantitative data on incarceration that I compiled from prison administrative records.

<sup>7</sup>Theda Skocpol, “Bringing the State Back In: Strategies of Analysis in Current Research,” in *Bringing the State Back In*, ed. Dietrich Rueschemeyer, Peter B. Evans, and Theda Skocpol (Cambridge, UK: Cambridge University Press, 1985), 3–38.

<sup>8</sup>One might argue that Southern governments’ decision to privatize prison operations is in and of itself evidence of a “strong” state. However, to avoid blurring the conceptual boundaries of what constitutes the “state,” I define state capacity in terms of “the state’s ability to implement chosen policies” (Hillel David Soifer, “The Development of State Capacity,” in *The Oxford Handbook of Historical Institutionalism*, ed. Orfeo Fioretos, Tullia Falletti, and Adam Sheingate [New York, NY: Oxford University Press, 2016], 181–94, emphasis added) throughout this article. Applying this to the development of carceral institutions in the postbellum South, I argue that, in the absence of delegating carceral functions to private actors via convict leasing, Southern states would likely *not* have had the capacity to implement their “chosen policy” of carceral expansion due to the fiscal and institutional limitations that they faced after the Civil War.

<sup>9</sup>Once established, convict leasing began to produce demand effects, both among the private sector, which benefitted from cheap labor, and among state governments, which were able to collect increasing revenues from leasing. Over time, these demand effects further facilitated the incarceration of freedmen and exploitation of penal labor, as has been documented in other parts of the literature on convict leasing. See especially: Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity*, Justice, Power, and Politics (Chapel Hill: University of North Carolina Press, 2016); Lichtenstein, *Twice the Work of Free Labor*; Talitha L. LeFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: University of North Carolina Press, 2015). However, my analysis highlights that these later developments are better understood as an example of policy conversion whereby political actors were able to “redirect institutions or policies toward purposes beyond their original intent.” See Jacob S. Hacker, “Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States,” *The American Political Science Review* 98, no. 2 (May 2004): 243–60. For recent examples of scholarship on conversion, see Daniel J. Galvin, “From Labor Law to Employment Law: The Changing Politics of Workers’ Rights,” *Studies in American Political Development* 33, no. 1 (2019): 50–86; Sarah Staszak, “Privatizing Employment Law: The Expansion of Mandatory Arbitration in the Workplace,” *Studies in American Political Development* 34, no. 2 (2010): 239–68.

<sup>4</sup>Du Bois, “The Spawn of Slavery.”

<sup>5</sup>Ayers, *Vengeance and Justice*; Blackmon, *Slavery by Another Name*; Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (London: Verso, 1996); Oshinsky, *Worse Than Slavery*.

<sup>6</sup>On the importance of temporality in analyses of American political development, see Paul Pierson, “Not Just What, but When: Timing and Sequence in Political Processes,” *Studies in American Political Development* 14, no. 1 (2000): 72–92; Paul Pierson, “The Study of Policy Development,” *Journal of Policy History* 17, no. 1 (January 2005): 34–51, doi:10.1353/jph.2005.0006.

Using an analytic approach centered on temporality and the role of state capacity, my study asks what the introduction of leasing teaches us about the development of carceral power and dynamics of state-building more generally. In recent decades, a growing body of literature in political science has sought to understand the origins of the U.S. carceral state, but much of this scholarship has focused on understanding the rise of mass incarceration and its consequences for democratic governance and racial equality in the latter half of the twentieth century.<sup>10</sup> Scholars of American political development have paid considerably less attention, however, to earlier moments of carceral expansion in American history.<sup>11</sup> Here, I shed new light on regional developments in carceral institutions in the decades following the Civil War. In particular, I argue that, while the post-Emancipation South saw patterns of incarceration growth quite similar to the post-Civil Rights era, the fiscal conditions and capacity issues that Southern states faced after the Civil War led them to introduce carceral “innovations” that were distinct—both from the penitentiaries maintained in Northern states at the time and from today’s prison institutions.

This article also allows us to revisit some of the dominant narratives of Southern state-building after the Civil War. Existing scholarship on the postbellum South routinely emphasizes the regressive and antidemocratic trends that resurged throughout the region after Congressional Reconstruction and has repeatedly demonstrated how the region remained underdeveloped with weak state capacities throughout the second half of the nineteenth century.<sup>12</sup> In an effort to reinstate antebellum racial hierarchies

and to maintain regional autonomy, post-Reconstruction governments actively resisted expanding taxation capacity and fended off federal intervention that might have aided institutional development and helped modernize the region.<sup>13</sup> In this article, I reflect on how these contracted state and fiscal capacities paradoxically conditioned the *expansion* of state coercive capacities in the postbellum South.

I begin by providing more background information on nineteenth-century penal policy in America and the convict-leasing system in particular. I then outline my argument, contrasting it to existing accounts on the origins of convict leasing, before presenting an in-depth case study of the events that led to the introduction of the lease system in Georgia after the Civil War. While my analysis focuses on the introduction of convict leasing in the immediate years following the Civil War (1865–1880), I also provide an outlook on how the system got entrenched in the decades that followed.

## 2. Background: The Carceral State in Nineteenth-Century America

### 2.1 Penal Policy and Institutional Innovation in Nineteenth-Century America

Institutional imprisonment has been the dominant mode of punishment for delinquency and crime for over two centuries now. In the early nineteenth century, imprisonment was considered a less barbaric alternative to the system of corporal and capital punishment that had been prevalent until then. By the early 1800s, penal reformers considered these crude forms of punishment through mutilation or whipping inhumane and, more importantly, inadequate for deterring criminal activity and forming law-abiding citizens.

As the French historian and philosopher Michel Foucault argued, the introduction of prison facilities coincided with a more general shift in the zeitgeist toward “discipline.”<sup>14</sup> With the technological revolution came a shift in societal organization as traditional forms of labor were replaced with more regimented work routines in factories and emerging industrial sectors. Here, better worker “discipline” typically translated into higher profit margins. Instilling discipline and dependability in individuals thus became a major project of nineteenth- and twentieth-century elites, and prison confinement, along with schools, the military, and workhouses, served as a tool to educate, monitor, and rein in those elements of society considered “deviant.”<sup>15</sup>

<sup>10</sup>See, for example, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (La Vergne, TN: The New Press, 2010); Katherine Beckett and Megan Ming Francis, “The Origins of Mass Incarceration: The Racial Politics of Crime and Punishment in the Post-Civil Rights Era,” *Annual Review of Law and Social Science* 16, no. 1 (2020): 433–52; Michael Javen Fortner, “The Carceral State and the Crucible of Black Politics: An Urban History of the Rockefeller Drug Laws,” *Studies in American Political Development* 27, no. 1 (2013): 14–35; Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York: Cambridge University Press, 2006); Marie Gottschalk, “Democracy and the Carceral State in America,” *The Annals of the American Academy of Political and Social Science* 651 (2014): 288–95; Amy E. Lerman and Vesla M. Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (Chicago: Chicago University Press, 2014); Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (Oxford, UK: Oxford University Press, 2014); Kirstine Taylor, “Sunbelt Capitalism, Civil Rights, and the Development of Carceral Policy in North Carolina, 1954–1970,” *Studies in American Political Development* 32, no. 2 (October 2018): 292–322.

<sup>11</sup>But see Matthew G. T. Denney, “‘To Wage a War’: Crime, Race, and State Making in the Age of FDR,” *Studies in American Political Development* 35, no. 1 (April 2021): 16–56; Gabriel S. Lenz, “Unprotected: The Rise of Interpersonal and Police Violence during Jim Crow” (unpublished manuscript, 2019); Soumyajit Mazumder, “A Brief Moment in the Sun: The Racialized (Re)Construction of Punishment in the American South” (unpublished manuscript, 2019); Paul Musgrave, “Bringing the State Police In: The Diffusion of U.S. Statewide Policing Agencies, 1905–1941,” *Studies in American Political Development* 34, no. 1 (April 2020): 3–23.

<sup>12</sup>For example, Richard Bensel, “Southern Leviathan: The Development of Central State Authority in the Confederate States of America,” *Studies in American Political Development* 2 (1987): 68–136; Richard Franklin Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859–1877* (Cambridge, UK: Cambridge University Press, 1990); Matthew Blackwell, Maya Sen, and Avidit Acharya, *Deep Roots: How Slavery Still Shapes Southern Politics*, Princeton Studies in Political Behavior (Princeton, NJ: Princeton University Press, 2018); Boris Heersink and Jeffery A. Jenkins, “Whiteness and the Emergence of the Republican Party in the Early Twentieth-Century South,” *Studies in American Political Development* 34, no. 1 (2020): 71–90; Ira Katznelson, John S. Lapinski, and David A. Bateman, *Southern Nation: Congress and White Supremacy After Reconstruction*, Princeton Studies in American Politics (New York: Russell Sage Foundation, 2018); V. O. Key, *Southern Politics in State and Nation* (Knoxville: University of Tennessee Press, 1984); Robert Mickey, *Paths Out of Dixie: The Democratization of Authoritarian Enclaves in America’s Deep*

*South, 1944–1972* (Princeton, NJ: Princeton University Press, 2017); Lawrence Powell, “Centralization and Its Discontents in Reconstruction Louisiana,” *Studies in American Political Development* 20, no. 2 (2006): 105–31; Pavithra Suryanarayan and Steven White, “Slavery, Reconstruction, and Bureaucratic Capacity in the American South,” *American Political Science Review* 115, no. 2 (2021): 568–84.

<sup>13</sup>See Katznelson et al., *Southern Nation*; Suryanarayan and White, “Slavery, Reconstruction, and Bureaucratic Capacity,” 568–84.

<sup>14</sup>Michel Foucault, *Discipline and Punish the Birth of the Prison* (New York: Vintage Books, 1979).

<sup>15</sup>Indeed, sociologists have suggested that the United States in particular became reliant on penal institutions as the main avenue to exert social control because the nation was founded on an “ultra-liberal political economy.” This ultra-liberal value structure tended to undermine other, community-level control mechanisms to ensure social cohesion, and it also made the nation less conducive to the introduction of social policy programs that address the socioeconomic causes of crime and violence. Carceral facilities thus became the dominant way to address lawlessness, crime, and deviant behavior. See David Garland, “Penal Controls and Social Controls: Toward a Theory of American Penal Exceptionalism,” *Punishment & Society—International Journal of Penology* 22, no. 3 (2020): 321–52.

In the early 1800s, penal reformers in the North therefore proposed new approaches to punishment centered around the incarceration of criminal offenders in designated carceral institutions for a period of time commensurate to their crime. Under this new philosophy, confinement from society in “penitentiaries” was considered essential for the prisoner’s rehabilitation process. The penitentiary was nationally and internationally celebrated as a major carceral innovation, and the first of these institutions that were built in the Northern states, in Philadelphia, PA, and Auburn, NY, attracted spectators from all over the world, including intellectual luminaries like Alexis De Tocqueville and Charles Dickens.<sup>16</sup>

What is more, the penitentiary movement introduced penal labor in addition to carceral confinement as reformers considered hard labor within prison walls an opportunity to teach trade skills and instill Protestant work ethic in prisoners.<sup>17</sup> However, throughout the nineteenth century, different modes of prison labor emerged. By the 1880s, the Department of Labor Statistics, in a designated report on convict labor in the United States, had identified six different labor systems.<sup>18</sup> Those systems varied in their degree of state management of prisoners and production process. Convict leasing, as one such subtype of prison work, became the dominant form of penal labor only in the American South in the decades after the Civil War. And while prison labor is still a cornerstone of American correctional institutions today, convict leasing had by and large been abolished by 1930s.

## 2.2 Convict Leasing: A Brief Overview

Convict leasing was distinct from other forms of penal labor in three important ways. First, by leasing prisoners to private companies or individuals, the state was absolved of the task of housing and caring for them. Instead, lessees were responsible for providing accommodation, meals, and clothing, as well as medical care. Second, by moving prisoners from prison walls to privately run camps, the state also gave up its custodial responsibility as lessees were to hire overseers and guards to ensure order in the camps and prevent prison escapes. Third, the state lost supervision of the productive labor process. Prisoners no longer worked within prison walls, and while contracts with lessees typically specified the type of labor convicts were expected to perform, the state had very little control over working conditions in the camps.<sup>19</sup>

As a consequence of the lack of state supervision, leasing camps were regular sites of neglect, abuse, and death. In many camps, prisoners lived in filthy, temporary sleeping quarters and were routinely underfed. Eye-witness accounts from former prisoners of leasing camps show that convicts rarely received more than a few pieces of meat and corn bread per day. In a legislative investigation into the lease system conducted in Georgia in 1908, one former prisoner summarized the insufficiencies of food provisions as follows:

*Committee Member Felder:* What kind of fare did they have; what would they give you for breakfast?

<sup>16</sup>Gottschalk, *The Prison and the Gallows*, 74–75.

<sup>17</sup>*Ibid.*, 43–47.

<sup>18</sup>Bureau of Labor, *Annual Report of Commissioner of Labor* (Washington, DC, 1887), 361–82.

<sup>19</sup>Ayers, *Vengeance and Justice*; Lichtenstein, *Twice the Work of Free Labor*; Mancini, *One Dies, Get Another*.

*Prisoner J.A. Cochran:* Well they gave you something to eat but I don’t call it anything for a man to work on. I went there weighing 218 pounds and when I was there only two months I weighed 154 pounds.<sup>20</sup>

Consequently, illness and diseases resulting from poor hygiene and malnutrition were rampant. In many states, the penitentiary physicians reported regular outbreaks of dysentery and typhoid fever. A large share of prisoners ended up in the hospital wards at some point or another, especially as leasing camps became more and more crowded.<sup>21</sup>

As laborers, prisoners were further brutalized in a system of labor organization that closely resembled the managerial practices of chattel slavery.<sup>22</sup> In many states, prisoners were classified into categories of “first-class, second-class, and third-class hands,” which determined the tasks they were coerced to perform for their lessees.<sup>23</sup> Prisoners were routinely worked until physical exhaustion and faced severe physical punishments, in the form of bucking and gagging<sup>24</sup> or whipping, when they failed to meet their assigned daily quotas.<sup>25</sup>

Perhaps unsurprisingly, then, Southern leasing camps were deadly places. As P. D. Sims, a physician and penal reformer from Tennessee, summarized it in his speech on the Southern penitentiaries at the National Prison Congress in Atlanta, GA, in 1886,

A careful compilation of the reports of thirty-nine state prisons, twenty-eight non leased and eleven leased, running through a series of years, with an average prison population of 16,839 in the former, and of 10,213 in the latter, shows an average mortality in the former of fifteen per thousand per annum to sixty-four per thousand per annum in the latter.<sup>26</sup>

In sum, convict leasing would soon be seen as one of the “harshes and most exploitative labor systems in American history.”<sup>27</sup> As governments were often unable (or unwilling) to provide adequate oversight and control of prisoner treatment and care, bondage in Southern leasing camps was generally considered as “worse than slavery”<sup>28</sup>—an observation that led many to believe that the system itself was born out of the desire to find a substitute for antebellum slavery.

## 3. Why Leasing? Toward a Theoretical Framework

The introduction of convict leasing in the South may seem puzzling for several reasons. First, most of the South had followed

<sup>20</sup>Georgia General Assembly, *Proceedings of the Joint Committee to Investigate the Convict Lease System of Georgia* (Atlanta, GA, 1908), 71.

<sup>21</sup>During the 1880s, the prison physician in Georgia made an attempt to more systematically record sickness cases from the various camps. In his biennial reports to the governor, he showed that, as annual prisoner numbers climbed, so did hospitalizations (Principal Keeper of the Georgia Penitentiary, *Biennial Report 1884–1886* [Atlanta, GA, 1886], 105–40).

<sup>22</sup>Caitlin Rosenthal, *Accounting for Slavery: Masters and Management* (Cambridge, MA: Harvard University Press, 2018).

<sup>23</sup>Lichtenstein, *Twice the Work of Free Labor*.

<sup>24</sup>Bucking and gagging consisted of tying a convict’s hands and wrists, putting his hands over his knees, and placing a stick under the knees and over the elbows. Another stick was tied in the prisoner’s mouth.

<sup>25</sup>Lichtenstein, *Twice the Work of Free Labor*; Georgia General Assembly, *Proceedings to Investigate the Convict Lease System*, 75–76, 146–47.

<sup>26</sup>National Prison Association, *Proceedings of the National Prison Congress* (Atlanta, GA, 1886), 137–38.

<sup>27</sup>Mancini, *One Dies, Get Another*, 1–2.

<sup>28</sup>Oshinsky, *Worse Than Slavery*.

the lead of Northern states in the first half of the nineteenth century and abandoned the then-prevalent system of corporal and capital punishment to replace it with new state penitentiaries. At the eve of the Civil War, all Southern states, with the exception of the Carolinas and Florida, had penitentiaries in operation. However, after the Civil War, all of the states of the former Confederacy except Virginia replaced the conventional penitentiary model with some variant of the convict-lease system.<sup>29</sup> Second, the expansion of the carceral state after the Civil War runs counter to the popular notion that the nineteenth-century American state was weak, especially in the South where bureaucratic and fiscal capacities remained limited. Why then did leasing emerge in the postbellum South as the dominant carceral policy?

### 3.1 Incarceration and Neo-Slavery Arguments

Existing scholarly analyses that try to understand this abrupt and nearly uniform turn in Southern carceral systems after the Civil War often interpret convict leasing as a stubborn relic of slavery.<sup>30</sup> Neo-slavery arguments start with the empirical observation that the overwhelming majority of postbellum prison populations in the South consisted of African Americans. This development stood in a stark contrast to antebellum penitentiaries in the South, which were home mainly to a small number of white convicts. After the war, blacks were consistently incarcerated at higher rates than whites (see discussion below as well as Figure 1).

Neo-slavery arguments often portray the rapid growth in black incarceration as the direct result of the convict-leasing system. The leasing system and, by extension, the disproportionate imprisonment of African Americans are seen as an effort to establish an alternative to antebellum chattel slavery after its abolition had devastated the Southern agrarian economy.<sup>31</sup> Variants of this argument are often stated very explicitly. At the turn of twentieth century, W.E.B. Du Bois wrote, “Two systems of controlling human labor which still flourish in the South are the direct children of slavery, and to all intents and purposes are slavery itself. These are the crop-lien system and the convict-lease system.” Reflecting on the introduction of convict leasing during Reconstruction, Du Bois observed that “throughout the South laws were immediately passed authorizing public officials to lease the labor of convicts to the highest bidder. The lessee then took charge of the convicts—worked them as he wished under the nominal control of the state. Thus a new slavery and slave-trade was established.”<sup>32</sup> Renowned Reconstruction historian Eric Foner likewise concludes that

in much of the South, the courts during Presidential Reconstruction appeared more interested in ... forcing [the black population] to labor

<sup>29</sup>Some states like Louisiana and Kentucky had leasing in place before the Civil War. In states like Georgia, Louisiana, and Tennessee, centralized prison facilities were abandoned almost entirely as the state rented out all its prisoners to the private sector. Other states such as South Carolina and Alabama maintained a hybrid system, leasing out large portions of their male prison populations to contractors while employing the remaining (usually women, children, and the sick and elderly) on state-run prison farms.

<sup>30</sup>For variants of this argument, see, for example, Blackmon, *Slavery by Another Name*; Milfred C. Fierce, *Slavery Revisited: Blacks and the Southern Convict Lease System, 1865–1933* (Brooklyn, NY: Africana Studies Research Center, Brooklyn College, City University of New York, 1994); Lichtenstein, *Twice the Work of Free Labor*; Mancini, *One Dies, Get Another*.

<sup>31</sup>Gavin Wright, *Slavery and American Economic Development* (Baton Rouge: Louisiana State University Press, 2006).

<sup>32</sup>Du Bois, “The Spawn of Slavery,” 3.

than in dispensing justice.... The convict lease system, which had originated on a small scale before the war, was expanded so as to provide employers with a supply of cheap labor.<sup>33</sup>

Given the racial composition of the postbellum prison populations, this interpretation may come about naturally as the most brutal and exploitative features of chattel slavery were seemingly reproduced under the convict-leasing regime. However, neo-slavery arguments fall short in various ways in explaining why leasing emerged in the South. First, slavery analogies are somewhat inconsistent with the observation that convict labor was not primarily used to supply agrarian contractors. While the Southern agrarian economy indeed collapsed after Emancipation, land-owning elites secured postbellum farm labor supply primarily through an intricate system of sharecropping contracts and debt peonage.<sup>34</sup> This resulted in continued oppression and exploitation of Southern blacks in the agrarian sector but in ways distinct from convict leasing.<sup>35</sup> Specifically, while the criminal justice system served as an important mechanism to enforce sharecropping contracts in the agricultural sector,<sup>36</sup> convict leasing never became a significant *direct* source of labor supply for land-owning elites to the degree neo-slavery explanations would suggest. Instead, prisoners in the convict-lease system, while occasionally sent to plantations, were predominantly employed in emerging industries of the New South, grading railroad beds or laboring in mining camps and lumber production.<sup>37</sup>

Second, neo-slavery interpretations seem at odds with the observation that leasing, when first introduced, enjoyed broad political support: In most Southern states, the first leasing contracts were signed during *Congressional* Reconstruction when the Republican party had majorities (or at least a strong presence) in state legislatures and governments.<sup>38</sup> It was often under the supervision of Union-installed governors as well as with the explicit support of black legislators during Reconstruction that the first convicts were leased to private contractors. This complicates stories about neo-slavery: If the primary motivation for the lease system was to reinstate a substitute form of slave labor through imprisonment, then why would the very political actors, who fought for the abolition of slavery, support—even promote—its introduction?

Lastly, existing analyses do not make sense of the timing and temporal ordering of events: In most states, growth in incarceration occurred *before* alternatives to the penitentiary model, including the leasing system, were eventually considered by policymakers during Congressional Reconstruction. Indeed, while prisoner numbers swelled almost immediately after the war,

<sup>33</sup>Foner, *Reconstruction*, 205.

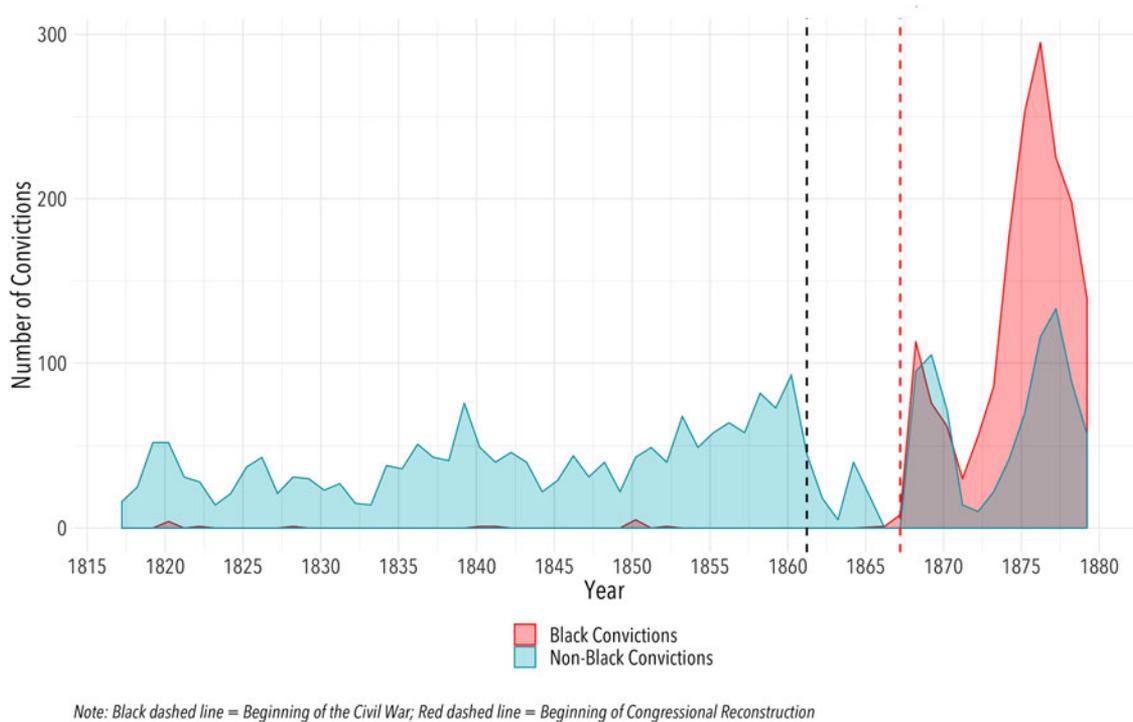
<sup>34</sup>Edward Cary Royce, *The Origins of Southern Sharecropping: Labor and Social Change* (Philadelphia: Temple University Press, 1993).

<sup>35</sup>Lee J. Alston and Joseph P. Ferrie, “Time on the Ladder: Career Mobility in Agriculture, 1890–1938,” *The Journal of Economic History* 65, no. 4 (2005): 1058–81; Suresh Naidu, “Recruitment Restrictions and Labor Markets: Evidence from the Postbellum U.S. South,” *Journal of Labor Economics* 28, no. 2 (2010): 413–45.

<sup>36</sup>Lichtenstein, *Twice the Work of Free Labor*; Haley, *No Mercy Here*.

<sup>37</sup>As I will discuss below, the postbellum penal system still played an important role in coercing agrarian labor in the postbellum decades as black tenant and sharecropping farmers were routinely threatened with time in prison for violating contractual terms with their landlords. Nevertheless, despite being used as a “labor force control mechanism” in this way, the convict-lease system *in and of itself* never became a significant source of agrarian labor, as prisoners in most states were leased predominantly to non-agrarian contractors. See also Haley (*No Mercy Here*) and Lichtenstein (*Twice the Work of Free Labor*) for in-depth discussion of these dynamics.

<sup>38</sup>Mancini, *One Dies, Get Another*, 82.



**Figure 1.** Total Number of Yearly Convictions of Whites vs. Blacks, 1817–1880.

leasing was formally introduced in most states, and became fully operational, only years, sometimes decades, after the war had ended. Thus, the emergence of leasing seemed to follow—rather than precede—increasing incarceration, at least initially.

In short, convict leasing tends to be portrayed too easily “as merely a bald attempt by whites to resurrect slavery in a disguised form.” As historian Edward Ayers suggests, “it was much more than this, an institution that reflected fundamental changes as well as continuities in the postwar South.”<sup>39</sup> In this article, I contribute to these debates by investigating in more detail the political processes and institutional factors that conditioned the emergence of the convict-leasing system.

### 3.2 Temporal Ordering of Policy Processes

Research in American political development has long recognized the important role of event sequencing and temporality in understanding macro-level political developments.<sup>40</sup> Following this approach, I extend existing analyses of the origins of the convict-lease system by paying more attention to the temporal ordering of events that led to the introduction of the policy during Reconstruction.

My particular aim here is to trace the political events and debates that generated convict leasing as a policy during Reconstruction, showing that growth in incarceration was not initially motivated by the desire to supply alternative slave labor to the planter class through the convict-lease system. Rather, as we will see, incarceration increased due to legal changes to penal codes that were aimed at curtailing the political rights and

economic independence of the freedpeople and, as such, *preceded* the decision to abolish the penitentiary and introduce convict leasing. Nevertheless, the growing incarceration that resulted from these changes in the states’ punitiveness subsequently conditioned carceral policy choices in important but underexplored ways.

Of course, over time, Southern convict-leasing systems produced “demand effects,” in particular among the changing landscape of private-sector contractors, who benefitted from cheap convict labor in the postbellum decades. Thus, by separating the forces and events that generated leasing as an institution during Reconstruction from those that reproduced and reinforced it during Redemption, my analytic approach allows me to reconcile two observations that are seemingly at odds: that leasing initially seemed to be a *response* to growing prisoner numbers but over time became a *driving force* of incarceration in the postbellum South.<sup>41</sup>

### 3.3 State Capacity and Fiscal Conditions

By paying closer attention to timing and sequencing in the policymaking process, I am also able to identify institutional factors that conditioned decisions about the form and locus of punishment in the postbellum South. In this article, I pay special attention to one such force, state capacity, which I conceptualize in terms of “the state’s ability to implement chosen policies, and

<sup>41</sup>Recent social science research has demonstrated that incarceration after the Civil War was at least to some extent driven by economic demands, with incarceration increasing when demand for plantation labor was high; see, for example, Melissa Rubio, “From Plantations to Prisons: The Legacy of Slavery on Black Incarceration in the US” (unpublished manuscript, 2019). However, this research focuses on later decades when the lease system was already in full swing. The bulk of my analysis focuses instead on earlier years when leasing was first introduced.

<sup>39</sup>Ayers, *Vengeance and Justice*, 185.

<sup>40</sup>For an excellent overview of the importance of attention to sequencing and timing in American political development analysis, see Pierson, “Not Just What, but When,” 72–92.

to perform a set of core functions like tax extraction and security provisions.”<sup>42</sup>

Existing scholarly accounts on Southern state-building after the Civil War routinely emphasize that the region remained underdeveloped with weak state and fiscal capacities throughout the second half of the nineteenth century.<sup>43</sup> These limitations to state-building are in large part attributed to the overarching objective of Southern whites to reinstate racial orders and white supremacy in the post-Emancipation era. With respect to fiscal capacity in particular, recent research has highlighted how Southern governments remained reluctant to expand taxation capacities after the Civil War because taxation was perceived as a redistributive device that disproportionately benefitted poor African American communities at the expense of white taxpayers in the South.<sup>44</sup> Other avenues for state-building and fiscal consolidation also remained closed off in the postbellum decades. Given the region’s commitment to maintaining racial hierarchies, Southern politicians routinely prioritized regional autonomy and refused federal aid, which could have helped modernize the region but which would have come with strings attached with respect to civil and political rights for African Americans. As Bateman, Katznelson, and Lapinski succinctly summarize,

the South cohered as a low-wage, undereducated, and underdeveloped section in part because the commitments of its representatives to racial hierarchy and regional autonomy dramatically limited their ability to secure federal support on terms they could accept or to block fiscal policies that disproportionately burdened the South.<sup>45</sup>

By contrast, with incarceration soaring after the Civil War, Southern carceral states paradoxically marked one of the areas where the “state” seemingly expanded in the postbellum decades. Nevertheless, the specific trajectory of Southern carceral development was fundamentally shaped by the limitations in state-building observed otherwise. In this article, I examine in more detail how limitations in state and fiscal capacities shaped carceral policy choices in the postbellum South.

Like existing accounts, I start with the observation that incarceration, in particular of African Americans, skyrocketed after the Civil War due to changes in penal codes. As prison populations swelled to an unprecedented size, the existing carceral infrastructure of state penitentiaries, many of which were severely damaged during the war, was quickly overburdened. At the same time, Southern states were economically and fiscally extremely constrained after the war, leaving little to no funds for building state-of-the-art carceral facilities to accommodate this unprecedented prisoner growth. In the search for solutions, leasing out convicts appeared to be a cost-effective short-term alternative to the more resource-intensive penitentiary model. Over time, the system got more and more entrenched as not only the private sector benefitted from the cheap labor supply but states also grew more reliant on the revenue generated through the lease system. Ultimately, the Reconstruction-era decision to privatize carceral functions in order to facilitate short-term incarceration growth

thus created distinct interest constellations that shaped the willingness and ability of political actors to reform and abolish convict leasing as a policy in the long run—even when the abusive nature of the system became increasingly clear.

### 3.4 White Supremacy and Carceral Development in the Postbellum South

While a narrow interpretation of convict leasing as neo-slavery overlooks other institutional factors that conditioned the emergence of the policy during Reconstruction, white supremacy nonetheless played an important—and complex—role for carceral development in the South. Throughout the analysis, I thus highlight three distinct ways in which racist beliefs systems featured in this developmental story:

First, as we will see, the motivation to reinstate racial hierarchies and white supremacy was one of the primary reasons for why Southern states began to incarcerate African Americans at growing rates in the first place. Changes in penal codes that occurred almost immediately after the Civil War, and their unequal enforcement against Southern blacks, were one way, among many, to intimidate freedmen and freedwomen, to curtail their civil rights, and to force them into exploitative labor contracts. In other words, without these changes, Southern prison populations would likely not have outgrown the existing prison infrastructure as fast as they did—a development that forced states to look for alternatives to penitentiary imprisonment in the first place.

Second, and perhaps less intuitively, the objective to reinstate racial hierarchies significantly limited overall fiscal and administrative capacity in the South in the postbellum decades. Precisely *because* Southern whites were committed to uphold white supremacy and dwarf notions of equality, governments remained reluctant to expand taxation capacity and, thus, remained cash-strapped and burdened by debt throughout much of second half of the nineteenth century.<sup>46</sup> This meant that the same belief system that facilitated rapid increases in black incarceration after the Civil War simultaneously limited the state’s capacity to respond to such incarceration growth in conventional ways, that is, by raising and spending taxpayer money to expand state-run prison facilities.

Third, while the horrors of the convict-lease system as well as its resemblance to antebellum slave labor were occasionally exposed to the public, racist beliefs ensured that the policy survived in many states into the early twentieth century. Assumptions about the inherent inferiority and criminality of blacks meant that few Southern whites were inclined to fight for abolition on humanitarian grounds. Instead, the system was gotten rid of in many states only when its profitability and usefulness to contractors and the state began to decline.

### 3.5 Empirical Approach

To illustrate my argument, I will focus my analysis on the state of Georgia, whose leasing system has often been described as an “ideal type” in the Weberian sense. First, Georgia was one of the earliest states to introduce leasing during Reconstruction and can thus be considered a pioneer of the policy. Second, while all states of the former Confederacy (except Virginia)

<sup>42</sup>Soifer, “The Development of State Capacity,” 181–94, 189.

<sup>43</sup>See, for example, Bensel, “Southern Leviathan,” 68–136; Bensel, *Yankee Leviathan*; Katznelson et al., *Southern Nation*; Key, *Southern Politics*; Mickey, *Paths Out of Dixie*; Powell, “Centralization and Its Discontents,” 105–31; Suryanarayan and White, “Slavery, Reconstruction, and Bureaucratic Capacity,” 568–84.

<sup>44</sup>This argument has been made most compellingly by Suryanarayan and White, “Slavery, Reconstruction, and Bureaucratic Capacity,” 568–84.

<sup>45</sup>Katznelson et al., *Southern Nation*, 77.

<sup>46</sup>See *ibid.*; Suryanarayan and White, “Slavery, Reconstruction, and Bureaucratic Capacity,” 568–84.

introduced convict leasing after the Civil War in some form, historians have argued that “Georgia’s leasing history shows the practice in its least diluted form,”<sup>47</sup> meaning that the state leased out the prison population in its entirety, while some of the other states initially tried to maintain hybrid systems whereby at least some prisoners remained under the state’s supervision. Thus, if the introduction of convict leasing was motivated by neo-slavery objectives, we would expect this logic to have come to bear most obviously in a state like Georgia, where the change toward leasing was near absolute. That said, whenever appropriate, I will draw comparisons to other states to highlight commonalities and exceptions to my argument.

Since my aim is to revisit why leasing was introduced in the South, I focus my analysis on the first fifteen years following the Civil War between 1865 and 1880. However, I will also highlight important antecedent developments during the antebellum era that help our understanding of carceral policy choices after the war. In addition, I provide some discussion of how the lease system developed after Reconstruction had ended, in an effort to distinguish more clearly between generative and reproductive policy processes.

My analysis rests on a variety of data and evidentiary sources, including administrative records kept by Georgia’s carceral institutions, legislative acts, reports, and hearings, as well as governors’ communications to the state legislature. In addition, I will reference newspaper coverage related to the state penitentiary in the years following the Civil War as well as existing secondary analyses on Georgia’s lease system. I will also draw on reports on prison labor prepared by the federal government in the 1880s as well as on insights from annual proceedings of the National Prison Congress. Where applicable, I also tie in quantitative data that I compiled from state administrative records on incarceration.

#### 4. Convict Leasing in Georgia

##### 4.1 Setting the Stage: Antebellum Penal Policy and Carceral Infrastructure in Georgia

Before the Civil War, penal institutions and practices in the Northern and Southern states were remarkably similar. Until the early nineteenth century, corporal punishment constituted the dominant way of dealing with criminals and lawbreakers. Thieves got flogged, murderers hanged, and their mutilation was enacted as public spectacles in town squares across the country. By the early 1800s, however, Northerners and Southerners alike considered these crude forms of punishment inhumane—and ineffective in deterring crime.<sup>48</sup>

In Georgia’s General Assembly, the Joint Committee on Finance remarked in 1815 that “the pillory, cropping and whipping have a most unfortunate tendency, hardening the individual; and when set at liberty, he is prepared for the perpetration of every crime.”<sup>49</sup> Penal reformers in the North introduced new approaches to punishment. Rather than mutilating criminals in public, they were to do penance by being locked away from society for a period of time commensurate to their crime in state-operated penitentiary facilities.

Southern carceral reform was not lagging behind. In Georgia, prison reformers had advocated for a penitentiary since the early 1800s. In 1811, the legislature passed an act to modify the penal code and make it more amenable to the penitentiary system.<sup>50</sup> In the same year, the General Assembly appropriated \$10,000 to erect a penitentiary building in the antebellum state capital, Milledgeville.<sup>51</sup> In December 1816, construction was completed, and in March 1817, only five years after the world-famous Eastern State Penitentiary had opened its gates in Philadelphia, Georgia transferred the first prisoners to its new state prison.

One innovation of the penitentiary model was that prisoners were to be kept away from society in designated carceral institutions. Another was that they were to be employed in hard labor for the duration of their sentence. Prisoners were expected to work within prison walls in order to learn trade skills they could employ once they reentered society. In 1815, the Joint Committee on Finance of the General Assembly summarized this logic as follows: “The penitentiary system proportions the punishment to crime; excludes the offender from society; accustoms him to the habits of industry which he is likely to preserve.”<sup>52</sup> Thus, in Georgia’s antebellum penitentiary, prisoners would manufacture a range of mercantile, including clothing and leather products.

Despite humanitarian underpinnings of the prison reforms in the early 1800s,<sup>53</sup> fiscal concerns played an important role in the lawmaking process right from the outset. States recognized that prison labor in particular, in addition to its supposedly rehabilitative function, could potentially be a lucrative source of revenue. In Georgia, the legislature had expressed hopes that a prisoner’s labor would be “beneficial to the State and to himself,” in that order, two years before the penitentiary was even in operation.<sup>54</sup>

However, in the early years of its existence, the Georgia penitentiary disappointed these hopes. Early reports on its operations cast doubt on how effective solitary confinement of prisoners really was in deterring future crime and rehabilitating criminals to society. In 1827, the legislature’s Joint Committee on the Penitentiary concluded that “the institution ... as yet has not realized the expectations of its founders in producing that reformation in the minds and habits of the convicts which was so fondly anticipated.”<sup>55</sup> In addition, the penitentiary was not able to break even financially, let alone make a profit for the state with its manufacturing activities, which further weakened its utility in the eyes of its opponents.

Voices demanding the abolition of the penitentiary model grew louder in Georgia, and for a short while, they seemed to gain the upper hand. In May 1831, the penitentiary burnt to

<sup>50</sup>Georgia General Assembly, An Act to Ameliorate the Criminal Code, and Conform the Same to the Penitentiary System, 1811, <http://neptune3.galib.uga.edu/ssp/cgi-bin/legis-idx.pl?sessionid=7f000001&type=law&byte=1970838>.

<sup>51</sup>Georgia General Assembly, Resolution (1811), <http://neptune3.galib.uga.edu/ssp/cgi-bin/legis-idx.pl?sessionid=7f000001&type=law&byte=2290507>.

<sup>52</sup>Principal Keeper of the Georgia Penitentiary, *Biennial Report 1872–1873*, p. 11.

<sup>53</sup>At this point, it is also important to stress that the Southern prison population before the war consisted mostly of white and a handful of free black men. Lawbreaking among the slave population was usually dealt with outside of the purview of the state. In other words, the “humanitarian” rationale of the criminal justice reforms that underpinned the introduction of the penitentiary model was not extended to enslaved people but exclusively applied to the free population of Georgia. Enslaved men and women who broke the law continued to be tortured, mutilated, or killed by their white masters as punishment for delinquency.

<sup>54</sup>Georgia General Assembly in 1815, as cited in Principal Keeper of the Georgia Penitentiary, *Annual Report* (Atlanta, GA, 1871), 11.

<sup>55</sup>Principal Keeper of the Georgia Penitentiary, *Biennial Report 1872–1873*, pp. 14–15.

<sup>47</sup>Mancini, *One Dies, Get Another*, 82.

<sup>48</sup>David Garland, *Punishment and Welfare: A History of Penal Strategies* (Brookfield, VT: Gower, 1985); Gottschalk, *The Prison and the Gallows*.

<sup>49</sup>Principal Keeper of the Georgia Penitentiary, *Biennial Report 1872–1873* (Atlanta, GA, 1873), 11.

the ground, and in December, the legislature repealed the penal reforms from 1811, abolishing penitentiary imprisonment and reverting the criminal justice system back to the days of corporal and capital punishment.<sup>56</sup>

However, not quite a year later, the General Assembly restored the penitentiary model, and in 1833, appropriated an additional \$5,000 to restore the building and “erect additional shops, and enlarge the old ones, and additional woodsheds.”<sup>57</sup> By 1835, the Penitentiary Committee reported that, for the first time, the institution achieved a positive balance, with \$143.43 on hand at the end of the preceding fiscal year, and expressed optimism that “it might so conducted as to be a source of revenue, instead of an expense” in the future.<sup>58</sup> Again, those hopes were short-lived. Until the eve of the Civil War, the penitentiary would not manage to get out of red numbers, accumulating a considerable debt for the state.

One reason for its fiscal difficulties was the way the penitentiary managed the sale of its prison-manufactured goods. In a 1854 report, the legislature complained that products had been sold on credit, rather than cash or bank notes, and that debts had not been repaid. The report argued, “The credit system ... has been the source of this evil.”<sup>59</sup> In addition, some blamed the location of the prison itself—Milledgeville was land-locked, “remote from any commercial center, or place of large trade”<sup>60</sup>—for its limited profitability.

In the 1850s, the General Assembly therefore began to look for solutions to its persistent penitentiary “problem.” The possibility of leasing out the prison to private individuals arrived on the agenda for the first time in 1853. That year, Lewis Zachary, at the time the principal keeper (prison warden) of the penitentiary, offered the legislature to lease the entire prison and its manufacturing facilities for six years, freeing the state of any maintenance costs during that time. His only condition: The legislature would have to appropriate \$10,000 to repair the building and workshops.

The legislature, however, was not ready to cede control over the state prison and instead recommended moving the state prison to a location where business could flourish more easily. One particular suggestion was for the state to purchase land at Stone Mountain and move the penitentiary thereto. Since the railroad line accessing Stone Mountain had been completed in 1847, the site was considered ideal for establishing a state-owned stone quarry, run entirely on the forced labor of prisoners. As the House Committee on the Penitentiary reasoned during the 1855–56 legislative session,

The fact is demonstrable that it would have been a saving to the State, had the convicts been employed at hard labor in pounding stone with stone, without outlay or income.... We believe ... that the system can be perfected and made self-sustaining, but that this can only be effected by removal to a different locality, where labor will be more remunerative, materials cheaper, and buildings of every description erected at less cost, yet more durable and convenient. We therefore recommend the purchase of Stone Mountain in DeKalb county, which your Committee understand can be purchased at a reasonably fair price.<sup>61</sup>

<sup>56</sup>Georgia General Assembly, An Act to Abolish Penitentiary Imprisonment in This State (1831).

<sup>57</sup>Georgia General Assembly, An Act to Appropriate Money for the Support of Government for the Political Year Eighteen Hundred and Thirty Four (1833).

<sup>58</sup>Principal Keeper of the Georgia Penitentiary, *Biennial Report 1872–1873*, p. 16.

<sup>59</sup>*Ibid.*, 18.

<sup>60</sup>*Ibid.*

<sup>61</sup>Georgia House of Representatives, *House Journal* (Milledgeville, GA, 1855), 169.

None of these suggestions, however, gained much traction in the legislature, so the status quo was preserved until after the Civil War. In the meantime, the penitentiary continued to cost, rather than earn, money, draining an average of around \$8,748 in appropriations from the state’s treasury between 1850 and 1860.<sup>62</sup>

If the state’s objective was to make the penitentiary financially self-sufficient, possibly even profitable, why was leasing not introduced before the war? Two possible answers come to mind: First, antebellum Georgia was extremely wealthy and, by extension, fiscally healthy. According to the 1860 Census, the average wealth per capita in Georgia was \$614.14, much higher than in many Northern states at the time.<sup>63</sup> In his address to the Georgia General Assembly in November 1860, Governor Joseph E. Brown reported an annual revenue of \$1,453,930 but only \$1,179,110 in spending.<sup>64</sup> In other words, while politicians would have preferred to make a profit from prison labor, it was not fiscally necessary to generate income with the penitentiary. Second, costs for prison maintenance and prisoner care were still relatively manageable because the prison population was comparatively small in size. In December 1860, James A. Green, the principal keeper of the penitentiary at the time, counted a modest 245 prisoners at hand—the highest number since the penitentiary had opened its gates in 1817 but nowhere near the prisoner counts the institution would witness after the war.<sup>65</sup>

As we have seen, leasing—although not formally introduced until 1866—was at least flirted with in the decade before the Civil War. At this time, the prison population still consisted by and large of whites. This provides some credence to my claim that the postbellum lease system was not initially a programmatic effort to re-enslave freedpeople after the war. Rather, its introduction followed in the footsteps of antebellum debates centered around fiscal burdens and profit making opportunities for the state.

#### 4.2 Georgia’s Penitentiary During the Civil War

On January 19, 1861, Georgia followed South Carolina, Mississippi, Florida, and Alabama in declaring secession from the Union, thus entering the Civil War. In the beginning of the war effort, the penitentiary was an important source of army supplies for Confederate troops as convicts manufactured articles like shoes, clothing, wagons, and even state arsenal. In fact, in 1861, the legislature authorized the governor to “procure and purchase all the machinery, tools, implements, and materials necessary to be used in the manufacture of arms” and “to direct said machinery to be put in operation in the Penitentiary of this State,” using the labor of convicts.<sup>66</sup> Ironically, for the first time in its existence, the state prison actually made a considerable profit, and the warden was able to pay \$10,000 into the state treasury by the end of 1862.<sup>67</sup>

<sup>62</sup>Principal Keeper of the Georgia Penitentiary, *Biennial Report 1872–1873*.

<sup>63</sup>U.S. Census 1860; J. Horace Bass, “Civil War Finance in Georgia,” *The Georgia Historical Quarterly* 26, no. 3/4 (1942): 213–24; see also Robert William Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little, Brown, 1974).

<sup>64</sup>Georgia House of Representatives, *House Journal* (Milledgeville, GA, 1860), 7–8.

<sup>65</sup>Principal Keeper of the Georgia Penitentiary, *Annual Report* (Milledgeville, GA, 1860), 3.

<sup>66</sup>Georgia General Assembly, An Act to Provide for the Manufacture and Purchase of Arms for the Public Defence (1861).

<sup>67</sup>James C. Bonner, “The Georgia Penitentiary at Milledgeville 1817–1874,” *The Georgia Historical Quarterly* 55, no. 3 (1971): 303–28, 316.

As the war waged on, however, less and less thought was given to the state prison and its residents. Most war prisoners were kept at Andersonville field, Georgia's largest camp of the Confederate army. At the same time, the number of "domestic" convictions dwindled and with it, the prison's significance for the war effort. In 1862, the warden received only twenty-eight felons from the courts.<sup>68</sup> As Union General William T. Sherman approached central Georgia in 1864, the incumbent Governor Joseph E. Brown pardoned all prisoners, except those with life sentences, on the condition that they pledged to fight for the Confederacy.<sup>69</sup> Predictably, most of them deserted after only a few weeks.<sup>70</sup>

When General Sherman and his troops reached Milledgeville in November 1864, less than a dozen prisoners were left, some of whom escaped during the chaos that would ensue. The penitentiary, a site of military significance due to its war-related manufacturing, was razed by Union troops and burnt to the ground. By the time the war officially ended in May 1865, the prison was home to no more than four prisoners.<sup>71</sup> At this point, the penitentiary was in destitute condition. Most of the manufacturing equipment was destroyed or had disappeared. The cell building as well as the manufacturing workshops had to be rebuilt. Governor Joseph E. Brown, in his final months in office, had estimated that necessary repairs would cost the state \$1 million in Confederate currency—money that the state did not have—and urged the legislature to abolish the penitentiary altogether, restoring the old system of corporal and capital punishment instead.<sup>72</sup>

#### 4.3 Confederate Reconstruction: Penal Reform, Black Codes, and Prison Growth

*Penal Reform and Growth in Prison Populations.* Not long after the end of the Civil War, Georgia's prison population began to grow again. By the fall of 1865, the new warden of the penitentiary, W. C. Anderson, reported 177 prisoners at hand (i.e., those that had to be accommodated by the penitentiary at the end of a given fiscal year) but not a single dollar to clothe or feed them. Guards were paid in kind, usually with leftover leather from the prison tannery.<sup>73</sup>

As Table 1 illustrates, the number of prisoners at hand rose steadily.<sup>74</sup> A look at administrative records kept by the state's prison administration reveals that Georgia's penitentiary received a total of 1,952 prisoners from the courts between 1817 and 1865.<sup>75</sup> By contrast, in the fourteen years between 1866 and 1880, the penitentiary received 2,631 convicts—34.8 percent more than during the entire 48-year period between of the penitentiary's inauguration and the end of the Civil War.<sup>76</sup> At the same time, the racial composition of prisoners began to change drastically. While Georgia's prison population before the war

**Table 1.** Prisoners at Hand in the Georgia Penitentiary

Year	Total Number of Convicts	Black Convicts	White Convicts
1865	177	N/A	N/A
1868	343	N/A	N/A
1869	393	N/A	N/A
1870	385	324 (84.2%)	61 (15.8%)
1873	614	524 (85.4%)	90 (14.6%)
1874	725	630 (86.9%)	95 (13.1%)
1875	926	835 (90.2%)	91 (9.8%)
1876	1,108	994 (89.7%)	114 (10.3%)
1877	1,108	N/A	N/A
1878	1,239	1,124 (90.7%)	115 (9.3%)
1879	1,186	1,071 (90.3%)	115 (9.7%)

consisted mostly of whites, the number of annual convictions of blacks consistently exceeded those of whites by 1871 (see Figure 1).<sup>77</sup>

How do we explain this rapid growth in Georgia's prison populations after the war?<sup>78</sup> First, part of this rapid carceral expansion was without a doubt attributable to changing demographics. Before the war, African Americans were not subject to the jurisdiction of the states' criminal justice system—unless they were free. Enslaved blacks, which constituted the vast majority of African Americans in the South before the war, were typically expected to be punished by their masters when they had broken the law.<sup>79</sup> With the end of the war, some 462,198 people who were enslaved in Georgia in 1860 (per the 1860 U.S. Census), gained their freedom and eventually joined the ranks of citizens. With Emancipation, freedpeople in Georgia fell under the purview of the state and its criminal justice system for the first time. As such, the total population subject to the state's jurisdiction in late 1865 had increased at once by more than 77 percent. As Georgia's Principal Keeper John T. Brown elaborated in his annual report in 1873,

While the negro was a slave, if he committed murder or rape, he was hanged. If he stole anything, or committed any other offense, which would be felonous in a white man, he was whipped and put to work again. Now he has all the privileges of a white man, among which is that of being punished like a white man in the Penitentiary. The result is, that we have more than three times as many convicts in the State prison as there were before the war.<sup>80</sup>

<sup>68</sup>Principal Keeper of the Georgia Penitentiary, *Annual Report* (Milledgeville, GA, 1862), 29.

<sup>69</sup>Lichtenstein, *Twice the Work of Free Labor*, 25.

<sup>70</sup>Bonner, "The Georgia Penitentiary," 316.

<sup>71</sup>*Ibid.*, 317.

<sup>72</sup>Georgia State Senate, *Senate Journal* (Milledgeville, GA, 1865), 14.

<sup>73</sup>Bonner, "The Georgia Penitentiary," 318.

<sup>74</sup>The data presented in table 1 are collected from annual or biennial reports, which were issued by the Principal Keeper of the Georgia Penitentiary and which recorded the number of prisoners "at hand" (i.e. currently in the correctional system) at the end of a given accounting period.

<sup>75</sup>*Ibid.*

<sup>76</sup>While these numbers are modest by modern standards, the changes in convictions were large enough to overwhelm the rudimentary prison infrastructure that states like Georgia had built before the Civil War.

<sup>77</sup>The data for Figure 1 were collected from handwritten historical convict ledgers, which detail individual-level prison admissions on a monthly basis. I digitized and transcribed all such ledgers that are still available today in the collections of the Georgia State Archives. However, given the observable "dip" in convictions in 1871–72, it seems plausible that not all ledgers survived until today or that the descriptive rolls were incomplete, resulting some missing data for those years. (Indeed, as is documented later in this article, the Principal Keeper complained in 1871 that he had trouble keeping track of convicts because the main contractor at the time, Grant, Alexander & Co., routinely failed to furnish the state with descriptive lists of the convicts that they received from the courts.)

<sup>78</sup>A formal analysis of the causes of this Southern carceral expansion is beyond the scope of this article. However, I will draw on existing research in that area to strengthen my argument.

<sup>79</sup>Thorsten Sellin, *Slavery and the Penal System* (New York: Elsevier, 1976).

<sup>80</sup>Principal Keeper of the Georgia Penitentiary, *Biennial Report 1872–1873*, pp. 9–10.

Still, in Georgia as in many other states, the rapid growth of incarceration of blacks was disproportionate to their share in the population. By the end of Reconstruction in Georgia in the early 1870s, the ratio of black to white convictions was consistently above 2 to 1 (see Figure 1). Historians attribute this racially skewed growth in part to changes in Southern penal codes that occurred right after the Civil War.<sup>81</sup> These reforms are commonly referred to as “Black Codes,” due to their unequal enforcement against freedpeople that resulted in rapid growth in black but not white incarceration. One such provision, enacted immediately after the war, criminalized vagrancy and idleness, sending an individual to jail for as little as not being able to show proof of employment. In early 1866, Georgia’s General Assembly, like other Southern legislatures, defined and punished “vagrancy” as follows:

All persons wandering or strolling about in idleness, who are able to work, and who have no property to support them; all persons leading an idle, immoral or profligate [profligate] life, who have no property to support them, and are able to work, and do not work; all persons able to work, having no property to support them, and who have not some visible and known means of a fair, honest and reputable livelihood; all persons having a fixed abode who have no visible property to support them, and who live by stealing or by trading in, bartering for, or buying stolen property; and all professional gamblers, living in idleness, shall be deemed and considered vagrants.<sup>82</sup>

The Black Codes commonly served two purposes. First, they were used to restrict African American labor market mobility. Land-owning whites in particular saw their wealth and fortune dwindle with Emancipation. To keep their land farmed, they were in desperate need for farm hands. Vagrant laws were used to force blacks into short-term labor contracts, because failing to provide proof of employment could land you in jail. Similarly, “fencing laws” were intended to keep landless blacks from roaming their livestock freely, and “hunting laws” made hunting livestock on private property a larceny charge. In the absence of personal wealth, these and other legal provisions essentially eliminated black people’s ability to secure sustenance independently, leaving them no choice but to earn income as low-wage workers on plantations or else face imprisonment.<sup>83</sup>

Notably, the criminal justice system in this instance served as a *labor force control* mechanism—it was not initially intended to be a state-sponsored source of labor force supply in the postbellum South.<sup>84</sup> This is underscored by two observations. First, many of these legal provisions were meant to be temporary solutions to address labor shortage in the chaos after Emancipation. In Mississippi, for example, one cornerstone provision of the vagrancy laws required all individuals to have proof of an employment contract for the year by January 1866.<sup>85</sup> Second, while incarceration of freedpeople undeniably increased after the war, it never reached levels of antebellum enslavement (see Table 1 and Figure 1).<sup>86</sup> Rather, the criminal justice system was initially

used as a coercive tool, among an array of practices, including sharecropping, debt peonage, and mob violence,<sup>87</sup> to pressure the postbellum black population into precarious, low-wage labor arrangements with little prospects for economic upward mobility.

Second, the Black Codes were used as a *social control* mechanism. As such, the politics around the Black Codes foreshadowed a familiar theme in American political development whereby moments of black political empowerment have regularly been met with backlash, violence, and attempts to curtail minority political rights. As Megan Francis has argued, “the pattern of black protest leading to an expansion of civil rights and the subsequent contraction of these very rights through state-sanctioned violence is durable and it is integral to the way the American political system has developed.”<sup>88</sup>

For Southern whites (land-owning or not), the abolition of slavery not only brought economic collapse but also threatened to tear a social fabric made of the firm belief in white supremacy and black inferiority. After Emancipation, most Southern whites did not accept the notion that blacks were their equals and shared the sentiment that the Speaker of Virginia’s House of Representatives expressed before Congress in 1866:

There is no unkind feeling towards the negro in a position where he is not asserting equality; but the best friend a negro ever had in the world, the kindest friend he ever had, a young boy or girl raised by a negro mammy, and devotedly attached to her, would become ferociously indignant if the old mammy were to claim equality for a moment.<sup>89</sup>

Emancipation also stirred up fears of racial upheaval and retaliation from the freedpeople. Newspapers all over Georgia warned about potential “negro insurrection,” often instigated by Northern radicals, as “the Jacobins in Congress have succeeded in making the negro believe that the whole of this country is his property, and that the white man is nobody, whom the angelic nigger can destroy at his pleasure.”<sup>90</sup>

Through the unequal enforcement of vagrancy laws and other provisions in the Black Codes, Southern criminal justice systems thus became one vehicle, among others,<sup>91</sup> to diminish notions of racial equality and curtail freedpeople’s civil liberties. In support of this social control thesis, recent empirical work on Georgia has suggested that postbellum incarceration indeed

Individuals convicted for misdemeanor crimes were typically kept at county jails, and data on county jails are even harder to find. However, I was able to find county conviction numbers for selected years in other states, and these county numbers are also nowhere near the levels of antebellum enslavement.

<sup>81</sup>See, for example, E. M. Beck and Stewart E. Tolnay, “The Killing Fields of the Deep South: The Market for Cotton and the Lynching of Blacks, 1882–1930,” *American Sociological Review* 55, no. 4 (1990), 526–39; Blackmon, *Slavery by Another Name*; Trevon D. Logan, “Whitelashing: Black Politicians, Taxes, and Violence,” (working paper, National Bureau of Economic Research, Cambridge, MA, June 2019); Royce, *The Origins of Southern Sharecropping*.

<sup>82</sup>Megan Ming Francis, “The Strange Fruit of American Political Development,” *Politics, Groups, and Identities* 6, no. 1 (January 2018), 128–37; Garland, “Penal Controls and Social Controls,” 321–52; Vesla M. Weaver, “Frontlash: Race and the Development of Punitive Crime Policy,” *Studies in American Political Development* 21, no. 2 (2007): 230–65.

<sup>83</sup>*Report of the Joint Committee on Reconstruction*, Part II, 39th Congress, 1st Sess., 108.

<sup>84</sup>*The Central Georgian*, 1866, p. 2.

<sup>85</sup>Besides incarceration, research on lynchings has similarly suggested that mob violence was particularly common in areas where African Americans enjoyed greater emancipation and political empowerment. See, for example, Beck and Tolnay, “The Killing Fields of the Deep South,” 526–39; Logan, “Whitelashing.”

<sup>81</sup>Du Bois, *Black Reconstruction in America*, 166–81; Foner, *Reconstruction*, 198–205.

<sup>82</sup>Georgia General Assembly, An Act to Alter and Amend the 4435th Section of the Penal Code of Georgia (1866).

<sup>83</sup>Charles L. Flynn, *White Land, Black Labor: Caste and Class in Late Nineteenth-Century Georgia* (Baton Rouge: Louisiana State University Press, 1983), 123–25; Foner, *Reconstruction*; Daniel A. Novak, *The Wheel of Servitude Black Forced Labor After Slavery* (Lexington: The University Press of Kentucky, 1978), 203.

<sup>84</sup>See also, Muller, “Freedom and Convict Leasing in the Postbellum South,” 367–405.

<sup>85</sup>Foner, *Reconstruction*, 199.

<sup>86</sup>Admittedly, the data presented here only capture convictions to the state penitentiary; that is, only those prisoners convicted for felony crimes were counted.

spiked in areas that were particularly exposed to the ideas of equality brought by Northern reformers.<sup>92</sup>

In short, for both sociopolitical and socioeconomic reasons, incarceration of African Americans spiked in the immediate aftermath of the Civil War. As such, growth in incarceration during that time period seemed to foreshadow similar expansions of the carceral state in response to the Civil Rights movements a century later.<sup>93</sup> Importantly, however, this surge in prisoner populations after the Civil War *preceded*—not followed—the introduction of convict leasing.

*Carceral Reform and Fiscal Pressures.* As prisoner numbers grew, pressures to reform the state's carceral institutions intensified. As we have seen, the Georgia penitentiary was left in terrible condition after the events of 1864 and remained so throughout the 1860s. In his address to the legislature on November 1, 1866, the newly elected Governor Charles J. Jenkins, an ex-Confederate who served as Georgia Supreme Court Justice during the Civil War, only reaffirmed the assessment that his predecessor John E. Brown gave toward the end of the war:

The Penitentiary of the State has been this year passing through a trying ordeal. Subjected during the war to the torch of an invading army; at the commencement of the present political year it was in a state of great dilapidation—scarcely an available tenement on the premises, its workshops destroyed, the large cell-building roofless, and otherwise injured—everything wearing the aspect of ruin, with no funds, and few convicts to aid in the work of reconstruction.<sup>94</sup>

Equally destitute was the state treasury, such that “at the end of the war the state had on hand a few thousand dollars of its own treasury notes and 44,750 of real money—U. S. A. currency which could now be circulated.”<sup>95</sup> As state coffers were empty, Georgia lacked the resources to invest in an expansion of its prison infrastructure. At the same time, the penitentiary—or what was left of it—and its prisoners continued to cost the state money. In 1866, the Comptroller General reported penitentiary-related expenditures of \$21,950 (from here on, all dollar amounts are U.S. dollars unless otherwise specified) and projected that the costs for running the prison would climb to \$26,400 in 1867.<sup>96</sup>

By late 1866, the newly elected Georgia General Assembly, consisting mostly of ex-Confederate whites who were elected in the first postbellum state election in 1865,<sup>97</sup> saw itself forced to consider solutions to the growing “prison problem.” Ironically, the same men who were responsible for passing Georgia's Black Code legislation in early 1866 now had to figure out how to address the ramifications of these penal reforms. The General Assembly formed the Commission on the Future of the Georgia Penitentiary, whose task it was to generate reform proposals. What has been documented of these legislative deliberations reveals much about policy priorities and legislative intent at this

<sup>92</sup>Mazumder, “A Brief Moment in the Sun.”

<sup>93</sup>For an excellent account on how expansions in civil rights for African Americans during the 1960s prompted a shift toward more punitive crime policy that ushered in the current age of mass incarceration, see Weaver, “Frontlash,” 230–65.

<sup>94</sup>Georgia House of Representatives, *House Journal* (Milledgeville, GA, 1866), 25.

<sup>95</sup>Bass, “Civil War Finance in Georgia,” 213–224, 224.

<sup>96</sup>Georgia Comptroller General, *Annual Report* (Milledgeville, GA, October 1866).

<sup>97</sup>In the first postbellum election held in Georgia on November 15, 1865, black men were denied the right to vote or run for office. As a consequence, the new legislature consisted almost entirely of ex-Confederates. The new governor, Charles Jones Jenkins, was a more reform-oriented Democrat who had initially opposed secession and sworn allegiance to the Union.

juncture. In particular, leasing emerged out of these debates as one alternative to the penitentiary model—but not the only one.

Indeed, one of the initial proposals was to abandon prison confinement altogether and instead return to a system of corporal and, where necessary, capital punishment for crime and delinquency. During the legislative hearings in February 1866, J. A. Render, a State House representative from Meriwether County, argued that penitentiary confinement constituted an ineffective strategy to deter crime or reform the prisoner, as it was “not a speedy mode of inflicting punishment.” Rather, he saw the penitentiary as “a school of vice where the most abandoned and hardened criminals act as teachers to those who have taken their first lessons in crime.” Instead, he advocated for reinstating corporal and capital punishment: “When the law is violated, inflict speedy corporal punishment. This will be dreaded much more than Penitentiary punishment, and much better for the peace and interest to society, and much less burdensome to the people.”<sup>98</sup>

Other reform proposals suggested moving the penitentiary to a more lucrative location in an effort to turn it profitable. One such location was discussed in more detail in the Legislative Report of Commissioners on the Future of the Georgia Penitentiary, along with a variety of other reform suggestions. Circling back to antebellum debates in the 1850s, the commission once again proposed to rebuild the penitentiary at Stone Mountain where convicts could be put to work in a state-operated mine:

Another consideration ... connected with the location of a Penitentiary has reference to a development of the resources of the State—mineral and others. If this institution ... can be made useful in developing its [the state's] resources ... it would commend it more to the favor of the people than any consideration that can be advanced from its past history, or any promise it may hold out in the future from its ordinary operations.<sup>99</sup>

However, none of these proposals were able to garner sufficient support.<sup>100</sup> The prospect of returning to a system of corporal punishment appalled many Georgians, in part because the punishment inflicted under this system was often incommensurate to the crime committed and, worse, irreversible. As *The Federal Union*, an anti-Union newspaper in Georgia, wrote in January 1866:

We hope the Legislature will reflect long and seriously before they decide to abolish the Penitentiary system in Georgia.... It is preposterous to talk about hanging men for stealing. The punishment must bear some proportion to the crime, or the feelings of the people will revolt against it.... One great advantage of the [penitentiary] system [is that] it gives time to correct any mistake by Judges or jurors; but if an innocent man has been hanged by false testimony or any other error, there is no chance for redress.<sup>101</sup>

At the same time, the state simply lacked the funding to relocate and rebuild the penitentiary at a different location. In his speech,

<sup>98</sup>J. A. Render's speech as printed in *The Southern Recorder*, “Abolishment of the Penitentiary,” *The Southern Recorder*, February 20, 1866, p. 1, accessed May 5, 2023, <https://gahistoricnewspapers-files.galileo.usg.edu/lccn/sn82016415/1866-02-20/ed-1/seq-1.pdf>.

<sup>99</sup>Georgia House of Representatives, *House Journal* (1866).

<sup>100</sup>Bonner, “The Georgia Penitentiary.”

<sup>101</sup>“The Georgia Penitentiary,” *The Federal Union*, January 10, 1866, accessed November 5, 2020, <https://gahistoricnewspapers.galileo.usg.edu/lccn/sn85038488/1866-01-16/ed-1/seq-1/>.

J. A. Render expressed these fiscal concerns explicitly, worrying about the prison's unnecessary financial burden on the state and taxpayers, especially given the fiscal difficulties the state found itself in after the war:

But there is another view of this subject too important to be overlooked at the present time, and under the present circumstances. I refer to its [the penitentiary's] expense. As is known to every member, our Penitentiary was burnt down by Gen. Sherman's Army, If the system is continued, it must be at a heavy cost to the State. In our present condition we cannot afford to incur a heavy tax, to provide accommodation for villains, cut-throats and a school for crime.<sup>102</sup>

Theatrics aside, Render's speech echoed broader public concern about the penitentiary and its financial liability—a sentiment that had been growing since before the war. As early as January 1865, a few months before the war would end, the *Columbus Times* demanded the abolition of the penitentiary and a return to corporal and capital punishment, as witnessed elsewhere in the South:

If our penitentiary ... is rebuilt, ... it will be at a cost of one or two million dollars. This will increase the debt of the State that amount.... It seems to us a propitious time to revise our Penal Code, and abolish the penitentiary system—adopting in lieu thereof the principles embodied in the Codes of South and North Carolina [corporal and capital punishment].<sup>103</sup>

Later in 1865, the *Savannah Daily Herald* likewise urged for penal reforms, considering it “one of the earliest duties of the legislature, not only to revise the penal code, but the system of punishment for crime.”<sup>104</sup> At this point, leasing as an option was put on the table again. In the short run, leasing offered a relatively cost-effective way of handling the soaring prison population. The legislature thus passed a law in December 1866 that authorized the governor to enter a lease agreement to “farm out the penitentiary” (GA Gen. Assem. (1866) A-221).<sup>105</sup>

Governor Jenkins, however, had no intention of farming out the state's prisoners nor did he favor suggestions to move the penitentiary to a different location. Instead, he urged the General Assembly to furnish the warden with funds to rebuild and modernize the existing structure. And so the state prison continued to cost the state resources as the legislature appropriated \$30,000 “for the support and repairs of the Georgia Penitentiary” and another \$6,600 for personnel salaries for the year 1867.<sup>106</sup>

However, the amount was hardly enough to meet the financial demands of the institution. By the end of the fiscal year of 1868, the new principal keeper of the penitentiary, Overton Walton, reported a considerable amount of debt and asked for even more funding:

<sup>102</sup>“Abolishment of the Penitentiary,” *The Southern Recorder*, February 20, 1866, p. 1, accessed May 5, 2023, <https://gahistoricnewspapers-files.galileo.usg.edu/lccn/sn82016415/1866-02-20/ed-1/seq-1.pdf>.

<sup>103</sup>Columbus Times. “The Georgia Penitentiary.” *Columbus Times*, January 30, 1865, p. 1, accessed May 5, 2023, <https://gahistoricnewspapers-files.galileo.usg.edu/lccn/sn86053047/1865-01-30/ed-1/seq-2.pdf>

<sup>104</sup>Savannah Daily Herald. 1865. “Criminal Reformation.” *Savannah Daily Herald*, December 7, 1865, p. 1, accessed May 5, 2023, <https://gahistoricnewspapers-files.galileo.usg.edu/lccn/sn82014389/1865-12-07/ed-1/seq-1.pdf>.

<sup>105</sup>Georgia General Assembly, An Act to Regulate the Manner in Which the Penitentiary Shall Be Managed, and to Provide for Farming Out the Same (1866).

<sup>106</sup>Georgia General Assembly, Appropriations Act (1866), A-002, secs. XIII, XV <http://neptune3.galib.uga.edu/ssp/cgi-bin/legis-idx.pl?sessionid=7f000001&type=law&byte=38667984&lawcnt=221&filt=doc>.

We found the Penitentiary considerably involved in debt at the time of taking charge of it, amounting to some \$25,000, principal and interest, and mostly with creditors who had furnished the means to sustain the Institution at a time when State aid could not be had. These debts ought to be paid by suitable appropriation without delay. We shall also need an appropriation of \$30,000 for the present year [1869], for the support of the Institution.<sup>107</sup>

In sum, by the end of Confederate Reconstruction in early 1867, the penitentiary struggled to accommodate the growing number of prisoners it received from the courts due to changes in the penal codes in 1865 and 1866. At the same time, the state lacked the funding to expand its carceral facilities—on the contrary, in an effort to address prison overcrowding, it had accrued considerable amount of debt. Leasing, although not yet put into operation, had already been discussed as a possible solution to the fiscal difficulties the institution was facing.

#### 4.4 The Politics of Punishment During Congressional Reconstruction

By 1867, Georgia had descended into political chaos. In the spring of that year, Congress had passed the First Reconstruction Act, which placed Georgia, Alabama, and Florida under military governance, supervised by General John Pope. The Georgia General Assembly elected back in 1865 was dissolved, and General Pope, as instructed by Congress, started registering eligible white and black voters throughout Georgia. In the fall of 1867, Georgians elected 169 delegates, including thirty-seven African Americans, to attend a new Constitutional Convention that was held in Atlanta between December 1867 and March 1868. The convention delegates wrote and passed a new state constitution in compliance with Congressional demands such as the right to vote for African Americans. Governor Jenkins, after opposing the appropriation of state funds to organize the Atlanta convention, was removed from office and replaced by the provisional military Governor General Thomas H. Ruger in January 1868.

In April 1868, Georgians were once again asked to the polls, this time to vote for a new legislature and governor. Republicans made significant gains in both houses, taking control of the Senate with twenty-seven seats, three of them belonging to black legislators. In the House, they fell short of a majority by only three seats, with a total of eighty-four Republican legislators, including twenty-nine African Americans.<sup>108</sup> In the gubernatorial race, the Republican candidate Rufus Bullock won over the ex-Confederate John B. Gordon and took office in July 1868.

Ironically, amid all the political turmoil of Congressional Reconstruction, it was General Ruger—the provisional military governor that Congress had appointed in early 1868—who would sign the very first contract to lease out Georgia's state convicts. On May 11, 1868, only a few weeks after Georgia's Reconstruction legislature was elected, Ruger leased the first hundred prisoners to William A. Fort, who would work them on the Georgia and Alabama Railroad for the duration of one year. Fort agreed to pay the state \$2,500, or 7 cents per prisoner per day. Not even two months later, Fort requested another

<sup>107</sup>Principal Keeper of the Georgia Penitentiary, *Annual Report* (Atlanta, GA, 1868), 5.

<sup>108</sup>This step was deemed necessary after Georgia's legislature had almost unanimously rejected the Fourteenth Amendment, which guaranteed citizenship rights to freepeople, during its regular session in November 1866.

hundred convicts for the duration of one year in exchange for a sum of \$1,000.<sup>109</sup>

The seemingly bipartisan support of the lease system in Georgia, or at least the lack of partisan opposition to it, mirrored the experience in other Southern states during Congressional Reconstruction. Here, too, leasing statutes were often passed with support of Reconstruction legislators and governors, many of whom were African American. As in Georgia, it was the federally appointed military governor General Alvan C. Gillem who made the first lease contract in Mississippi in 1868.<sup>110</sup> In Louisiana, leasing was formally introduced in 1869 by a legislature with a Republican majority. Interestingly, of the twenty-five black state legislators in Louisiana, all but one voted in favor of the act.<sup>111</sup> Similarly, black Republicans played a central role in introducing the lease system in South Carolina.<sup>112</sup>

Why did Republican lawmakers and black officeholders at the time support the introduction of a carceral policy that would soon be seen as “worse than slavery”<sup>113</sup>? In the midst of Reconstruction, carceral policy seemingly took a backseat to other institutional and policy projects that were deemed more important in the aftermath of the Civil War and Emancipation. For example, the focus of many Southern Republicans, backed by Northern industrial interests, was to expand infrastructure, in particular railroad networks, across the South.<sup>114</sup> Given that resources were extremely constrained in the first decade after the Civil War, spending what little was available on state-of-the-art prisons was simply not considered a priority. Similarly, in order to help their communities gain economic independence, black legislators were eager to invest public funds into education.<sup>115</sup> In addition, black Reconstruction politicians found themselves under enormous pressure to demonstrate their suitability for public office and deservingness of citizenship. As such, protecting rights and liberties of convicted prisoners took a backseat to the “politics of respectability” that dominated black political life in the postbellum years.<sup>116</sup>

Overall, these political dynamics provide suggestive evidence that convict leasing did not emerge out of a partisan struggle between progressive Republicans and conservative Democrats. Rather, it was initially supported (or at least tolerated) by a bipartisan coalition in a short-term effort to dispose of the expanding prison population and to free resources for other Reconstruction projects that were deemed more important.<sup>117</sup>

<sup>109</sup>Principal Keeper of the Georgia Penitentiary, *Biennial Report 1872–1873*, p. 22.

<sup>110</sup>Mancini, *One Dies, Get Another*, 132.

<sup>111</sup>Mark T. Carleton, *Politics and Punishment: The History of the Louisiana State Penal System* (Baton Rouge: Louisiana State University Press, 1971), 18.

<sup>112</sup>Ayers, *Vengeance and Justice*, 190.

<sup>113</sup>Oshinsky, *Worse Than Slavery*.

<sup>114</sup>For example, Mark Wahlgren Summers, *Railroads, Reconstruction, and the Gospel of Prosperity: Aid Under the Radical Republicans, 1865–1877*, course book (Princeton, NJ: Princeton University Press, 2014).

<sup>115</sup>Trevon D. Logan, “Do Black Politicians Matter? Evidence from Reconstruction,” *The Journal of Economic History* 80, no. 1 (March 2020): 1–37.

<sup>116</sup>Saidiya Hartman’s work on “fashioning obligation” among freedpeople in the postbellum years by insisting upon “dutiful conduct as a prerequisite for enjoying the entitlements of freedom” is insightful in that regard. See Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth Century America* (New York: Oxford University Press, 1997), p. 145, ch. 5. More recent psychological research on the “politics of respectability” has likewise shown how “an insistence on proper comportment and good behavior from in-group members” can lead to more punitive policy preferences among Black Americans. See Hakeem Jefferson, “Punishment and the Politics of Respectability among Black Americans” (unpublished manuscript, 2022).

<sup>117</sup>These political dynamics also foreshadowed similar patterns of bipartisan support for carceral expansion throughout the twentieth century. As recent work on the U.S.

#### 4.5 Georgia’s Convict-Lease System in Its Early Years

It would take another seven years until the lease system was in full swing in Georgia, but even in its early years, the exploitative potential of the policy was obvious to those who cared to look. Just a few months after the first lease was signed in 1868, then-Principal Keeper Overton Walton concluded in his annual report to the governor:

From a personal inspection of the stockades and hospitals provided for the accommodation of the convicts employed on the Selma, Rome & Dalton Railroad I am fully satisfied that a humane treatment of them is *entirely ignored* [emphasis added].<sup>118</sup>

At the same time, Overton complained that “the price paid... as wages of the convicts is thought to be inadequate.... unless the State shall receive a greater annual hire, the farming out of the Penitentiary convicts must prove an expense instead of a source of income to the State.”<sup>119</sup> These fiscal considerations led him to the conclusion that “if the private parties can make money by hiring convicts, the State can certainly make money by working out contracts on her own account.”<sup>120</sup> Overton’s recommendation was to replace leasing with a contract system that would have allowed state supervision over the convict labor force and its working conditions.

However, when the first lease with William A. Fort expired a year later, the state already had new bidders lined up. In June 1869, Governor Bullock signed a new lease, now renting out the entire penitentiary to Grant, Alexander & Co., a railroad construction company that was responsible for building portions of the Western and Atlantic Railroad line stretching from Atlanta to Chattanooga in Tennessee. This mirrored developments in other states where convicts were routinely sent to grade and restore railroad lines. Leasing convicts to railroad contractors initially aligned well with the Republican “Gospel of Prosperity” during Reconstruction, which saw in railroad (re-)construction the primary avenue of industrialization and economic restructuring in the postbellum South. Railroad construction companies, themselves severely cash-strapped and fiscally constrained after the Civil War, were willing takers of cheap convict labor.<sup>121</sup>

Notably, the state initially did not seem to share Overton’s concerns about profitability. On the contrary: Unlike the previous lessee, Grant, Alexander & Co. received the entire prison population *free of charge*. The contractors’ only duty was to take care of prisoner lodging, food, and medical treatment, and to hire prison guards.<sup>122</sup> Thus, while profit became a driving force in later years, the state’s main concern at this juncture seemed to be to alleviate the state of the pending fiscal burden of running the penitentiary.

Only six months after the lease was signed with Grant, Alexander & Co. in 1869, the new prison warden, John Darnell,

carceral states has shown, the rise of mass incarceration since the 1960s has often been supported—and facilitated—by Democratic and Republican elites alike. See, for example, James Forman, *Locking Up Our Own: Crime and Punishment in Black America* (New York: Farrar, Straus and Giroux, 2017); Fortner, “The Carceral State,” 14–35; Elizabeth Kai Hinton, *From the War On Poverty to the War On Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2016); Murakawa, *The First Civil Right*; Taylor, “Sunbelt Capitalism,” 292–322.

<sup>118</sup>Principal Keeper of the Georgia Penitentiary, *Annual Report* (1868), p. 8.

<sup>119</sup>*Ibid.*, 8.

<sup>120</sup>*Ibid.*, 9.

<sup>121</sup>Lichtenstein, *Twice the Work of Free Labor*; Summers, *Railroads, Reconstruction, and the Gospel of Prosperity*.

<sup>122</sup>The lease contract with Grant, Alexander & Co. as printed in Georgia General Assembly, *Proceedings of the Joint Committee Appointed to Investigate the Condition of the Georgia Penitentiary* (Atlanta, GA, 1870), 15–16.

who was left with only a handful of invalid or elderly prisoners who remained within the prison walls, warned in his annual report to the governor about the difficulty to hold the new lessee accountable. In particular, the state seemed to have lost count of the exact number of prisoners who were in the hands of the lessee:

I have no way of knowing the exact number of each color on the two Railroads mentioned above. Neither can I say positively that they have the exact number of convicts now debited to them in possession, for, notwithstanding my repeated and urgent requests to the contractors to make weekly statements to this institutions of the number of escapes, deaths, pardons,&c. [sic], as well as the number on hand, they have failed to make but one report, which report was very unsatisfactory.<sup>123</sup>

Concerned about these developments, the legislature appointed a Committee to Investigate the Condition of the Georgia Penitentiary in 1869. The committee consisted of six members, including two black House representatives, James M. Simms and Henry M. Turner. In his witness testimony before the committee in May 1870, the principal keeper once again raised concerns about the lack of transparency and state oversight.

Q. Rawls—How is it possible that there can be prisoners with out [sic] direct information to the Principal?

A. John Darnell, Principal Keeper—By Grant, Alexander & Co. receiving them from the place of sentence and not reporting descriptive list to me.<sup>124</sup>

At the same time, more reports about cruel abuse and treatment of convicts by the hands of their lessee surfaced. To give a concrete example from one of several witness testimonies by former prisoners, as provided during the 1870 committee hearings:

Q. Hillyer—You stated that you saw one man whipped to death, were you present when he was whipped?

A. Prisoner—I was

Q. Hillyer—How many licks did he receive?

A. Prisoner—I cannot tell; I was in the cut at work and did not count them. The man went on the bank, told the overseer he was sick. Overseer ordered him to go to work. He said he was not able. Overseer said pull down your pants, I will make you able. He then whipped him. Afterwards he ordered the water carrier to pour water on him. He died in about five minutes.<sup>125</sup>

However, as the committee investigation went on, these witness reports fell on deaf ears. Instead, the legislators were more concerned with taking steps to reduce expenditures for incarceration even further. Thus, in January 1872, toward the end of Reconstruction, the legislature passed an act that not only gave the governor full discretion in arranging lease contracts, but it also ordered the immediate dismissal of all custodial personnel in the state's employ, except for the warden. The warden—or principal keeper of the penitentiary—was to continue on as the sole “inspector” of convicts, reporting directly to the governor:

The General Assembly of the State of Georgia do enact, ... Sec.II. That all the officers and employees now required and employed in and about said Penitentiary, shall be discharged, except the Principal Keeper thereof, after

<sup>123</sup>Principal Keeper of the Georgia Penitentiary, *Annual Report* (Atlanta, GA, 1869), 7.

<sup>124</sup>Georgia General Assembly, *Proceedings to Investigate the Condition of the Georgia Penitentiary*, 4.

<sup>125</sup>*Ibid.*, 72–73.

such contract as hereinbefore named shall have been made, and the convicts turned over to the contractors. The Principal Keeper shall continue in office as Inspector of convicts, and shall report to the Governor any and all violations of the contracts by the persons to whom the convicts shall have been farmed, and discharge all the duties now required of him by law, as well as those of Inspector of the Penitentiary, so far as such discharge shall be consistent with the carrying out of the contract or contracts hereinbefore authorized.<sup>126</sup>

In sum, by the early 1870s, Georgia had fully committed to the lease system. As prisoner numbers grew steadily, the penitentiary in its original intent had been abandoned, and Georgia had adjusted leasing operations so as to minimize expenditures and financial liabilities for the state. As Reconstruction drew to a close and Redeemer governments took over, however, these earlier institutional choices would prove fateful for the further development of the state's convict leasing system.

#### 4.6 Redemption Politics, Policy Conversion, and “New South” Capitalism

Indeed, precisely because the leasing policy was introduced for pragmatic rather than programmatic reasons, it was open to dynamics of what scholars of American political development call policy conversion, whereby political actors were able to “redirect institutions or policies toward purposes beyond their original intent.”<sup>127</sup> Due to the deliberate lack of state supervision and regulation of the system, politicians and private actors were able to bend the policy to fit their needs and interests over time. The state's laissez-faire attitude toward the system, which was initially born out of the desire to minimize the financial burden of incarceration, not only set the stage for the systematic exploitation of African Americans by private interests, but it also made leasing as an institution extremely amenable to changes in these interest constellations over time.

As Congressional Reconstruction ended in Georgia in the 1870s,<sup>128</sup> essentially cementing in one-party rule of the state until the 1940s,<sup>129</sup> prospects for abolition of the lease system would be buried for decades. Instead, Redeemer politicians and public officials were eager to sign new, even longer leases. Eventually, in February 1874, the legislature decided that it would be best to lease out the penitentiary for no less than twenty years. In April of the same year, Governor James M. Smith advertised for bids for the new lease in the Atlanta Constitution.<sup>130</sup> The state signed contracts with three “Penitentiary Companies,” which consisted of a conglomerate of several railroad, mining, and brick production lessees. Convict labor thus began to play an increasingly important role for New South capitalists as it helped keep labor costs down and suppress wages for free laborers in these industries.<sup>131</sup>

<sup>126</sup>Georgia General Assembly, An Act for Farming Out the Convicts of the Penitentiary (1872), Law No. 198, Sec. II.

<sup>127</sup>Hacker, “Privatizing Risk,” 243–60.

<sup>128</sup>The end of Reconstruction is defined as the election that led to simultaneous Democratic control of the governorship and both chambers of the state legislature. See Eric Foner, *Freedom's Lawmakers: A Directory of Black Officeholders during Reconstruction*, Schomburg Center for Research in Black Culture (New York: Oxford University Press, 1993), xiii.

<sup>129</sup>Mickey, *Paths Out of Dixie*.

<sup>130</sup>“The Penitentiary Convicts,” *The Atlanta Constitution*, March 7, 1874, p. 2.

<sup>131</sup>See Lichtenstein, *Twice the Work of Free Labor*; Mancini, *One Dies, Get Another*; A. Elizabeth Taylor, “The Origin and Development of the Convict Lease System in Georgia,” *The Georgia Historical Quarterly* 26, no. 2 (June 1942): 113–28.

Convicts were distributed evenly among these contractors, and lessees were to pay \$500,000 to the state in twenty annual installments, prorated to the number of convicts at hand in each company. After the state had released almost all prison personnel in 1872, the only remaining cost for the state was the salary of the “penitentiary keeper,” who was supposed to serve as the liaison person between the state and the private contractors.<sup>132</sup> From a financial perspective, the convict-lease system thus “performed” better and better. In his biennial report to the governor in 1879, then-Principal Keeper John W. Nelms recapitulated the annual appropriations made to support state carceral institutions over the years. Based on his numbers, in the fifty-one years between the initial decision to build a penitentiary in 1811 and the beginning of the Civil War, the legislature appropriated \$485,051—roughly \$9,510 per annum, or \$263 per prisoner per annum. Extrapolating those numbers to the postbellum prisoner counts between 1865 and 1879, the legislature would have had to appropriate roughly \$49,151 per annum—*more than five times* the average antebellum amount—to support the postwar penitentiary and its growing prisoner population. However, as the penitentiary keeper concluded, the shift toward convict leasing had spared the state these potential expenses:

I will add, that, while the present system has many grave faults, when we look at it from a financial standpoint—contrasting annual income now derived with the annual amount drawn to support it—from its incipency to the time of the first lease—we will hardly deny that the present lease system is a success.<sup>133</sup>

Indeed, for the first time since the introduction of the penitentiary, punishing crime and deviance not only became cost-neutral for the state, but the carceral state also generated net-positive revenue. Under the twenty-year contract signed in 1876, the state received \$25,000 per annum in revenue from the lessees, while annual expenditures related to the penitentiary (mainly the salary of the principal keeper and his assistants) rarely exceeded \$10,000 until the late 1890s. Even after the twenty-year lease contract expired in 1896, the state generated more revenue through leasing than the “operation” of the system incurred.

Over the years, the New South industrialists, who contracted the convict labor, would become infamous for their abhorrent treatment of prisoners and blatant ignorance of human and worker rights. Occasionally, highly contentious investigations into such reports of prisoner abuse and mismanagement exposed the horrors of the system to the public, but the state remained both unwilling and unable to regulate lessees effectively. Once Georgia had signed a twenty-year contract with the three “penitentiary” companies in 1876, it became difficult for the state to renegotiate—let alone terminate—leases before they eventually expired in 1896.

In 1878, for example, the chairman of the House Committee on the Penitentiary, Robert Alston, made a passionate speech before the legislature, introducing several motions to reform the system in order to allow the state better control and supervision of the convicts.<sup>134</sup> In addition, Alston expressed outrage because the convict-leasing system had begun to line the pockets of

powerful Bourbon politicians and industrialists—including the infamous “Bourbon Triumvirate,” which would come to dominate Georgia’s politics until the 1890s.<sup>135</sup> However, Alston’s crusade to abolish the system remained futile as concerns about public finance once again dominated the public discourse. As the *Monroe Advertiser* put it in December 1878:

The truth is that there is to be a preconcerted attempt made to break the present system of hiring out the convicts. Doubtless those engaged in the attempt are actuated by the best of motives, but the result to the tax payers will be fearful. A wall penitentiary will cost a large sum, and maintaining the convicts would almost bankrupt the State. The penitentiary was always an expensive institution previous to the war but being rich the State could then afford it. Now the State is poor and in debt and cannot spend hundreds of thousands of dollars to keep the criminals in one piece.<sup>136</sup>

Thus, the legislative investigation led nowhere, and when Alston was killed in 1879, so were his reform efforts.<sup>137</sup>

The next serious challenge to the system arose in 1887 when reports about inmate abuse in one of the leasing camps once again led to a formal investigation and trial to determine whether the twenty-year lease should be canceled. While the investigation uncovered widespread mistreatment and neglect of convicts, it proved difficult to end the contract altogether—in no small part because some of the main stakeholders in the leasing companies were also current and former Bourbon politicians.

One of those prominent stakeholders was the incumbent Governor John B. Bullock. As reported in a local newspaper, Bullock owned one fourth of the “Penitentiary Company No. 3,” which operated, among others, the brick-manufacturing camp in Chattahoochee County.<sup>138</sup> One conscientious judge involved in the trial proceedings at the time pointed out that this presented an obvious conflict of interest: “But the proceedings which bring us here are leveled at the company which you organized, that existed by your own act, and the contract that you are called upon to cancel, is one that bears your name.”<sup>139</sup> The judge consequently moved to disqualify Governor Brown from presiding over the trial, thus removing him from the decision on whether or not to terminate the lease. However, the judge seemed alone in his concerns because the Court dismissed his motion, claiming that the governor had divested his monetary interests in the company when he had taken office. It comes at no surprise that Governor Brown subsequently upheld all lease contracts.

<sup>135</sup>The “Bourbon Triumvirate” referred to the three most influential politicians in Georgia in the post-Reconstruction Era: Joseph E. Brown, Alfred H. Colquitt, and John Brown Gordon. All three were ex-Confederates and members of Democratic party. Throughout their reign, they occupied a number of the most powerful political offices in state. Joseph E. Brown was the forty-second governor of Georgia throughout the Civil War (1857–1865) before he served as chief justice of the Georgia Supreme Court during Reconstruction (1868–1870) and U.S. senator during Redemption (1880–1891). John B. Gordon served in the U.S. Senate between 1873 and 1880 and became the fifty-third governor of Georgia between 1886 and 1890 before returning to the U.S. Senate in 1891. Alfred H. Colquitt briefly served in the U.S. House of Representatives before the Civil War (1853–1855). After Reconstruction, he became the forty-ninth governor of Georgia between 1877 and 1882 before serving in the U.S. Senate between 1883 and 1894.

<sup>136</sup>“The Georgia Penitentiary,” *The Monroe Advertiser*, December 24, 1878, p. 1, accessed May 5, 2023, <https://gahistoricnewspapers-files.galileo.usg.edu/lccn/sn85034048/1878-12-24/ed-1/seq-2.pdf>.

<sup>137</sup>Taylor, “Origin and Development of the Convict Lease System,” 120.

<sup>138</sup>“Recapitulation of Testimony for the State,” *The Georgia Weekly Telegraph*, September 13, 1887, p. 1, accessed February 2, 2022, <https://gahistoricnewspapers-files.galileo.usg.edu/lccn/sn89053329/1887-09-13/ed-1/seq-1.pdf>.

<sup>139</sup>Judge Hopkins, as cited in “Horrors of the Camps: The Fight to Cancel the Leases Begun,” *The Morning News*, September 2, 1887, p. 2, accessed February 2, 2022, <https://gahistoricnewspapers-files.galileo.usg.edu/lccn/sn86063034/1887-09-02/ed-1/seq-2.pdf>.

<sup>132</sup>Taylor, “Origin and Development of the Convict Lease System,” 119.

<sup>133</sup>Principal Keeper of the Georgia Penitentiary, *Biennial Report 1878–1879* (Atlanta, GA, 1879), 7.

<sup>134</sup>Summary of House Afternoon Session,” *The Georgia Weekly Telegraph*, December 17, 1878, p. 8, accessed May 5, 2023, <https://gahistoricnewspapers-files.galileo.usg.edu/lccn/sn85034222/1878-12-17/ed-1/seq-8.pdf>.

Over the years, few observers were startled by the fact that the abuse and exploitation witnessed in the leasing camps predominantly affected African Americans, who made up the majority of the convict population. In a cultural environment that remained rooted in white supremacist beliefs, many white Southerners were convinced of the inherent criminality—and thus “deservingness” of punishment—of the black population. Such beliefs were often stated explicitly by officials running the leasing operations. In his annual report to the legislature in 1876, then-Principal Keeper John T. Brown explained the large racial disparities in the convict population as follows:

The work of reformation must be begun and prosecuted with the colored masses outside of the Penitentiary. The only difference existing between the colored convicts and the colored people at large consists in the fact that the former have been caught in the commission of crime, tried and convicted, while the latter have not. The same results would happen to the latter should the same opportunities for criminal action and criminal conviction occur. The entire race is destitute of pride of character.<sup>140</sup>

In sum, the initial emphasis on expenditure reduction and cost effectiveness, which motivated the introduction of convict leasing during Reconstruction, left the state of Georgia with weak enforcement and oversight powers over its prison population in the long run. As demand for convict labor increased, the lack of state supervision made the system vulnerable to corruption, rent-seeking, and client politics, allowing prominent Bourbon politicians and industrialists in the state to bend the policy to their changing needs over time. And since many Southern whites firmly believed in white supremacy and the inherent inferiority and criminality of black people, appeals to reform the system based on humanitarian and moral principles typically fell on deaf ears.

Thus, in the end, it was concerns about corruption and financial mismanagement—not misgivings about inhumane and exploitative treatment of convicts—that led to the abolition of convict leasing in Georgia in the early 1900s. Following one last investigation into the lease system in 1907, Georgia terminated leasing to private entities in 1908, with the last lease expiring in 1911. But even during this last investigative process, legislators were less concerned about the blatant abuse of prisoners in the camps. Instead, they were preoccupied with the rampant corruption within the system and the extent to which it affected the state’s own revenue and profit margins.<sup>141</sup> Leasing was replaced with prison labor on state-owned penal farms or in chain gangs on public roads—once again with the objective to protect public funds in a political climate that remained fiscally conservative.<sup>142</sup>

## 5. Conclusion

Following the end of the Civil War and the Emancipation of nearly four million enslaved individuals in 1865, Southern states were required to fundamentally reorganize all of their social, political, and economic institutions. During this time period, Southern criminal justice systems came to play a major role in reinstating racial orders and exerting social control as Southern

elites strategically revised penal codes to facilitate the large-scale incarceration of freedpeople. Hence, Southern carceral states, which had been limited in size during the antebellum era, expanded massively in the years immediately following Emancipation and the Civil War.

The punitive turn that Southern societies took after Emancipation coincided with the introduction of convict leasing, which became the dominant carceral institution in the American South after the Civil War. Its introduction marked a notable break from the conventional mode of punishment for felony crime in state-run carceral facilities such as penitentiaries, which were common throughout the region before the Civil War. The departure from the penitentiary model and turn toward convict leasing in the postbellum South has often been portrayed as an effort to find an alternative source of cheap, coerced labor after chattel slavery was abolished. Given its resemblance to antebellum labor arrangements and practices, this conclusion may come about naturally. However, a closer look at the timing of political events and underlying political processes that led to the introduction of the policy reveals that “neo-slavery” narratives are inconsistent with a number of empirical observations. First, leasing was introduced in many states only *after* states had witnessed substantial growth in their postbellum prison populations. Second, most convicted prisoners were not employed in traditional “slave labor” industries (e.g., plantations) but instead were forced to labor in emerging industrial sectors for New South capitalists. And while the criminal justice system served as an important mechanism to enforce exploitative sharecropping contracts in the agricultural sector, convict leasing never became a significant direct source of agricultural labor to the degree that neo-slavery interpretations of the system would suggest. And last, the introduction of leasing was often supported by a broad political coalition, including the very actors that had fought to see slavery abolished.

In this article, I have therefore sought to revisit the political origins of convict leasing more systematically using the case of Georgia. I have argued that its introduction was in part a consequence of short-term fiscal pressures and limited institutional capacity. By paying closer attention to the sequencing of political events during Confederate and Congressional Reconstruction, I have shown how the punitive turn that Southern societies took after 1865 subsequently increased state fiscal pressures. As incarceration numbers grew rapidly after the war, aided by unequally enforced reforms of the penal code, the existing Southern prison infrastructure—or what was left of it after the war—was quickly overwhelmed. At the same time, Southern governments faced enormous fiscal constraints, as many of them had accrued massive debts during the war, but also remained reluctant to expand their fiscal capacities through conventional levers of public finance such as taxation. Given their limited carceral infrastructure, and the lack of public funds to build one, Reconstruction governments initially saw convict leasing as a short-term solution to facilitate carceral growth at very little cost to the state. The decision to privatize carceral functions via convict leasing was thus in part a consequence of limited state capacity as well as public finance considerations.

My account complements a growing body of literature that seeks to understand how fiscal and economic conditions facilitated prison development in the twentieth century. Some of this work has argued that prisons in the second half of the twentieth century were often built in economically distressed communities as a way to revive local economic conditions, thereby catalyzing subsequent growth in incarceration. For example, Ruth Wilson

<sup>140</sup>Principal Keeper of the Georgia Penitentiary, *Annual Report* (Atlanta, GA, 1876), 7.

<sup>141</sup>For example, Georgia General Assembly, *Proceedings to Investigate the Convict Lease System of Georgia*, 1063–70.

<sup>142</sup>For an excellent analysis on Southern whites’ efforts to minimize taxation and public spending, see Suryanarayan and White, “Slavery, Reconstruction, and Bureaucratic Capacity,” 568–84.

Gilmore has documented how economic crises and restructuring in California had created a local surplus in labor, capital, and state capacities, which facilitated prison construction in rural areas and fueled massive increases in state-level incarceration in the 1980s.<sup>143</sup> Nevertheless, the role that fiscal factors played in carceral policy choices in the postbellum South was distinct from the prison development observed in more recent decades. Specifically, as I have argued here, convict leasing was first born out of the fiscal pressures *caused by* the initial punitive turn that Southern governments took post-Emancipation, and thus was a consequence of the lack—rather than the surplus—of state capacity.

In addition, the story of the origins of convict leasing allows us to revisit some of the dominant narratives of Southern state-building after the Civil War. Existing scholarship on the postbellum South has repeatedly emphasized that the region remained underdeveloped with weak state capacities throughout the second half of the nineteenth century. In an effort to reinstate antebellum racial hierarchies and to maintain regional autonomy, post-Reconstruction governments actively undermined taxation capacity and fended off federal interventions that might have helped build state capacity but that would have threatened the racial order of the region.

However, despite these commitments to limited government and fiscal austerity, Southern states were able to significantly

expand their carceral capacities during the postbellum era. The introduction of convict leasing allowed Southern governments to deepen their coercive powers after 1865. The mechanism through which this was made possible was privatization: By privatizing carceral functions, Southern states were able to further scale incarceration, in particular of freedpeople, at essentially zero cost. Thus, the introduction of convict leasing in the postbellum South illustrates a dynamic of state-building whereby weak, cash-strapped states strengthened certain aspects of their state capacity by forging strategic public-private partnerships.

Leasing would become one of the “harshes and most exploitative labor systems in American history.”<sup>144</sup> Over the course of its existence, tens of thousands of African Americans were convicted, often on trumped-up charges, and coerced to labor for the benefit of private contractors, who showed no concern for their well-being or worker rights. The Enlightenment philosophy of the early nineteenth century that saw confinement and manual labor as avenues for reform and apprenticeship for criminal offenders took a backseat to private profiteering and the state’s concerns about public finance after the Civil War. That these priorities once again deprived freedpeople of their fundamental rights as citizens outraged few observers in a political culture that remained anchored in deeply held beliefs about white supremacy and black inferiority.

<sup>143</sup>Ruth Wilson Gilmore, “Globalisation and US Prison Growth: From Military Keynesianism to Post-Keynesian Militarism,” *Race & Class* 40, no. 2-3 (March 1999): 171–88; Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007).

<sup>144</sup>Mancini, *One Dies, Get Another*, 1–2.