

Slavery By A Different Name: The Convict Lease System

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After the Civil War, the 13th, 14th, and 15th Constitutional amendments were passed which aided newly freed slaves in being equally treated under the law, or so the story goes. The fact of the matter is that slavery was- and still is- completely legal in the United States and not only that, but it took on a much different form. The institution of slavery changed as instead of having the direct enslavement of blacks with an entire apparatus that had to be created to keep slaves in their condition, elements of the state apparatus were used to enslave blacks, namely the legal and prison systems. Yet, the enslavement itself was changed as black convicts were no longer slaves to individual masters, but rather they were enslaved to the companies which they were leased out to. To create this system there not only had to be the involvement of the Southern judicial system and individual Northern and Southern elites, but also the involvement of the corporation and reinstitution of slavery within a corporate context.

The 13th Amendment

To attain a full understanding of the convict lease system, there must first be a reexamination of the 13th amendment. It has been stated in history books and in classrooms across America that this amendment ended slavery, yet this is quite false. The 13th Amendment states “neither slavery nor involuntary servitude, **except as a punishment for crime whereof the party shall have been duly convicted**, shall exist within the United States, or any place subject to their jurisdiction.” [1] (emphasis added) Thus, slavery is completely and totally legal if it is part (or the whole) of a punishment for someone who was convicted of a crime.

When debating the 13th amendment, many in Congress were not thinking of slaves, but rather white labor, with Senator Henry Wilson saying “The same influences that go to keep down and crush down the rights of the poor black man bear down and oppress the poor white laboring man.” [2] Senator Richard Yates of Illinois was much blunter, stating that he had “never had the negro on the brain” [3] when discussing the amendment. Such notions are in the absurd! Wilson is correct to an extent when he argues that both slave and white labor are oppressed by the same system; both are oppressed in that they are being manipulated and played off one another by the elite of both the North and South. Still, Wilson ignores the fact that white labor was very much less oppressed than black slave labor as white laborers were seen as human being, deserving of dignity and respect, rather than treated worse than animals. White laborers were free to do as they pleased, not having to worry about ensuring that they consistently had papers on their person as to prove their freedom.

The passing of the 13th amendment should be examined within the context of an economic competition between black slave labor and free white labor. The South's economy was built around slave labor and the ability to have the slaves produce more than they were 'worth,' seeing as how slaves were viewed as not just general property but a long-term economic investment which helped the Southern plantation elite. Yet, due to the existence of slavery, white labor suffered as not only did they lose out on the income they were making when slavery was first introduced as well as the potential future income, but also white labor was unable to make advances within the South as slave provided a source of labor that was less expensive in the long-term.

Senator Henry Williams illustrates these points and other problems that white labor had with slavery. He stated that

slavery was evil because it destroyed much of the richest land in the South; **it degraded labor and the meaning of labor for poor white working men in the South; it robbed the South of culture by degrading the efforts of laborers; and it allowed southern aristocrats to further insult northern white workers by demeaning their laboring efforts as crabbed and mean.** It was the association between labor and slavery in the minds of southern aristocrats that demeaned the efforts of industrious northern laborers. **Thus, slavery pulled white workers down in two ways: one, by direct competition with slave labor in the South, and two, by associating all the industrious efforts of workers with those of the degraded slaves.** [4] (emphasis added)

Thus, the only way for white labor to triumph in their struggle for rights such as a fair wage and regular working hours was for the abolition of slavery. White labor had a direct interest in the nullification of slavery.

Yet, there was a difference of opinion in the minds of Southern elites who wanted to continue slavery, but on different terms.

Southern Elites

Before discussing the Southern elites, one must first examine it within the context of the Southern economy after the Civil War. It was utterly in shambles, one could make quite the argument that it had been decimated and demolished in virtually every conceivable way. The entire economy of the South was built upon the institution of slavery and agriculture. With the end of the Civil War, not only was the Southern economy damaged by the freeing of black slaves, but also the land was deeply scarred and hurt, thus creating an immediate economic problem. However, among all of this there was an opportunity reorient and reconstruct the economy around a new labor source as cheap labor would be needed to rebuild the region.

The social order must be examined as well. While the slaves were now free and able to do as they pleased, there was still a deeply embedded racism within the minds of Southern whites. Just because blacks had fought in the Civil War did not suddenly mean that the perception of blacks had changed; rather to the Southern elites, they still viewed blacks as inferior and only good for labor, longing to perpetuate the slave system but within a new industrial framework seeing as how the agricultural framework had been destroyed. This

new system was to be found in the convict leasing.

The leasing out of state convicts to private hands has its basis in the minds of such people as John T. Milner of Alabama. Milner was no ordinary man, rather he was a Southern elite who “was in the vanguard of that new theory of industrial forced labor,” writing in 1859 that “black labor marshaled into the regimented productivity of factory settings would be the key to the economic development of Alabama and the South.” [5] Milner’s idea of using regimented black labor can be seen in his involvement of a project for the Blue River, a railroad company, in Alabama. In 1859 he issued a plan for the laying of rail in Montgomery, “presenting statistical evidence to demonstrate the potential economic benefit to Montgomery of securing connections with Decatur,” a city north of Montgomery. He argued that the Blue River could build its own track in nearby Jones Valley with the use of slave labor. Yet, in Milner’s mind, this slave labor had to be managed by whites. He stated “**A negro who can set a saw, or run a grist mill, or work in a blacksmith shop, can do work as cheaply in a rolling mill, even now, as white men do at the North, provided he has an overseer, a southern man, who knows how to manage negroes.**” [6] (emphasis added) After the end of the Civil War, Milner’s plan changed, but he was convinced that “the future of blacks in America rested on how whites *chose* to manage them.” [7] To this end, in the 1870s, he moved with purpose to acquire the black convict labor that Alabama’s prisons were offering up. He took these convicts and put them to work in coal mines, treating them barbarically.

Records of Milner’s various mines and slave farms in southern Alabama owned by one of his business partners- a cousin to an investor in the Bibb Steam Mill- tell the stories of black women stripped naked and whipped, of hundreds of men starved, changed, and beaten, of workers perpetually lice-ridden and barely clothed. [8]

Black Americans, many of them former slaves, were essentially re-enslaved but within the context of a corporate structure with an alliance between the state and the corporation. Yet, the judicial system was greatly involved in allowing this to occur, from the laws passed to sheriffs selling of convicts to companies.

The Judicial System

In order to allow for the convict lease system to exist and for blacks to be reduced to their former state as a labor source, it required that the law limit the rights of blacks and criminalize black life to the point that blacks could be imprisoned on the most frivolous of offenses. Such laws took the form of Black Codes.

To understand the creation of Black Codes, it is necessary to understand the social order that motivated elites to push for such legislation. North Carolina is a prime example. After the war, the elite would have preferred the system to revert back to the status quo that existed under the slave system, yet this was not possible due to the liberation of blacks and free whites caused by the destruction of the slave system. This problem was greatly exacerbated by the fact that “in suppressing the war to dissolve the Union the whites were deprived of arms while many Negroes had easily obtained them,” thus “A general feeling of insecurity on the part of the whites” resulted. [9] Armed blacks were a threat to elite

interests as by being able to defend and protect themselves; blacks would be able to ensure that they would not be re-enslaved. Furthermore, it presented a problem to the overall white power structure as having weapons would empower blacks to stand up for themselves and assert their rights not only as Americans but also as human beings and such a situation brought the memories and worries of a slave revolt back to the forefront of the minds of elites.

To put blacks back 'in their place,' the elite pushed several laws that were passed in the state legislature such as defining "a Negro as any person of African descent, although one ancestor to the fourth generation might be white." [10] The fact that racial identity was dependent on the mother rather than the father made the situation all the worse as blacks who had white fathers, whether by marriage or by rape, were now considered to be black and thus would be subject to the worst aspects of living within a white supremacist society.

Another example of the law being used to punish blacks was those laws concerning vagrancy. In North Carolina there was a problem concerning labor as after the Civil War, blacks and whites were working on their own fields, yet

Many others less energetic, white and black, were flooding the towns and refusing work of any sort, for in the days of bondage, master and slave had been taught that to labor with the hands was undignified: consequently, freedom to many Negroes meant a deliverance from hard labor. [11]

These workers proved a problem to North Carolinian industrialists and agriculturalists as few could afford to pay workers a wage until the crop had been grown, not to mention that neither employee nor employer were familiar with a wage system. A solution was found in creating vagrancy laws. Of the workers who refused to do any labor, vagrancy laws were passed that stated that a person who had no means of survival or refused to work would be regarded a vagrant and sent to court, however, a payment could be offered which would be conditional upon the good behavior of the vagrant for one year and thus would allow the person to get off scot free. Yet if the person was unable to make such a payment, they would be convicted a vagrant and fined, imprisoned, or both. When concerning now freed slaves, the laws was much harsher as many of them, once convicted, were apprenticed to their former owners under a contract or being leased to a corporation. In the contract, the owner was to feed, clothe, and instruct the freed slave in reading, writing, and arithmetic and, upon the end of the apprenticeship, they were to be given money, a new set of clothes, and a new Bible as payment for the work done. However, such repayment rarely occurred or was enforced by the state government.

Overall in the South, vagrancy laws were so vaguely defined that any free black that was not under the protection of a white person could be arrested. Such laws allowed for police to "round up idle blacks in times of labor scarcity and also gave employers a coercive tool that might be used to keep workers on the job." [12]

With the judicial system having established a means to ensure a continuous supply of cheap labor, the leasing could now begin.

Convict Leasing

The act of leasing out convicts isn't anything new as in states such as Alabama, where the

government had no interest in caring for convicts; prisoners were leased out to companies. While this may have helped prisons get convicts off their hands, they made no extra revenue from it. After the Civil War, such leasing began to pick up steam as corporations had access to almost free labor.

Labor scarcity between states was a major problem and thus concerted efforts were made by each state to keep black prison labor within their borders. This was done by waging war on emigrant agents, people who specialized in moving labor from where it was abundant to where it was scarce. They had done this when slavery was still existent and it continued under the newly freed slaves. Such agents were viewed as a threat to white farmers as by moving black labor here and there, it threatened the establishment of a stable labor source. Though in the early months emigrant agents were ignored, many states established anti-emigrant agent laws due to their need to keep in black labor. One example is in 1876 when Georgia, "Hard hit by black movement to the West," passed legislation that "levied an annual tax of \$100 for each county in which a recruiter sought labor. A year later she raised the amount to \$500." [13]

Convict leasing, interestingly enough, resulted in power being taken from the state level and given to those on the local level to the point that sheriffs became quite powerful soon after the Civil War ended as "County sheriffs and judges had dabbled with leasing black convicts out to local farmers, or to contractors under hire to repair roads and bridges, beginning almost immediately after the Civil War." [14] This economic empowerment of sheriffs created an incentive for them to convict and lock up as many freedmen as possible and keep a steady supply of labor. An entire economy eventually formed around the convict lease system, including a speculative trade system in convict contracts developed.

The witnesses and public officials who were owed portions of the lease payments earned by convicts received paper receipts- usually called scrips- from the county that could be redeemed only after the convict had generated enough money to pay them off. Rather than wait for the full amount, holders of scrips would sell their notes for cash to speculators at a lower than face amount. In return, the buyers were to receive the full lease payments- profiting handsomely from on those convicts who survived, losing money on the short-lived. [15]

While there was much profit to be made in the convict lease system, not everyone was happy with it, namely, white labor.

Labor's Reaction to Convict Leasing

Just as how white labor was against slavery due to it undermining their struggle for better working conditions, they were also against the convict lease system for the very same reasons. Never did they stop to consider the fact that both worker and freedman were being manipulated by the very same systems that governed them.

Labor's anti-convict leasing sentiments were felt long before the Civil War began. In 1823 in New York City, journey men cabinet makers conducted a mass meeting to discuss prison-made goods being introduced to the market and how it threatened their trade. In that same year, also in New York City, mechanics petitioned the state legislature to end the use of prison labor. [16]

During the Civil War, labor unions were opposed to the use of convict labor, arguing that it “tended to lower the wages of thousands of laborers, and in some instances has virtually driven certain kinds of labor out of the field” and that “the contractor is seeking cheap labor and cares nothing for the welfare of the prisoner.” [17] However it should be noted that unions were not opposed to all convict labor, as they stated that they were fine with prisoners building a state prison. Thus, the labor unions didn’t truly care about the brutal, inhumane treatment of convicts, but whether or not the convicts were encroaching on their area of employment.

Yet this should not be examined as a separate battle between free labor and convict labor, but rather a continuation of the struggle between the two groups. Once again, the only way white labor’s goals could be achieved was with the destruction of most of the convict lease system to protect their own industries.

While the convict leasing may have been profitable for a select few and a thorn in the side to many, eventually the system would have to end.

The End of Convict Leasing

Due to a mixture of the changes in economic and social landscape, convict leasing would eventually die out. However, it is important to first note that the economic and social justifications for such a system reinforced each other as not only was it “an expedient by which Southern states with depleted treasuries could avoid costly expenditures; it was also one of the greatest single sources of personal wealth to some of the South’s leading businessmen and politicians.” [18] The Southern elites benefitted greatly from the system and thus put all their efforts into perpetuating the system for as long as possible.

If one only looks on the surface at the abolition of convict leasing, they may assume that its demise was due to the public indignation that arose against the system yet this is not the case- far from it, rather it involved a combination of race, politics, and economics depending on the state. For example, in Louisiana, convict leasing was abolished due to it being “part of a reform package which had as its purpose the complete triumph of white supremacy in political affairs” whereas in Tennessee, its leaders

decided that the demands of fiscal responsibility dictated abolition when the expense of maintaining the militia at convict stockades-a cost incurred by an armed rebellion on the part of free miners who were displaced by convict gangs-proved greater than the income from the leasing contract. [19]

In this system was embedded racism, politics, and economics, but it was also just as much embedded in violence and brutality. Men and women were beaten, bloodied, bruised, and valued only so long as they were able to do labor. They were reduced to nothing more than human resources, human tools to do the bidding of and enrich white industrialists and agriculturalists from the North and the South. From the Civil War to World War Two, black Americans were re-enslaved under a new system that was no better than the first.

Notes

1: Legal Information Institute, *13th Amendment of the US Constitution*,

<http://www.law.cornell.edu/constitution/amendmentxiii>

2: Lea S. VanderVelde, "The Labor Vision of the Thirteenth Amendment," *University of Pennsylvania Law Review* 138:2 (1989), pg 440

3: VanderVelde, pg 446

4: VanderVelde, pg 466

5: Douglas A. Blackmon, *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War 2* (New York, New York: Anchor Books, 2008) pg 51

6: W. David Lewis, "The Emergence of Birmingham as a Case Study of Continuity between the Antebellum Planter Class and Industrialization in the 'New South'," *Agricultural History* 68:2 (1994), pg 67

7: Blackmon, pg 51

8: Blackmon, pg 52

9: James B. Browning, "The North Carolina Black Code," *The Journal of Negro History* 15:4 (1930) pg 462

10: Browning, pg 464

11: Browning, pg 466

12: William Cohen, "Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis," *The Journal of Southern History* 42:1 (1976) pg 34

13: Cohen, pg 39

14: Blackmon, pg 64

15: Blackmon, pg 65

16: Henry Theodore Jackson, "Prison Labor," *Journal of the American Institute of Criminal Law and Criminology* 18:2 (1927) pgs 244, 245

17: Theodore Jackson, pg 246

18: Matthew J. Mancini, "Race, Economics, and The Abandonment of Convict Leasing," *The Journal of Negro History* 63:4 (1978) pg 339

19: Mancini, pg 340

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