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Continuity vs. Discontinuity: The Issue of Race and Forced Labor After Emancipation in
the American South

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Undergraduate Honors Thesis

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Introduction

In May of 1995, journalists writing for *Time*, *Newsweek*, and the *Economist* released articles bearing such titles as, “Back to the Chain Gang” and “Chained to the Past.” In a time when the former convict-leasing system and chain gangs had not existed for over thirty years, the scene before these journalists and erstwhile onlookers driving along highway 65 through rural Alabama indicated that elements from the past’s all too notorious penal system hardly remained relics. In 1995 the state of Alabama resurrected the use of the chain gang on its public roads, making Alabama’s Limestone prison the first American prison to do so in over thirty years.¹ The scene of 320 or so prisoners, shackled in leg chains, and working outside in twelve-hour shifts, appeared to catch some passing motorists by surprise. More than sixty percent of the individuals working on the chain gang that day in rural Alabama were black.² Onlooker Flossie Hodges, an elderly white woman, stated to the journalists that she liked what she saw: “I love seeing them in chains. They ought to make them pick cotton all day. It’s a lot harder than what they’re doing.”³

The scene before the journalists and the motorists, like the remarks made by Mrs. Hodges, unfortunately reflected both an attitude and a practice that transcended both space and time. The prisoners working on Alabama’s chain gang in 1995 and the remarks made by Mrs. Hodges represented a continuation of policies and attitudes that dated back to the decades following the Civil War. Alabama, however, was not the only state in 1995 to reflect this kind of racial inequality in its prison population, nor was it the only state to resurrect the use of the chain gang in the 1990’s. Today, nationwide, the prison

¹ Adam Cohen, “Back on the Chain Gang,” *Time*, 145, May 1995, 20.

² *Ibid.*

³ John Leland, “Back on the Chain Gang,” *Newsweek*, 125 (May 15, 1995), 58.

population reflects a tremendous racial imbalance. However, when we focus exclusively on the South, this racial imbalance in prisoners has been reflected since the resurrection of the penitentiary during the era of Reconstruction.

Other states continued to bring back this inhuman practice at the dawn of the twenty-first century. In 1999, Massachusetts's Bristol County Sherriff Thomas Hodgson instituted the chain gang in the northeastern state. The 1990s effectively saw the resurfacing of chain gangs in several states throughout the country: first in Alabama, then Arizona, Florida, Iowa, and Massachusetts; each instance reflected enormous racial inequalities amongst those being incarcerated and those being put to work on state works.⁴ The use of prison labor continues to be a contentious issue throughout the United States due primarily to the fast-growing private prison industry.

Other striking historical parallels existed alongside the return of the chain gang in the 1990s; namely, that like the high numbers of African Americans that were sentenced to the convict labor camps and chain gangs throughout the South in the late nineteenth century, the prison population, nationwide, at the turn of the twenty-first century reflected a similar racial makeup. Further, like the implementation of the Black Codes throughout the South and the criminalization of actions such as vagrancy in the late nineteenth century, the late twentieth century saw ubiquitous, radical changes in the criminal justice system, specifically with the declaration of the "War on Drugs" and numerous political campaigns vouching to "get tough on crime," all of which tremendously impacted the prison population, poor communities, and communities of color. These sweeping criminal justice policies have contributed greatly to our nation's burgeoning prison

⁴ Tribune News Services, *Chicago Tribune*, June 17, 1999, http://articles.chicagotribune.com/1999-06-17/news/9906170166_1_chain-gangs-bristol-county-civil-rights-and-prison.

population and can be traced back to many of the policies that were implemented during the years following the Civil War.

When historian Mary Ellen Curtin published her book, *Black Prisoners and Their World*, in the year 2000, the United States prison population sat at approximately 2 million incarcerated individuals. Today, there are approximately 2.3 million individuals behind bars nationwide. That number, however, does not reflect the number of individuals currently on probation and parole. The prison population has risen approximately 370 percent since the year 1970. Perhaps what remains most telling is the fact that approximately seventy percent of those incarcerated today are people of color; reflecting that while the prison population has continued to grow, so too has the racial inequality amongst prisoners. And yet, research continues to show that people, no matter the color of their skin, break laws at very similar rates. That begs the question, why does a minority population constitute the majority of our nation's prison population?⁵

Historian Alexander Lichtenstein finds it necessary to preface his work by first illuminating the past and present continuities between the post-bellum southern penal system and today's criminal justice system. He states:

For African Americans living a century ago on the cusp of freedom, much the same pattern of raised hopes and dashed expectations defined the era of Radical Reconstruction and its aftermath. Within a generation the post-emancipation dreams of land ownership, the right to vote, civic equality, and economic independence, had been deferred. They were replaced by a lengthy struggle against landlessness, disenfranchisement, segregation, lynching, and a host of legal and extralegal means of keeping the black person dependent upon the white. An important component of this tightly woven net of oppression, exploitation, and terror was the South's notorious penal system. (xiv)

⁵ Please see the United States Department of Justice website for statistics on prison population <http://www.justice.gov>; please see the United States Census statistics at <http://www.census.gov>; please see the United States Federal Bureau of Investigation crime statistics at <https://www.fbi.gov>.

Lichtenstein likens the era of radical Reconstruction, and the sweeping legal changes that were put forth during that era, to some of the policies and practices being implemented today as a result of the “war on drugs” campaign and the development of the prison industrial complex. He states, “Most observers agree that the single most important factor in the increase in incarceration has been the so-called “War on Drugs,” a war prosecuted primarily against racial minorities,” with most of the individuals being dragged into the criminal justice system being African Americans who are arrested for misdemeanors, minor property crimes, and non-violent drug offenses.⁶ Again, these patterns of incarceration and discriminatory laws date back to the policies implemented during the post-Civil War years.

In the conclusion of her study, Curtin speaks to yet more striking past and present parallels regarding the current state of incarceration and criminal justice policies. According to Curtin, “Prisoners are no longer leased out, but private companies still see convicts as a source of profit. The profit motive, the recent sharp increase in the prison population, and the disproportionate number of incarcerated African Americans link current practice to the past.”⁷ Like the prisons of the past, the government continues to look to the private sector as a means to alleviate costs, while the private sector continues to look to the state to make a profit off of the state’s prisoners. According to Curtin, “Private prison companies have a financial stake in the rising numbers of incarcerated men and women. In the 1980s they promoted their services to state legislatures with claims to being cheaper than state-run institutions.”⁸ The bulk of Curtin’s study examined

⁶ Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996), xiv.

⁷ Mary Ellen Curtin, *Black Prisoners and Their World, Alabama, 1865-1900* (Charlottesville: University Press of Virginia, 2000), 211.

⁸ *Ibid.*, 212.

the two nineteenth-century private sector convict leasing giants, Tennessee Coal and Iron Company (TCI) and Sloss Iron and Steel Company, both of which were responsible for leasing the majority of Alabama's convicts during the South's eager attempt to industrialize during the postwar decades. Today, the two corporate giants dominating the private prison industry are Wackenhut Corporation and the Corrections Corporation of America (CCA). According to Curtin, CCA does not want prisoners solely for their labor, as did the former TCI and Sloss. However, she states that, "Despite this salient difference, Alabama's nineteenth century lease and today's private prisons have much in common. In both cases the main priority was and is profit."⁹

Some of the most obvious questions coming out of this information are how did we get here and why? In recent years a number of scholars have focused their attention on the years following the Civil Rights Movement and the ubiquitous changes in the criminal justice system that occurred immediately after that era. The late 1960s through the 1990s saw unprecedented political and legal changes sweep the nation, which exacerbated what legal scholar Michelle Alexander terms the "The New Jim Crow." Alexander describes the "New Jim Crow" as a kind of transitory development of a less blatant and more furtive racism. According to Alexander, this racism is no longer the blatant racism that once existed in the face of America with segregated drinking fountains, schools, and "no coloreds allowed" signs in storefronts. According to Alexander, the racism of today is a "new," or rather evolved kind of racism, that exists surreptitiously within the institutions that govern our everyday lives. In her book, *The New Jim Crow*, she points out that "After the passage of the Civil Rights Act, the public

⁹ Ibid., 213.

debate shifted focus from segregation to crime.”¹⁰ It was during these years that presidential candidate Richard Nixon adopted a Southern, racial strategy built around the rhetoric of “law and order” that appealed greatly to the white South and working class blue-collar whites across the nation. Alexander traces how the Republican Party from Nixon through George H. Bush campaigned primarily on the basis of racial issues, using coded anti-black rhetoric. They used the rhetoric of “law and order,” the “war on drugs,” and “getting tough on crime.”¹¹ This, however, did not remain a strictly conservative, Republican policy. In 1992, presidential candidate Bill Clinton, as part of his campaign strategy, vowed that he would never permit any Republican to be perceived as tougher on crime than he. According to Lichtenstein, “between 1984 and 1994 the already large state and federal prison population more than doubled, surpassing the one million mark for the first time (this figure does not include inmates in state and county jails). Back in 1980 there were approximately 330,000 prisoners in the United States.”¹² Today, that number hovers around 2.3 million individuals currently behind bars. That number does not include the approximately 700,000 individuals on probation and parole. Thus, the Clinton administration’s ‘tough on crime’ policies resulted in the largest increases in federal and state prison inmates of any president in American history. And, all the while, the steady increase in inmates continued to reflect tremendous racial disparities.¹³

Alexander first touches on what she terms “the death of slavery” and the social conditions in the South that influenced white southerners to create a new social order predicated on race during the decades following emancipation. She links current

¹⁰ Michelle Alexander, *The New Jim Crow Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010), 43.

¹¹ *Ibid.*, 45.

¹² Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996), 13.

¹³ *Ibid.*, 56.

stereotypes of black men as aggressive, unruly predators, to this period of white southern fear that ensued after the war as well as to the laws that existed both before and after the war. She then addresses the state of the southern economy following the Civil War, essentially pointing out that during this period many former slaves literally walked away from the plantations they had been laboring on. This of course left many white plantation owners without the labor force on which they had previously been dependent on. White Northerners and white Southerners tended to perceive the actions of freedpeople, who decided to exercise their new freedom by leaving their old plantations in search of new lives and long lost families, as an indication that blacks were not “ready” for freedom. Alexander broadly looks back at this specific point in American history, the era of emancipation and southern Reconstruction, and argues that it is precisely in this era that one begins to see the birth of white perceptions of “black criminality” and the subsequent criminalization of “blackness” with the states, the law, northern and southern industrialists, and former planters, taking on a role similar to the role that previous planters, masters, and overseers had taken during the antebellum years.

In many ways, the case made by Alexander is a case that points to the issue of southern continuity versus southern discontinuity. Ultimately, Alexander’s discussion harkens back to the changes and conditions that took place during the decades following the Civil War and she speaks to the idea of southern continuity. Alexander claims that the Civil War, emancipation, and Reconstruction did not result in a fundamental restructuring of southern society. She finds evidence of that in the history and present day conditions of our nation’s politics and criminal justice system. During the decades following the Civil War, African Americans throughout all parts of the South continued to toil in

conditions similar to those they had faced in slavery, and white supremacy continued to reign. While slavery may have been abolished with the Emancipation Proclamation, the policies that ensued throughout the post-bellum South resulted in the creation of conditions for African Americans that were similar to the conditions under slavery.

While Michelle Alexander is not a historian, much of her scholarship on this topic is grounded in historical research done by historians W.E.B. Dubois, Jonathan Wiener, Eugene Genovese, and Barrington Moore; and like them, her desire to illuminate the continuities between the past and the present speak to an ongoing historical debate that is centered on the controversial topic of the post-bellum South or, in other words, the “New South.” Some of the primary debates on this topic concern questions over continuity versus discontinuity and the concept of the “Old South” versus the “New South.” Scholars of southern history who focus on this debate ask whether or not slavery actually ended with the Emancipation Proclamation, and if so, who freed whom? Did the Civil War bring about a fundamental restructuring of southern society?

Renowned scholar and ardent critic of American capitalism, W.E.B. Dubois, was one of the first academics to write extensively on the issue of life and labor after the Civil War, with a specific emphasis on the black experience; and only in more recent decades have scholars begun to pick up where he left off. Dubois research efforts focused on an examination of the law and how the law facilitated the continuation of labor exploitation in the South. Dubois saw how racism, poverty, and evolving notions of criminality shaped the criminal justice system; and how those notions were being used to secure forced black labor. He also saw how those forces were connected to the economy,

industrialization, and white northern and southern avarice, but his voice remained largely unheard by other scholars and the broader white public at the time.

The voice of Dubois, like the voices of many black scholars at the turn of the twentieth century, went largely unheeded in their efforts to draw attention to the conditions of southern blacks in the post-emancipation years. In essence, Dubois was one of the earliest scholars to make the unpopular argument for southern continuity. For Dubois, and many other black scholars researching the conditions of the South at the turn of the century, the Civil War and emancipation had not resulted in any fundamental southern change on the social or political fronts. He, along with other black scholars, saw a tremendous level of racial continuity throughout the American South.

The scholarship that dominated the early to mid twentieth century discussions on the Civil War and emancipation discussed it in the terms of the era of Reconstruction, which tended to emphasize the efforts of the Freedman's Bureau and white northern and southern politics, while excluding discussions of the lives and labors of southern blacks. When freedpeople were brought into these early twentieth century discussions, it was usually in the context of labor and their supposed unwillingness to maintain steady work as sharecroppers and tenant farmers under the duress of white landowners. Thus, the dialogue regarding the lives and labors of freedpeople during the early twentieth century was generally couched within the framework of what was commonly known as the "Negro Problem." As historian Edwin Woolley described in 1901, the economic failure of the South during the decades following the Civil War was due largely to the demoralization caused by the war and "the restlessness of the negroes."¹⁴ Unlike Dubois, the scholarship put forth by Woolley advanced the more popular and accepted narrative

¹⁴ Edwin C. Woolley, *The Reconstruction of Georgia* (New York: Columbia University Press, 1901), 17.

that favored southern discontinuity. For Woolley, writing at the turn of the century, the Civil War and Reconstruction had destroyed the previous planter elite along with their power and property and had thus resulted in the creation of a “New South.”

The narrative that guided southern history for the first half of the twentieth century largely favored the narrative of southern discontinuity and the idea of the “New South.” In 1951, historian C. Vann Woodward brought forth one of the most comprehensive histories of the southern experience in his book, *Origins of the New South*.¹⁵ Woodward told a thorough social history steeped in the regional economic realities both southern whites and southern blacks faced during the immediate post-emancipation years. His study covered discussions of the political economy of elite southern whites, post-bellum industrialization, and the transformation of agricultural production and labor relations amongst white plantation owners, black sharecroppers, and northern and southern industrialists. Woodward made a very compelling case for southern discontinuity. According to historian Alexander Lichtenstein, “Woodward’s account, which remains the benchmark for studies of the New South, the Civil War, and Reconstruction utterly destroyed the power, property, and pretensions of the antebellum planter elite, and replaced them with a class of ruthless capitalist entrepreneurs wedded to economic development, industrialization and growth, and thoroughly bourgeois values.”¹⁶ Woodward’s ideas of a New South portrayed the post-bellum decades as years “dominated by bourgeois modernizers – merchants and capitalists who shaped social relations in a way that completely transformed the South.”¹⁷ According to Woodward,

¹⁵ C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1951).

¹⁶ Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso Press, 1996), 6.

¹⁷ *Ibid.*

northern and southern industrialists and entrepreneurs had replaced the old planter class elite, which had resulted in the creation of a “New South.”

Not all historians agree with the discontinuity argument. Historian Jonathan Wiener in *Social Origins of the New South* advanced an argument in favor of southern continuity by pointing to the continued power that was held and wielded by what he calls the large “antibourgeois agrarians” who remained prominent contenders socially, economically, and politically during the post-bellum decades. According to Wiener, the South remained a labor repressive agrarian society due primarily to the fact that the southern planter class persisted after the Civil War.¹⁸ Further, according to Wiener, and Lichtenstein, the South’s continued reliance on labor repressive agriculture came at the expense of industrial development. In many ways Wiener follows Barrington Moore’s idea of the “Prussian Road” to modernization.¹⁹ Moore’s theory takes a “New Continuarian” stance, because it essentially argues that the Civil War and emancipation resulted in a failed revolution in the South; the South was not socially or politically transformed after the Civil War. Moore, and “New Continuarian” historian Dwight B. Billings, describe the “Prussian Road” theory as “the preservation of the traditional agrarian social structure” and the economic empowerment of a nascent bourgeois industrial class.”²⁰ Essentially, continuity historians such as Wiener, Moore, and Billings argue that the antebellum agrarian elite in fact retained social and political supremacy throughout the South; and therefore, the South, in many ways, remained more or less the

¹⁸ See Jonathan Wiener, *Social Origins of the New South: Alabama, 1860-1885* (Baton Rouge: Louisiana State University Press), 1978.

¹⁹ See Jonathan Wiener, *Social Origins of the New South: Alabama, 1860-1885* (Baton Rouge: Louisiana State University Press), 1978; Barrington Moore, *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World* (Boston: Beacon Press), 1966.

²⁰ See Dwight B. Billings, *Planters and the Making of a "New South": Class, Politics, and Development in North Carolina, 1865-1900* (Chapel Hill: University of North Carolina Press, 1979), 223; See also Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso Press, 1996), 6.

same politically and socially during the post-bellum decades, both inside and outside of the agricultural sector. In other words, according to “New Continuarians,” rapid southern industrialization in the post-bellum South looked a lot like the labor repressive agrarian society of the antebellum years.

The main point of departure between Woodward, Wiener, Moore, and Billings has to do with the idea of “new” versus “old” southern leadership and the social structure of southern society. This study, like Lichtenstein’s more contemporary work, sees the ideas posited by the “New Continuarians” of the left as extremely necessary and useful because they provoke scholars to rethink Woodward’s argument that favors discontinuity, an argument that has dominated southern history for decades. “New Continuarians” beg scholars to ask *how* “New” was Woodward’s *New South*? Lichtenstein sees the work of Wiener, Moore, and Billings as asking scholars to consider the following questions: “What vision of economic development did the New South elite champion? Were they interested in reconstituting the plantation system, and subordinating manufacturing to the continued reliance on monocrop agriculture produced by a bound labor force? Or were they more “capitalist” in orientation, redirecting capital into railroads, coalmines, cotton mills, and real estate, in order to build a new South based in manufacturing, economic development, speculation, and free labor.”²¹ Perhaps most importantly though, the “New Continuarians” force scholars to take a closer look at race and labor relations in the wake of southern emancipation.

While the “Prussian Road” analogy has lost steam, the analyses from historians Jonathan Wiener, Berrington Moore, and Dwight Billings beg us to consider whether or not the interests of southern planters and the interests of both northern and southern

²¹ Ibid., 8.

industrialists of the New South actually clashed.²² In his book, *Twice the Work of Free Labor*, Lichtenstein centers his attention on the history of the convict lease system in Georgia. While his analysis focuses almost exclusively on the lease in Georgia, he also briefly examines the lease in Alabama, Tennessee, and the Carolinas. According to Lichtenstein, the convict lease system “clearly demonstrates that the class interests and ideologies of planters and industrialists were not necessarily incompatible. On the one hand, convict lessees seemed to be advocates of a “Prussian” path to development; that is, they were reluctant to accept the use of free contractual labor in their enterprises, and preferred the bound labor of convicts. Yet they were hardly anticapitalists or agrarians.”²³ Thus, Lichtenstein points to the fact that southern industrialists and financiers were often times simultaneously landlords and “labor-lords” as slaveholders had been before them, buying, selling, and exploiting the labor of convicts, who were predominately former slaves.²⁴ It was not uncommon for Bourbon politicians, many of whom had previously been southern planters, to privately purchase convict labor from the state, during the post-bellum decades, to work as forced laborers in their numerous developing industries.

While this analysis relies heavily on the ideas articulated by “New Continuarians,” it also builds off the work done by historians Edward Ayers, Pete Daniel, Daniel Novak, and more recently, Mary Ellen Curtin. Ayers, in his book, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South*, provide a comprehensive investigation of the southern post-war criminal justice system. His chapter on the southern convict leasing system is of particular importance in this analysis because it addresses the economic and political factors that both fueled and shaped the

²² Ibid.

²³ Ibid., 9.

²⁴ Ibid.

creation of the southern lease. However, unlike Ayers, my analysis does not lend a discussion to the white southern culture of honor on which he builds his argument on. The bulk of Ayer's analysis provides, in broad strokes, a social history of the white South. While he dedicates an extensive discussion to the convict leasing system, he only broadly touches on other forms of forced labor that developed during the post emancipation years.

Daniel Novak's *The Wheel of Servitude: Black Forced Labor After Slavery* is a legal study that is largely focused on the southern peonage system from the end of the Civil War to the 1970s. Novak's work lends tremendous insight into the development and implementation of the laws that supported (and should have theoretically destroyed) the system of debt peonage that ran rampant throughout the South from the end of the Civil War into the twentieth-century. My analysis differs specifically from Novak's in that it attempts to provide more than a legal history of southern debt peonage. Like Novak, Pete Daniel's *The Shadow of Slavery: Peonage in the South* also focuses on debt peonage. Unlike Novak, however, Daniel's analysis spans from 1900-1969 and does in fact provide more than a legal history; he concentrates his efforts on telling the full history of few specific cases and incidences during that period; in doing so, he provides a more nuanced social history of peonage, thus making it extremely valuable for this analysis. In addition, both Novak and Daniel make a strong case for southern continuity.

Mary Ellen Curtin's analysis is undoubtedly the most comprehensive research done on the topic of post-bellum forced labor and southern continuity. Her work combines many of the points posited by Novak, Daniel, Ayers, and Lichtenstein, but she goes a step further in giving voice to the dispossessed without engaging in the

romanticization that Lichtenstein almost saw as unavoidable with such an endeavor. Curtin's analysis succeeds in illuminating the deep association that existed in the post-bellum South between criminality, convict mining, and race. Her work goes beyond the scope of this analysis and the analyses of other historians on this topic by discussing how the black prisoners in late nineteenth century Alabama became apart of a new generation of an evolving black working class.

Thesis

This study examines the systems of forced labor that developed throughout the post-bellum South. An examination of the southern Black Codes, the convict leasing system, sharecropping, and debt peonage demonstrates that planters and industrialists were aligned. My analysis therefore aligns more closely with the ideas of the "New Continuarions" and elements of the "Prussian Road" thesis of southern development than with those who argued that Reconstruction represented a significant break with the previous system of exploitation under slavery. However, like Lichtenstein and Fields I argue that the systems of forced labor that developed throughout the post-bellum South marked a transitional period from slavery to capitalism.²⁵ Ultimately, the case for southern discontinuity is incomplete, but not wholly inaccurate. It becomes, as "New Continuarions" have pointed out, problematic when one examines the labor structure that developed throughout the post-bellum south because of the South's ongoing reliance on forced black labor during the post-bellum decades. Scholars who subscribe to the idea of the "New South" have failed to adequately account for race and racism in their analyses. Thus, my analysis refines the current scholarship by emphasizing "racial continuity"

²⁵ Barbara J. Fields, "The Nineteenth Century American South: History and Theory," *Plantation Society in the Americas I* (April 1983), quoted in Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso Press, 1996), 11.

instead of simply “continuity,” which has tended to only partly acknowledge the prevalence that both race and racism played in shaping the post-bellum criminal justice system, post-bellum prisons, and the post-bellum labor structure, both bound and “free.” Where Lichtenstein’s work focused exclusively on the nature of the convict leasing system in Georgia to demonstrate a case for southern continuity, to illustrate the deep connection between forced labor, free labor, and capitalism, my research goes a step further and combines an examination of the southern convict leasing system, the Black Codes, sharecropping, and debt peonage to make a case for southern continuity.

This analysis focuses specifically on the element of forced labor and the role that race and racism played to perpetuate systems of forced labor throughout the post-bellum South. As will be demonstrated throughout the course of this paper, during the decades following the Civil War, the South continued to rely on various forms of forced African American labor. The South’s continued reliance on forced African American labor was neither strictly agricultural nor industrial, but was a means of securing cheap labor for economic and industrial growth throughout the post-bellum South.

*The Law: The Black Codes, the Former Slave Codes
and the Supreme Court*

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.²⁶

Following emancipation and the conclusion of the Civil War, under President Andrew Johnson’s somewhat revised program of Reconstruction, southern state legislatures gradually began re-entering the Union. Historian Daniel Novak has pointed

²⁶ Quoted from William E. Gienapp, ed., *The Civil War and Reconstruction: A Documentary Collection* (New York: W.W. Norton & Company, 2001), 427.

out that while President Johnson may have revised Lincoln's original "Ten Percent" Reconstruction program, by excluding some of the wealthier, old land owning classes from participating in the restoration of the South and southern governments, it should nonetheless be made clear that the men who comprised the "New South" during the years following the war were "by and large, the same men who had run the Old South, or at least they reflected its values. This orientation was made evident by the Black Codes they quickly enacted."²⁷

In 1865, the year the Thirteenth Amendment was ratified, Mississippi addressed what was being called the "Negro Problem" throughout the South before a special session of the state legislature; in the weeks following, Mississippi became the first state to enact Black Codes. Serving as chair of the 1865 convention, Mississippi Governor Benjamin Humphreys, a planter and a former confederate general during the Civil War, spoke to the convention. He acknowledged what many white southerners were feeling throughout the South: namely that freedom for the formerly enslaved had its limitations. According to Humphreys, "Freedom protected the Negro's person and property, but did not guarantee him social or political equality with whites. The purity and progress of both races required a strict caste system, with the Negro dutifully accepting his place at the bottom of the pile. His new life after slavery would remain largely unchanged; he would labor at the same tasks, on the same land, with the same whites directing his efforts. Such was the rule of the plantation and the will of God."²⁸

The Black Codes were a series of laws enacted to regulate the "freed" black population: they ranged from a prohibition on "mischief," "insulting gestures," and "the

²⁷ Daniel Novak, *The Wheel of Servitude: Black Forced Labor After Slavery* (Lexington: The University Press of Kentucky, 1978), 2.

²⁸ Quoted in, David M. Oshinsky, "Convict Labor in the Post-Civil War South: Involuntary Servitude After the Thirteenth Amendment," in *Promises of Liberty: The History and Contemporary Relevance of the Thirteenth Amendment*, ed. Alexander Tsesis (New York: Columbia University Press, 2008), 100.

vending of spirituous or intoxicating liquors,” to prohibiting blacks from keeping firearms and cohabitating with whites.²⁹ Apart from the fact that the Black Codes generally reflected racist ideas deeply rooted in southern white culture, it is imperative to recognize that they also represented a solution for white southern governments and planters to regulate and control a vast “new” labor force comprised of approximately four million freedpeople who lived throughout the post-bellum South. This component of the Black Codes is most evident through an examination of the southern vagrancy, apprenticeship, contract, and penal laws enforced throughout the post-bellum South.

Many scholars have focused on the role that the Black Codes played almost strictly within the context of the law and social control. Woodward only briefly touches on the codes in *Origins of the New South* when he states, “In the working out of a new code of civil rights and social status for the freedmen – in the definition of the Negro’s “place” – Reconstruction had been only an interruption, the importance of which varied state to state, but which was nowhere decisive. Slavery had been vastly more than a labor system, and the gap that its removal left in manners, mores, and ritual behavior could not be filled overnight. The so-called “Black Codes” were soon overthrown, as were the laws imported by the Carpetbaggers.”³⁰ Thus, the Redeemers capitalized on the rhetoric that it was the northern carpetbaggers who could not be trusted. According to the Redeemers, they had been the force behind the implementation of various Black Codes throughout the South. In the compromise of 1877, southern Redeemers pledged to “Protect the Negro in all of his rights.” According to Woodward, “They were probably guilty of less hypocrisy than has been charged. The class they represented had little to fear from the

²⁹ Ibid., 101.

³⁰ C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1951), 209.

Negro and at the same time considerable to gain for the conservative cause by establishing themselves in a paternalistic relationship as his protector and champion against the up-land and lower-class whites.”³¹ Woodward only references the codes once and lends no discussion of the role that they played as a mechanism for securing steady black labor. Indeed, while the Black Codes most obviously served as a new legal mechanism to keep newly emancipated black individuals in their “right” and “appropriate” social place, they also served as a tool for securing forced black labor.

The codes, in fact, served to create both perceived and actual danger for freedpeople who considered capitalizing on their supposed new right to labor whenever and for whomever they wished. Once aware that acts such as vagrancy, loud talking, and mischievous behavior could land one a hefty fine, followed by time served as a convict laborer, some freedpeople opted to stay put and continue laboring just as they had prior to emancipation. Others took their chances and ventured off in search of freedom on their own terms. In the Mississippi Black Codes of 1865, under the portion titled “Civil Rights of Freedmen,” sections six and seven outlined the labor policies for freedpeople:

Sec. 6 All contracts for labor made with freedmen, free negroes, free mulattoes for a longer period than one month shall be in writing, and in duplicate, attested and read to said freedman, free negro, or mulatto by a beat, city or county officer, or two disinterested white persons of the county in which the labor is to be performed, of which each party shall have one; and said contracts shall be taken and held as entire contracts, and if the laborer shall quit the service of the employer before the expiration of his term of service, without good cause, he shall forfeit his wages for that year up to the time of quitting.

Sec. 7 Every civil officer shall, and every person may, arrest and carry back to his or her legal employer any freedman, free negro, or mulatto who shall have quit the service of his or her employer before the expiration of his or her term of service without good cause ... *Provided*, that said arrested party, after being so returned, may appeal to the justice of the peace or member of the board of police

³¹ Ibid.

of the county, who, on notice to the alleged employer, shall try summarily whether said appellant is legally employed by the alleged employer, and has good cause to quit said employer; either party shall have the right of appeal to the county court pending which the alleged deserter shall be remanded to the alleged employer or otherwise disposed of, as shall be right and just; and the decision of the county court shall be final.

As is evidenced in sections six and seven of the Mississippi Black Codes, labor control, not simply social control, was central to the purpose of the codes.

The Mississippi vagrancy laws of 1865 were particularly stringent in terms of labor control. Section one of the Mississippi Vagrant Law read as follows:

All rogues and vagabonds, idle and dissipated persons, beggars, jugglers, or persons practicing unlawful games or plays, runaways, common drunkards, common nightwalkers, pilferers, lewd, wanton, or lascivious persons, in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, misspend what they earn, or do not provide for the support of their families, or dependents, and all other idle and disorderly persons, including all who neglect all lawful business, habitually misspend their time by frequenting houses of ill-fame, gaming houses, or tippling shops, shall be deemed and considered vagrants, under the provisions of this act, and upon conviction thereof shall be fined not exceeding one hundred dollars, with all accruing costs, and be imprisoned, at the discretion of the court, not exceeding ten days.³²

This was only one of seven sections of the Mississippi Vagrant Law of 1865; the subsequent six sections read similarly. Essentially, one could be arrested and charged with “vagrancy” for almost any action. As section one points out, once a freedperson was convicted of vagrancy, a series of fines and a term of imprisonment followed. While section one states that the term of imprisonment was not to exceed ten days, it should be clarified that freedpeople who violated such laws did in fact often times serve longer sentences due to their inability to pay mounting court fines and sheriff fees.³³

³² From William E. Gienapp, ed., *The Civil War and Reconstruction: A Documentary Collection* (New York: W.W. Norton & Company, 2001), 325.

³³ See John Dittmer, “The New Slavery,” in *Black Georgia in the Progressive Era, 1900-1920* (Chicago: University of Illinois Press, 1977).

Vagrants and vagrancy, according to an examination of Alabama state laws, were intimately tied to land use, labor, and the resurrection of southern state penitentiaries. Sections one and two of the Alabama vagrancy laws reveal that as early as 1865 southern state governments saw the law as a mechanism that could be used to ensure a steady supply of cheap labor throughout the South, and simultaneously used as a system of social control to regulate the newly freed black population. According to section one of Alabama's vagrancy laws:

Section 1. The commissioners' court of any county in this State may purchase, rent, or provide such lands, buildings and other property as may be necessary for a poor-house, or house of correction for any such county, and may appoint suitable officers for the government of the inmates thereof, and make all necessary by-laws, rules and regulations for the government of the inmates thereof, and cause for the same to be enforced; but in no case shall the punishment inflicted exceed hard labor, either in or out of said house; the use of chain-gangs, putting in stocks, if necessary, to prevent escapes; such reasonable correction as a parent may inflict upon a stubborn, refractory child; and solitary confinement for no longer than one-week, on bread and water; and may cause to be hired out such as are vagrants, to work in chain-gangs or otherwise, for the length of time for which they are sentenced; and the proceeds of such hiring must be paid into the county treasury, for the benefit of the helpless in said poor-house, or house of correction.³⁴

Section 2. *Be it Further enacted*, That the following persons are vagrants in addition to those already declared to be vagrants by the law, or that may hereafter be so declared by law; a stubborn or refractory servant; a laborer or servant who loiters away his time, or refuses to comply with any contract for a term of service without just cause; and any such person may be sent to the house of correction in the county in which such offense is committed and for a want to such house of correction, the common jail of that county may be used for that purpose.³⁵

At first glance, section one of Alabama's vagrancy law reads more like the state penal laws. As is evidenced in the passage, an individual convicted of vagrancy or being a

³⁴ From Melvin I. Urofsky and Paul Finkelman, ed., *Documents of American Constitutional and Legal History From the Founding to 1896*, vol. 1 (New York: Oxford University Press, 2008), 490.

³⁵ *Ibid.*

vagrant was, according to section one of this law, vagrants were already considered “inmates” upon conviction of this nonviolent crime.

As in Mississippi, one could be convicted of vagrancy for the smallest infractions. Alabama, like the rest of the South, implemented similar laws that served as both a mechanism of social control as well as a mechanism of labor control. The law, of course, has always been used as a mechanism of social control; it is the labor component that that is of significance to the southern continuity piece. Section two reveals how the law was used to ensure that free black laborers remained complicit to landowners and general overseers through the threat of declaring one to be a vagrant, which could then result in being sentenced to several months on a county chain-gang or working in an industry as a convict laborer. “A laborer or servant who loiters away his time, or refuses to comply with any contracts . . . any such person may be sent to the house of correction in the county in which such offense is committed.”³⁶ The vagrancy laws of Alabama and Mississippi, like the vagrancy laws that were implemented all throughout the former Confederacy, should thus be viewed not only as an example of a racist measure of the Black Codes, but also as an example of the South’s effort to hold onto forced labor and maintain control over black laborers.

Along with the implementation of vagrancy laws throughout the South, apprenticeship laws also proved to be an effective means for southern states and white landowners to ensure a continued supply of labor, as well as to maintain a significant level of social control over freedpeople. The Mississippi Apprentice Law of 1865 essentially granted sheriffs, justices of the peace, and the courts throughout the state of Mississippi the duty of ensuring that the children of freedpeople under the age of eighteen

³⁶ Ibid.

were also engaged in steady work. According to the Mississippi Apprentice Law of 1865, “All freedmen, free negros, and mulattoes, under the age of eighteen, in their respective counties, beats or districts, who are orphans or whose parent or parents have not the means or who refuse to provide for and support said minors; and thereupon it shall be the duty of said probate court to apprentice said minors to some competent and suitable person.”³⁷ Thus, it was left to the discretion of sheriffs and the courts to deem whether or not a freedperson was caring for their children “properly.” The law went so far as to give the former owner of said minors *preference* “when, in the opinion of the court, he or she shall be a suitable person for that purpose.”³⁸

In many ways, freedpeople being made to serve as apprenticed minors remained slaves to both their new white master and mistress, as well as to the state. Enforcing labor laws upon freedpeople was no longer solely the responsibility of a white landowner, but the state. Whereas during the antebellum years the master or mistress of a black individual maintained total and complete physical ownership over their said property, in the post-bellum years, southern state power became a crucial arbiter of power in the relationship between freedpeople and white southern land-owners. Thus, it was not uncommon for sections of southern apprenticeship laws to contain the following provisions: “It shall be the duty of all sheriffs, justices of the peace, and other civil officers of several counties in this State, to report to the probate courts of their respective counties, at any time, all minors under the age of eighteen years, within their respective counties, beats or districts, who are orphans without visible means of support.”³⁹

³⁷ From Melvin I. Urofsky and Paul Finkelman, ed., *Documents of American Constitutional and Legal History From the Founding to 1896*, vol. 1 (New York: Oxford University Press, 2008), 493.

³⁸ *Ibid.*

³⁹ *Ibid.*

The southern Black Codes, however, did not go unnoticed by those who had either fought for abolition or worked at the federal level to enforce it. In 1866 Congress attempted to pass the Civil Rights Act. Prior to this act, protection of individual rights was a state matter; thus, laws passed at the state level, such as the laws falling under the Black Codes, had been protected by state power. The act essentially attempted to establish national standards for what constituted protecting an individual's civil rights, and it sought to use the law to protect those rights.⁴⁰ The law proved to be only partially successful for a number of years until a series of Supreme Court cases, starting with the Slaughterhouse cases of 1873, stripped the Fourteenth Amendment of power to proscribe social discrimination. In the 1883 Civil Rights Cases, the Supreme Court struck down the Civil Rights Act of 1875, which sought to secure and protect by law social equality for all Americans by prohibiting racial discrimination in public places.⁴¹ Then, in 1896 the Supreme Court ruled in *Plessy v. Ferguson* that distinctions based on race were not unconstitutional and the Equal Protections Clause of the Fourteenth Amendment became wholly ineffective.⁴² Between the enactment of the Black Codes in 1865 and the ruling of *Plessy v. Ferguson* in 1896, inmates in southern penitentiaries grew to be disproportionately black. Evidence of this is seen in the eleventh census taken in 1890. According to the census, former confederate states in the south Atlantic region, such as Georgia, Florida, and the Carolinas, boasted tremendous racial disparities within their prisons; the same was also true in the south central region.⁴³

⁴⁰ Ibid., 495.

⁴¹ Ibid., 551.

⁴² Ibid., 593.

⁴³ See Fredrick Howard Wines, *Report on Crime, Pauperism, and Benevolence in the United States at the Eleventh Census, 1890* (Washington, D.C.: G.P.O., 1896), 125.

White southern landowners and government officials recognized that the slave economy of the Confederacy had been weakened by emancipation; and thus, through the enactment of the Black Codes and other repressive laws, southern leaders sought a method of dealing with two critical issues facing the South: labor shortage and a new need for social control. During the antebellum decades, the system of chattel slavery served as a solution for both of these issues, but now with slavery gone white land-owning southerners had lost approximately four million forced laborers. While historian David Oshinsky has pointed out that the Thirteenth Amendment had created a gaping hole for white southerners to exploit by banning slavery except as a punishment for crime, my analysis points out the specific role that the failure the Fourteenth Amendment played in protecting freedpeople's rights to labor on their own terms. Criminal peonage, a legal device that began with the implementation of the Black Codes of 1865, became established throughout the South with the undermining of the Thirteenth and Fourteenth Amendments.⁴⁴ The system of labor control that began with the Black Codes of 1865 continued to burgeon at the turn of the century as the southern criminal justice system continued to feed the prison system. As historian Alexander Lichtenstein has pointed out, "The criminal justice system thus provided a steady stream of blacks from the cotton belt, to the industrial sectors."⁴⁵ Thus, in conclusion, the laws that were passed throughout the South during the post-bellum decades serve as evidence that the "New South" was, in fact, not as new as many scholars argued.

*The New Penitentiary, Crime, and
Southern Industry: The Convict Lease System*

⁴⁴ Ibid.

⁴⁵ Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*, (New York: Verso Press, 1996), 85.

In 1901, almost forty years after emancipation, W.E.B Dubois addressed his concerns regarding the convict leasing system and the crop-lien system in the South before the Industrial Commission. The Industrial Commission was a United States government body implemented in 1898-1902 by President William McKinley to manage such matters as industry pricing policies, industrial concentration, and the state of various labor markets.⁴⁶ Ultimately, Dubois concluded that these systems of forced labor had a criminalizing effect on the African American community.⁴⁷ In his analysis Dubois explained how states leased out the labor of convicts to southern landowners, who had previously lost their labor force with abolition, and developing private industrial giants such as Pratt Coal and Coke Company and Georgia governor Joseph Brown's Dade County Coal Company. Dubois's inquiry into the southern crop-lien system and the southern convict leasing system pointed to what he saw as the strategic enactment of an assortment of vagrancy laws, implemented through the Black Codes and subsequent southern state laws, to secure African American labor, and keep the southern economy afloat in the decades following the Civil War. Dubois argued that, "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."⁴⁸

Dubois's research and report before the Industrial Commission reveal several important points: the first being that almost half a century after emancipation many freedpeople throughout the American South continued to toil in conditions akin to

⁴⁶ See Gerald F. Vaughn, "Organized Speculation as an Institution: John Franklin Crowell and the U.S. Industrial Commission Report on Distribution of Farm Products," *Journal of Economic Issues* vol. 39, no. 1 (2005).

⁴⁷ W.E.B Dubois, "The Spawn of Slavery: The Convict Lease System in the South," in *African American Classics in Criminology and Criminal Justice*, ed. Shaun L. Gabbidon, Helen Taylor Greene, and Veretta D. Young (Thousand Oaks: Sage Publications, 2002), 87.

⁴⁸ *Ibid.*, 83.

slavery. Second, Dubois presentation before the Industrial Commission pointed out the interconnectedness and prevalence of forced labor in industrial enterprises to the U.S. economy. This narrative of sustained forced black labor in the American South that Dubois research further demonstrated the connections between industrialization, capitalism, and the South's continued reliance on forced black labor in the post-emancipation era.

The creation and then subsequent enforcement of the Black Codes spurred a revival of southern penitentiaries. Prior to the Civil War, the southern penitentiary had been a tenuous institution. Throughout the early nineteenth century it had proven to be a financial burden to southern state governments. The institution continuously failed to reform the behavior and morals of prisoners; and more importantly, failed to return any significant revenue to the state. Thus, on various occasions throughout the early nineteenth century, state legislatures throughout the South had seriously considered abolishing the institution. In 1860, on the eve of the Civil War, the Georgia state prison population sat at approximately 245 inmates, making it the highest it had ever been, with the majority of the prisoners being white.⁴⁹

Throughout the war years, this racial makeup persisted, and from 1861-1865 white prisoners played a significant part in the Confederate war effort. Looking specifically at the state of Georgia in December 1861, James Bonner has pointed out that the Governor of Georgia "authorized to purchase machinery and tools needed to employ convicts, in the production of rifles, bayonets, pikes, and other arms. They were also engaged in making shoes for soldiers and in making wool and cotton cards for public

⁴⁹ See James C. Bonner, "The Georgia Penitentiary at Milledgeville 1817-1874," *The Georgia Historical Quarterly* vol. 55, no. 3 (1971): 315.

distribution. By 1862 the penitentiary had taken on the character of an armory and its shops were under the supervision of a master armorer. The Principle Keeper, James A. Green, turned into the state treasury the sum of \$10,000 net profit for the year.”⁵⁰ However, this kind of success was short-lived, as Union forces continued to advance deeper into the South and set fires to southern penitentiaries. By May of 1865, shortly after the conclusion of the war, only four inmates remained in the Georgia penitentiary.⁵¹ During the decades following the war, the penitentiary would continue to remain empty due to the fact that the majority of the inmates following the war were leased out.

Southern state legislatures did not waste any time after abolition in their efforts to secure labor control over freedpeople. Focusing on the penitentiary in the state of Georgia, Bonner notes that, “By the fall of 1865, the number of convicts had increased to 177, and for the first time a large number of Negroes was among them.”⁵² Similar to the legal sanctions imposed under the Black Codes, southern reliance on predominately black convict labor through the leasing of state prisoners to private industrialists served as yet another way to enact labor control throughout the South. By 1871, six years after the conclusion of the Civil War, the number of prisoners in the Georgia penitentiary was three times greater than what it had been in 1860, with eighty-four percent of the prisoners being black. Table 1.1 below displays the demographics of the Georgia penitentiary from the year 1871 to 1909. Over the next forty or so years, penitentiaries throughout the entire South not only grew exponentially, but also began to house a disproportionate number of black prisoners.

⁵⁰ Ibid., 316.

⁵¹ Ibid., 317.

⁵² Ibid., 218.

Year		Whites			Blacks	
	No.		%	No.		%
1871	61		16	324		84
1874	90		15	524		85
1875	95		13	630		87
1876	91		10	835		90
1877	114		10	994		90
1880	115		10	1,071		90
1886	149		10	1,378		90
1890	168		10	1,520		90
1896	193		8	2,164		92
1900	258		12	1,900		88
1904	256		11	2,059		89
1909	262		10	2,296		90
1871-80 Increase		54			747	
% Of this increase		7			93	

Figure 1.1 Source: Georgia Principle Keeper's Reports. Cited in Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*, (New York: Verso Press, 1996), 60.

As the number of incarcerated individuals grew, so too did the cost of housing them. By the early 1870's, southern state governments were desperate for a solution that would solve the mounting costs of running their state prisons. Fortunately, for southern state legislatures, the desire among private investors and industrialists for a cheap and steady labor supply was also mounting and southern state prisons happened to offer the perfect solution for them. For example, in 1868 Georgia Governor Rufus B. Bullock; Overton H. Walton, Principle Keeper of the Georgia state penitentiary, and the railroad company Grant, Alexander and Co. entered into a leasing contract. In the contract Governor Bullock and Principle Keeper Walton agreed to "furnish to said Grant, Alexander and Co. from one hundred to five hundred able-bodied convicts from the State

Penitentiary” for a term of two years.⁵³ This, however, was not Georgia’s first lease. Prior to the contract signed between Bullock, Walton, and Grant, Alexander and Co., on May 11th, 1868, former provisional Governor, General Thomas H. Ruger had leased one hundred convicts to William A. Fort of Rome to work on the Georgia-Alabama Railroad with the state receiving \$2500 in monthly installments.⁵⁴ Several months later, Bullock, Ruger’s successor, contracted with Grant, Alexander and Co. under new terms, agreeing to provide the railroad company from one hundred to five hundred convicts at ten dollars each per year.⁵⁵

Georgia was just one of several southern states engaged in convict leasing during the post-war years. By the mid-1870s virtually the entire former Confederacy had been redeemed by Bourbon politicians and the lease continued to expand throughout the South, with numerous southern industries looking to it as a means of securing cheap and steady labor. States frequently passed legislation that allowed convicts to be hired-out to both private citizens and private industries.⁵⁶ Over the next thirty years southern convicts, the majority of whom were black, labored in an array of industries that ranged from laying track for railroads in Georgia, to coalmining in Alabama, to aiding in the production and distillation of turpentine in Florida. By 1898 convict labor had become an integral part of southern industrialization and black forced labor was at its apex. Table 1.2 represents the demographics of convict coalminers leased to Tennessee Coal, Iron and Railroad Company and Sloss Iron and Steel Company in the state of Alabama for the

⁵³ Cited in the “Proceedings of the Joint Committee Appointed to Investigate the Condition of the Georgia Penitentiary,” in *Criminal Justice in America* ed. Robert M. Fogelson (New York: Arno Press, 1974), 15.

⁵⁴ Cited in James C. Bonner, “The Georgia Penitentiary at Milledgeville 1817-1874,” *The Georgia Historical Quarterly* vol. 55, no. 3 (1971): 322.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, 324.

year 1898. As is evidenced in the table below, both companies relied almost exclusively on the labor of black convicts.

	State Convicts		County Convicts		Total	
	No.	%	No.	%	No.	%
<u>T.C.I.</u>						
White	63	8.7	8	2.5	71	6.7
Black	664	91.3	318	97.5	982	93.3
<u>Sloss.</u>						
White	16	7.1	29	9.2	45	8.3
Black	208	92.9	286	90.8	494	91.7
Total						
White	79	8.3	37	5.8	116	7.3
Black	872	91.7	604	94.2	1476	92.7

Figure 1.2 Source: Alabama, *Second Biennial Report of the Board of Inspectors of Convicts, 1896-1898* (Montgomery Ala.: State Printer, 1898), p.19. Cited in Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*, (New York: Verso Press, 1996), 85.

Social reformer and ardent critic of the leasing system, George Washington Cable pulled out all the stops when it came to leveling criticism towards the institution.

Working from his collection of essays in, *The Silent South*, published in 1885, one is able to gain a more precise understanding of just how “old” the supposed “new” South remained. According to Cable, “The states where this system is in vogue are now, and have been for some years, enjoying a new and great development of their natural resources and of other industries than that colossal agricultural system that once monopolized their attention. There is, therefore, a vigorous demand for the opening and completion of extensive public works, - mines, railways, turnpikes, levees, and the like, -

and for ways and means of getting them done as quickly and cheaply as possible.⁵⁷ The “Colossal agricultural system that once monopolized their attention,” Cable refers to in the above passage was, of course, the former cotton industry that was heavily dependent on slave labor. According to Cable, southern governments along with both northern and southern landowners worked closely with local law enforcement to keep a steady flow of convicts in industrial labor camps. According to Cable, “A single glance at almost any of their [penitentiary] reports startles the eye with the undue length of sentences and the infliction of penalties for mere misdemeanors that are proper only to crimes and felonies. In the Georgia penitentiary, in 1880, in a total of nearly 1200 convicts, only 22 prisoners were serving as low a term as one year, only 52 others as low a term as two years, only 76 as low a term as three years; while those who were under sentences of ten years and over numbered 538, although ten years, as the rolls show, is the utmost length of time that a convict can be expected to remain alive in a Georgia penitentiary [labor camp].”⁵⁸ Longer sentences therefore ensured a steady supply of forced laborers.

Looking at the entire South Atlantic and South Central regions, one continues to see significant racial disparities throughout the southern prison population as late as 1890.⁵⁹ In 1890 the United States government asked special agent Frederick H. Wines to conduct a report on the state of crime, pauperism, and benevolence in the United States. As figure 1.3 illustrates below, the largest percentage of African American prisoners existed in the South Atlantic and South central regions.⁶⁰

⁵⁷ Cable, 152.

⁵⁸ *Ibid.*, 153.

⁵⁹ According to the 1890 census, the South Atlantic region consisted of Delaware, Maryland, the District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida; while the South Central region consisted of Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Texas, and Arkansas.

⁶⁰ Fredrick Howard Wines, *Report on Crime, Pauperism, and Benevolence in the United States at the Eleventh Census, 1890*, (Washington, D.C.: G.P.O., 1896), 129.

Color:	The U.S.	North Atlantic	South Atlantic	North Central	South Central	Western
Total	100.00	100.00	100.00	100.00	100.00	100.00
White	69.61	92.65	22.30	85.76	34.84	88.53
People of color	30.39	7.35	77.70	14.24	65.16	11.47

Figure 1.3

Broken down further into a table showing a comparison between the total number of white prisoners and the total number of prisoners of color, figure 1.4, shown below, illustrates that again, even as late as 1890, working from the Department of the Interior Census Report, the total number of prisoners of color far exceeded the total number of white prisoners in both the South Atlantic and South Central divisions, which further indicates the tremendous impact the Black Codes and other discriminatory legal practices were having on the ever growing black prisoner population in the South.

Prisoners in state prisons and penitentiaries by geographical division and race:	Total number of white prisoners	Total number of prisoners of color
North Atlantic	13,224	1,253
South Atlantic	1,204	5,262
North Central	9,261	1,729
South Central	3,271	5,970
Western	3,586	473

Figure 1.4

The census report of 1890 reports on several classifications of prisons that were adopted for the purpose of the census. According to the report, “The prisons proper are divided into 5 groups: (1) state prisons and penitentiaries; (2) county jails; (3) city prisons; (4) workhouses and houses of correction; (5) military and naval prisons.”⁶¹ The

⁶¹ Ibid.,130.

report goes on to discuss two additional categories, which are illustrated below in figure 1.5: “The table [see figure 1.5 illustrated below] contains two other columns, of which the first is for leased prisoners, most of whom are in rude prisons or stockades constructed by the lessees, and others are at work upon farms or elsewhere.”⁶²It is further noted that, “All in the column for leased prisoners are in the South Atlantic and South Central divisions,” with no prisoners in the northern divisions or the western division engaging in the process of leasing out convicts for state or private enterprises.⁶³ Even more telling the report states:

Georgia has no penitentiary except such camps, nor has Florida. Of the Penitentiary prisoners in Alabama only 300 are within the walls of the penitentiary; of those in Louisiana, only 70; of those in Mississippi, only 67; of those in North Carolina, only 214. The rest are confined at work in convict camps or in mines, varying in number at each camp from 9 to 786. In Tennessee all of the prisoners are leased by the state. Less than one-half of them are kept in the state penitentiary at Nashville; the remainder are in 4 branch penitentiaries (130).

Referring now to figure 1.6, it is clear that by 1890, the South as a whole maintained several systems and means of incarceration. It is worth noting that while the table provides a specific column for leased out prisoners, that number does not provide a completely accurate depiction of the number of individuals who were made into forced laborers upon entering into the southern criminal justice system. In fact many individuals who were doing time in county jails throughout the South were temporarily put to work on private enterprises. Thus, it is important to remember that number recorded in this 1890 census only provides a small piece of the picture.

Classes of Prisoners:	Total White Population	Total number of people of color
In State Prisons and	30,546	14,685

⁶² Ibid.

⁶³ Ibid.

penitentiaries		
In county jails	14,115	4,746
In city prisons	2,166	1,098
In work houses and house of correction	8,608	1,360
Leased out (by county)	312	1,996
In military and naval prisons	745	49
In hospitals and asylums for the insane	818	83

Figure 1.5

Classification of Prisoners by Geographical Division:	The U.S.	North Atlantic	South Atlantic	North Central	South Central	Western
All Prisoners	82,329	28,258	11,409	19,854	16,084	6,724
In state prisons and penitentiaries	45,233	14,477	6,466	10,990	9,241	4,059
In county jails	19,861	6,764	3,019	4,225	4,118	1,735
In city prisons	3,264	791	670	798	582	423
In workhouses and houses of correction	9,968	5,644	695	3,002	323	304
Leased out (by counties)	2,308	-----	544	-----	1,764	-----
In military and naval prisons	794	62	3	551	22	156
In hospitals and asylums for the insane	901	520	12	288	34	47

Figure 1.6

According to the 1890 census, “Since the prisoners who would in the North Atlantic, North Central, and Western divisions be confined in county jails are in the South Atlantic and South Central largely leased out, the leased prisoners, for the purpose of comparison, should be added to those in the jails.”⁶⁴ Figure 1.7 as well as the note in

⁶⁴ Ibid., 133.

the report thus illustrates that in the South time in the county jail for an African American almost undoubtedly meant doing some time as a leased out convict laborer. As figure 1.7 illustrates, white convicts were rarely leased out.

Sections.	White prisoners	Black prisoners
Prisoners in the north	11,676	1,048
Prisoners in the south	3,001	6,444
In county jails	2,688	4,449
Leased out	313	1,995

Figure 1.7

Now, after having made clear that the South was the only region to engage in the leasing of convicts, the overwhelming majority of whom were African Americans, more analysis on the labor and industry of convicts is necessary to further illustrate the prominence of forced labor in post-bellum southern industry. The tables illustrated above point to the fact that the South, by 1890, was almost solely dependent on the leasing out of its entire prison population, and unlike the North, it did not utilize the penitentiary to house its prisoners. It was also evident in the tables illustrated above that the overwhelming majority of the prisoners throughout the South were African Americans.

Prison labor throughout the United States consisted of numerous categories and varying industries. It ranged from prisoners making boots, clothes, furniture, and wagons, to the production of more industrial enterprises such as masonry, foundry work, and ironwork. And then, of course, there were the industries of farming, mining, turpentine harvesting, and railroad building. Prisoners in the northern divisions were predominately engaged in making boots, clothing, furniture, chairs, and wagons, while in the southern divisions they were confined to working in heavier industrial enterprises. For example, the census report of 1890 indicates that 2,701 prisoners were engaged in making clothing in the North Atlantic division, while the South Atlantic region recorded zero prisoners,

engaged in the making of clothing, and the South Central division only seventy-one prisoners, engaged in the process of making clothing.⁶⁵ Prisoners in the northern divisions also predominated in the making of items such as barrels, brooms, brushes, agricultural implements, and carpenter work. However, working from the 1890 census, the more industrial the enterprise, the more the South utilized forced, convict labor. Looking exclusively at the industries of farming, mining, railroad building and brick-making, figure 1.8, illustrated below, shows the number of prisoners in each of the five divisions and their involvement in those industries in 1890. As is evidenced in the table, the overwhelming majority of prisoners engaged in farming, mining, railroad building, and brick-making were in the South Atlantic and South Central divisions. While the table does not indicate the race of the prisoners, given the information and data that was addressed in the previous tables, it is fair to assume that the majority of the prisoners laboring in these very lucrative, labor intensive industries, consisted primarily of African Americans.

Occupation in Prison by Geographical Divisions:	North Atlantic	South Atlantic	North Central	South Central	Western
Farming	555	882	34	3,108	32
Mining	-----	725	388	1,630	-----
Railroad building	-----	1,668	103	1,407	275
Brick making	19	209	205	51	
Total	555	3,275	525	6,145	307

Figure 1.8

The use of convict labor throughout the postbellum South, like the implementation of the Black Codes and other repressive laws put in place to control the

⁶⁵ Ibid., 186.

approximately four million freed souls during the postwar decades, serve as pieces of evidence that indicate that the “Old South,” had not been reformed and made anew into what Woodward and many other scholars have attempted to proclaim was a “New South.” This analysis of the southern convict leasing system has attempted to illustrate that Woodward’s “New South” in fact remained very old.

Labor Contracts and the Cycle of Debt Peonage

The indifference which so many of the people feel and express as to the fate of the Negro is shocking and to the last degree revolting to me. He is actually to many of them nothing but a troublesome animal; not a human being, with hopes and longings and feelings, but a mere animal, valuable, but altogether unlovable. “I would shoot one just as soon as I would a dog,” said a man to me yesterday on the cars. And I saw one shot at in Columbia yesterday as if he had been only a dog, - shot at from the door of a store, and at midday!⁶⁶

According to Pete Daniel, one of today’s leading historians of post-bellum southern labor history, “Peonage in the southern United States grew out of the labor settlement following emancipation.”⁶⁷ The specific labor system that Daniels referenced was none other than the contracted labor system that developed, in some fashion or another, all throughout the post-bellum South. Upon the conclusion of the Civil War the contracted labor systems of sharecropping and tenant farming emerged as ways for southern planters, northern and southern capitalists, and the federal government to ensure that a stable labor force would remain in the South. Shortly after the conclusion of the Civil War, the United States government created the Federal Freedman’s Bureau and directed it to enter the South to aid in southern reconstruction. Along with the duty of protecting freedpeople, it was also the duty of the Freeman’s Bureau to ensure, encourage, and promote northern free labor ideals and ideology. The Freedman’s Bureau

⁶⁶ From Sidney Andrews, *The South Since the War* (Boston: Ticknor and Fields, 1866), 96-101.

⁶⁷ Pete Daniel, *The Shadow of Slavery: Peonage in the South* (Chicago: University of Illinois Press, 1972), 19.

had the duty of ensuring that newly emancipated individuals became contract laborers and found what was deemed to be steady employment with “fair” wages and “reasonable” guidelines on the part of the landowners and planters drafting the labor contracts. Since the federal emancipation effort had failed to grant freedpeople with land or capital of their own, many were left with few options other than to sign annual contracts with white landowners, many of whom happened to be their previous slave masters. This was due in part to the persistence of vagrancy laws that existed throughout the South, as well as to the development of contracted labor that came about during the post-bellum years.⁶⁸ As Daniels point out, by the dawn of the twentieth century, “Nearly every Southern state legislature had passed a contract-labor measure that in many ways resembled the black codes of Reconstruction.”⁶⁹

In essence, an examination of the sharecropping and tenant farming systems that developed throughout the post-bellum South highlights the similarities between the antebellum and post-bellum labor and social structure of the South. An examination of labor contracts and testimony from freedpeople reveals that while the formal institution of slavery may have been abolished with the Emancipation Proclamation and the noble efforts of some Freedman’s Bureau, elements of the previous labor system nonetheless continued to thrive. The most prevalent carryover from slavery was perhaps the level of control and coercion that white landowners continued to wield over freedpeople.

During his travels throughout the South in 1865, special agent and correspondent for the Chicago Tribune and Boston Advertiser, Sidney Andrews, went to the Carolinas and Georgia to report on the general state of the South. After his time traveling and

⁶⁸ See John Dittmer, *Black Georgia in the Progressive Era 1900-1920* (Chicago: University of Illinois Press, 1977) and Pete Daniel, *The Shadow of Slavery: Peonage in the South* (Chicago: University of Illinois Press, 1972).

⁶⁹ Pete Daniel, *The Shadow of Slavery: Peonage in the South* (Chicago: University of Illinois Press, 1972), 25.

collecting data through the region, Andrews' (1866) notes published his notes in a book titled *The South Since the War*. Throughout his time spent traveling throughout the post-bellum South, Andrews came to the conclusion at numerous points that southern whites had very little faith in black free labor. During this period, there was much debate among both northern and southern whites as to the ability of freedpeople to become successful free laborers. Generally speaking, the white attitude that dominated the South saw freedpeople as largely incapable of becoming successful free laborers. In fact, Andrews believed that the failure of the implementation of free labor in the South was due entirely to whites: "The fault unquestionably, it appears to me, lies with the white man. He is of the ruling race, and might, I feel very certain, have established a different order of things if he had pleased to do so, and had exercised good common sense in the beginning. That there are some planters who find the free negroes honest and faithful is positive proof that there might have been many more, and if many more, then without number."⁷⁰

Andrews described the attitudes held by planters towards black free labor, what he saw as the new type of servitude that freedpeople were being subjected to throughout the South, and the nature and implementation of contracted labor arrangements. "Most of them [white planters] began by assuming, however, that it was right to keep the negro in slavery just as long as possible, and by adding thereto the assumption that the free negro would not work. Despite the fact that nearly everybody tells me the free negro will not work, the experience of some of the better class of planters convinces me that he will work, if he is treated like a man."⁷¹ In describing the contracted labor system he witnessed, Andrews wrote:

⁷⁰ From Sidney Andrews, *The South Since the War* (Boston: Ticknor and Fields, 1866), pp, 96-101.

⁷¹ *Ibid.*

Some of the blacks are working along as heretofore, under the private arrangements with their former masters; but in most cases there is a written contract between the employer and the employed, - one copy in the hands of the planter and the other at the Freedman's Bureau office. I hear of very few cases in which the compensation is in money; in nearly all instances it is a part of the crop. The laborer's share ranges from one tenth to one half; on some small farms, where special privileges are given the negroes in the way of clothing, use of land, use of team, use of time, the share may not be over one sixth to one tenth of the regular crop; in the lower part of the State [South Carolina], where most of the labor is done by hand, and where there are no special privileges, the share is from one third to one half; in the upper part of the state, where horses or mules are more in use, the share is from one fourth to one third. The contracts generally expire at New Year's.

Andrew's notes on the South reveal that, in terms of labor and prevailing attitudes of white landowners, much of what occurred during the post-bellum decades signified a significant level of southern continuity. The contracted labor system that developed along with the prevailing attitudes of white planters and white southern elites spoke more to the "Old South" and less to ideas of a "New South."

Taking a closer look at the systems of contracted labor that Andrews witnessed during his tour of the post-bellum South, it should first be pointed out that sharecropping and tenant farming have been argued by many historians as having been a kind of slavery by another name because these systems tended to result in freedpeople falling into debt servitude; or, otherwise commonly known as, debt peonage. I begin my analysis of southern debt peonage by first examining the nature of the labor structure that developed throughout the post-bellum South. I do this by analyzing a series of labor contracts from various points in time. With the absence of institutional slavery, the new labor structure that developed throughout the post-bellum South was built around the systems of sharecropping and tenant farming. By examining the language of specific labor contracts one is able to identify elements in the form of attitudes and perceptions held by white

landowners that harken back to the antebellum years and further suggests that, for African Americans, the “New South” was not so new.

In Pete Daniel’s analysis of southern debt peonage, he finds that the southern landlords and credit merchants who were fighting against financial ruin and a lack of capital during the post-bellum decades “were notorious for their exploitation of the tenant class.”⁷² One type of peonage that developed out of the post-bellum southern labor settlement was the system of sharecropping. According to Daniel, “In theory the sharecropping system in the cotton belt offered a poor agrarian worker the opportunity to become a farm owner. Successful years sharing a crop with a landowner might enable the man to save his money and eventually make a down payment on his own acres.”⁷³ However, in actuality, the labor system that was sharecropping tended to both lead to, and subsequently perpetuate, the system of debt peonage that developed throughout the post-bellum South. While some individuals did manage to climb the sharecropping ladder, so to speak, many nonetheless fell victim to the usurious credit rates that the cropper needed in order to purchase supplies and tools. It was the usurious credit rates that fueled the cycle of debt, which resulted in a cycle of peonage.

The system of sharecropping that developed throughout the post-bellum South functioned as a system of debt peonage when the debt that a cropper owed to a planter was used as a form of labor compulsion that “forced a man to remain on a plantation year after year.” Daniel points out that, “One planter might claim that a cropper owed him \$300, but let a neighboring planter have him for \$150. The second planter continued to record the indebtedness as \$300. This practice, nailed as it was to the high interests rates

⁷² Ibid., 24.

⁷³ Ibid.

prevailing through the cotton and tobacco areas, kept the workers in constant debt [which in turn kept them confined to a planter]. Yet harsh as this system was, it did not constitute peonage.”⁷⁴ From a legal standpoint, peonage only occurred when the planter forbade the cropper to leave the plantation due to a debt that was owed to him. Peonage thus rested on debt, and as Daniel points out, “the debtor had to be restrained for the legal definition to be fulfilled.”⁷⁵ Once a planter refused to let a cropper go because of a debt that he owed, it became debt peonage. According to Daniel, “Most blacks signed annual contracts, improvident they took advances on their expected share of the crop. When settlement time came the next fall, the laborers often discovered that their share of the crop did not cover what they owed to supply merchants or to the planters.”⁷⁶ Thus, when a planter resorted to labor coercion through the threat and implementation of debt, the system became one of debt peonage. According to Daniel, “The line that divided the cropper from the peon was a thin but crucial one. It depended on the compulsion that forced a man to remain on the plantation year after year.”⁷⁷

Looking at the provisions outlined in labor contracts one is able to gain a better understanding of what this form of labor compulsion looked like and how it created conditions and circumstances that were similar to the conditions and circumstances during the antebellum years. Some contracts, such as the one signed between A.T. Mial and Fenner Powell in 1886 in North Carolina, were basic and only outlined a handful of provisions. According to this specific labor contract, “The Said Fenner Powell agrees to work faithfully and diligently without any unnecessary loss of time to do all manner of work on Said farm as may be directed by Said Mial, And to be respectful in manners and

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Pete Daniel, *The Shadow of Slavery: Peonage in the South* (Chicago: University of Illinois Press, 1972), 20.

⁷⁷ Ibid., 24.

deportment to Said Mial.”⁷⁸ However, on the other end of the spectrum, some labor contracts were quite lengthy with pages of provisions that could be violated. In a contrasting sharecropping contract from the year 1867, the following detailed list of provisions was outlined: “Each cropper must keep all bridges in his crop or over ditches that he has to clean out and when a bridge needs repairing that is outside of all their crops, then any one that I call on must repair it; no cotton must be planted by croppers in their home patches; all croppers must clean out stable and fill them with straw, and haul straw in front of stable whenever I direct; no cropper is to work off the plantation when there is any work to be done on the land that he has rented, or when his work is needed by me or other croppers.”⁷⁹ In speaking to the last provision outlined in this contract, it is surprising that the landowner did not completely prohibit his sharecroppers from working off his property. Generally speaking, sharecropping contracts tended to have a provision that forbade them from hiring out their labor to other landowners. Such a violation, along with the violation of most other sharecropping contract provisions could, and often times did, result in a visit by the county sheriff or a stint as a forced convict laborer. However, more frequently, the landowner would simply deduct pay or fine the cropper, which then generally contributed to creating a cycle of debt between the landowner and the cropper.

A common sharecropper could go from a state of relative freedom to a state of peonage almost instantaneously due to a simple contract violation. It also was not uncommon for sharecroppers to receive some form of corporal punishment due to

⁷⁸ Quoted from William E. Gienapp, ed., *The Civil War and Reconstruction: A Documentary Collection* (New York: W.W. Norton & Company, 2001), 391.

⁷⁹ Grimes Family Papers (#3357), 1882, in the Southern Historical Collection, University of North Carolina at Chapel Hill. 2009. www.learnnc.org/lp/editions/nchist-sampler/4765.

contract violations. In an article titled, "A Georgia Negro Peon," published in *The Independent* in 1904, a former sharecropper told of how he had violated his contract. The name of the man is unknown, but, according to the firsthand account in the article, he told of how he attempted to hire-out his labor to more than one planter and as a result was subsequently severely beaten for it and made to continue laboring on the farmer's plantation. At the age of twenty-one the planter informed the said peon that he was free to go, but encouraged him to stay on and sign another contract. Over the next several years the young man continued signing short-term labor contracts, until eventually he agreed to sign a ten-year labor contract, only to, at the end of the ten years, find out that he had acquired debt through the interest accrued on borrowed farming materials, which then resulted in him becoming a debt peon for the next three years.⁸⁰

The labor systems of sharecropping and tenant farming were not the only structures influencing the growth and spread of southern peonage. In his analysis of southern peonage, Daniels also points to the corruption of southern law enforcement as being another factor that contributed to the growth and spread of peonage. According to Daniels:

This type of peonage differed from the more formal convict-lease system. That equally abusive system usually existed as a statewide operation, and convicts were often divided up among the mine operators, large businessmen, and planters of the state. Peonage, on the other hand, originated from local jails and often existed in the absence of supporting laws. Moreover, convicts leased by the state were bound out not because of a debt but because they were serving terms in the penitentiary. The local laws and customs that permitted peonage were tied to debts, real and fictitious. Except in local court-approved contracts with prisoners, which were similar to state convict lease systems, men bailed out of local jails had squared their debts to society by allowing an employer to pay their fines (24-25).

⁸⁰ University of North Carolina at Chapel Hill, Documenting the American South (Project), *The New Slavery in the South an Autobiography*, Electronic ed. (Chapel Hill: Academic Affairs Library, University of North Carolina at Chapel Hill, 2001).

Thus, it was not uncommon for private landowners and individuals with significant capital to post bail for individuals (a significant portion of whom were African Americans) being held in county jails for petty crimes. Of course, once bail was posted, these individuals were then indebted to the landowners and capitalists and were subsequently made to labor for them to pay off their debt. This legally protected (although it did technically violate the 1897 federal peonage statute) system of forced labor that continued throughout the South serves as further evidence of southern continuity.

Conclusion

Emancipation did not truly mark the end of forced labor in the American South. While the former institution of chattel slavery may have gradually dissolved with the passage of the Thirteenth Amendment, new forms of forced labor promptly took its place. From the implementation of discriminatory laws such as the Black Codes, to the use of convict labor, to the contracted labor of sharecropping and tenant farming, African Americans throughout all parts of the American South continued to toil in conditions akin to slavery during the decades following the Civil War. Simultaneously the evidence suggests that southern governments remained wedded to and vastly reliant on forced labor.

This study examined the systems of forced labor that developed throughout the post-bellum South and found that an examination of the southern Black Codes, the convict leasing system, sharecropping, and debt peonage demonstrated that to a large degree both the economic goals and policies of planters and industrialists were aligned.

My analysis aligned more closely with the ideas of the “New Continuarrians” and elements of the “Prussian Road” thesis of southern development than with those who argued that Reconstruction represented a significant break with the previous system of exploitation under slavery. However, like Lichtenstein and Fields I argued that the systems of forced labor that developed throughout the post-bellum South marked a transitional period from slavery to capitalism.⁸¹ Ultimately, I found that the case for southern discontinuity is incomplete, but not wholly inaccurate. It becomes, as “New Continuarrians” have pointed out, problematic when one examines the labor structure that developed throughout the post-bellum south because of the South’s ongoing reliance on forced black labor during the post-bellum decades. Scholars who subscribe to the idea of the “New South” have failed to adequately account for race and racism in their analyses. Thus, my analysis refined the current scholarship by emphasizing “racial continuity” instead of simply “continuity,” which has tended to only partly acknowledge the prevalence that both race and racism played in shaping the post-bellum criminal justice system, post-bellum prisons, and the post-bellum labor structure, both bound and “free” during this period of transition between slavery and capitalism. Where Lichtenstein’s work focused exclusively on the nature of the convict leasing system in Georgia to demonstrate a case for southern continuity, to illustrate the deep connections between forced labor, free labor, and capitalism, my research went a step further and combined an examination of the Black Codes, the southern convict leasing system, sharecropping, and debt peonage to make a case for southern continuity that emphasized the role of race and racism.

⁸¹ Barbara J. Fields, “The Nineteenth Century American South: History and Theory,” *Plantation Society in the Americas I* (April 1983), quoted in Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso Press, 1996), 11.

This analysis focused specifically on the elements of forced labor and the role that race and racism played to perpetuate systems of forced labor throughout the post-bellum South. As was demonstrated, during the decades following the Civil War, the South continued to rely on various forms of forced African American labor. The South's continued reliance on forced African American labor was neither strictly agricultural nor industrial, but served as a means of securing cheap labor for economic and industrial growth throughout the post-bellum South. According to Lichtenstein, "In the post-bellum South, at each stage of the region's development, convict labor was concentrated in some of the most significant and rapidly growing sectors of the economy. Initially southern prisoners worked on the railroads, laying the indispensable infrastructure for nineteenth century economic development. Then, southern capitalists turned to the rapid development of the region's exploitable resources, convicts played a key role in increasing vertical integration of extractive industries, which required large concentrations of steady, predictable, controllable, -i.e. proletarianized – labor."⁸² From Reconstruction through the Progressive Era, the numerous uses of forced labor and labor coercion developed hand in hand with the political economy of southern capitalism.⁸³

Unfortunately forced labor did not end with the conclusion of the twentieth century. Today there still exists a level of collaboration between the government and private capital in the form of prison labor. This is especially evident when one considers the recent rise in private prisons. Perhaps what is most telling though, similar to the post-bellum decades, the prison population today is still disproportionately African American.

⁸²Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso Press, 1996), 188.

⁸³ See Alexander Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso Press, 1996), 188-189.

Just like in the mid 1990s, stories about the ongoing use of prison labor and resurrections of the chain gang can still be found.

This history has much broader implications. It is my hope that this analysis succeeded in illuminating the historical parallels that we are witnessing today in this moment of “Black Lives Matter” and unprecedented levels of incarceration of people of color. Ultimately when we are talking about the United State’s long history of convict labor and legal discrimination, we do so within the framework of this nation’s even longer history of both overt and discrete racism. While the overt racism of the post-bellum decades may be a thing of the past it remains clear, especially when examining our current criminal justice system and the demographics of today’s prisons that institutional racism continues to be ubiquitous. My analysis began with a discussion on the current state of the criminal justice system, the current politics around criminality, and the prison industrial complex. Ultimately I am suggesting that in order for us to understand and change the current system of incarceration, prison labor exploitation, and institutionalized racism, we must look to the past.

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