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## The Keepers and the Kept: The First Hundred Years of the Tennessee State Prison System, 1830-1930. (Volumes I and II).

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**The keepers and the kept: The first hundred years of the  
Tennessee State Prison System, 1830–1930. (Volumes I and II)**

**Gossett, Larry D., Ph.D.**

**The Louisiana State University and Agricultural and Mechanical Col., 1992**

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**THE KEEPERS AND THE KEPT: THE FIRST  
HUNDRED YEARS OF THE  
TENNESSEE STATE PRISON SYSTEM  
1830-1930**

**VOLUME I**

**A Dissertation**

**Submitted to the Graduate Faculty of the  
Louisiana State University and  
Agricultural and Mechanical College  
in partial fulfillment of the  
requirements for the degree of  
Doctor of Philosophy**

**in**

**The Department of History**

**by**

**Larry D. Gossett  
B.A., B.S., The University of Tennessee, 1987  
M.A., Louisiana State University, 1988**

**May, 1992**

## Dedication

This work is dedicated to the more than two hundred thousand convicts, inmates, and residents who have passed through the gates into the Tennessee State Prison System since its inauguration on January 1, 1831.

It is also dedicated to the many thousands of employees of those institutions: commissioners, wardens, officers, nurses, and staff personnel. It is especially dedicated to those guards who view the convict not as a reject but as a human being who happened to go wrong and who then treat him as he would any other person down on his luck.

A special note of dedication goes to Billy Mayo McWherter of Tiptonville, Tennessee, who started me on this long journey with a simple statement in 1983.

**For Allison, Ryan, and Emily -- with love, as always.**

### Acknowledgements

Any project of this magnitude requires the cooperation and support of many individuals to accomplish. The efforts of my dissertation director, Professor Mark T. (Tom) Carleton, in this regard have been exemplary, and all candidates should receive the same amount of attention from their professors. Professors Burl Noggle, Robert Becker, Benjamin F. Martin, James Bolner, Sr., and Marshall De Rosa have also been supportive, yet critical and demanding of the work. Professor Susan Haynie also read and commented on the work.

The staff of the Tennessee State Library and Archives, Nashville, Tennessee, and especially Robert O. DePriest, Archivist II and Manuscript Librarian (now retired), went far beyond the bounds of duty in helping me locate many sometimes obscure materials on the prison system. Greg Maynard, former director of Planning and Research for the Tennessee Department of Correction and now an official of the state juvenile corrections department, was a model for cooperative state employees. The staff of the Louisiana State University Troy Middleton Library Interlibrary Loan Department was also extremely helpful in the acquisition of hard-to-find materials. The wardens and staff members of the Tennessee prisons were generous with their time and

limited resources in response to my requests for records and information.

A graduate fellowship from the Louisiana State University Alumni Federation and a national graduate fellowship from Phi Kappa Phi National Honor Society made the achievement of both the graduate degree and the writing of this work much easier. Appreciation is very gratefully extended to both organizations for their generous financial assistance.

## Preface

In the author's course of questioning the "whys" of modern prison management during the mid-1980s, Billy Mayo McWherter, warden of Tennessee's Lake County Regional Correctional Facility, said in response to a question about his own innovative management approach, "How can anyone fault anything that I do? We haven't done anything right in Tennessee prisons in 150 years." It was that statement from one of Tennessee's most respected prison officials, a former Deputy Commissioner of Correction and now Administrator of all West Tennessee prisons, along with a somewhat morbid personal sense of curiosity about modern prisons, crime, and convicts that led me to this study of Tennessee prisons.

The earliest Tennessee prisons resembled large jails more than modern prison facilities, and there was no attempt at segregation by age or seriousness of offenses. Blacks and women, however, were segregated from white males, and blacks would remain segregated until the early 1980s. These "hell holes"<sup>1</sup> did more than their share to increase contempt for society among the early convicts, many of whom would return to prison

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<sup>1</sup>National Banner and Nashville Whig, September 12, 1835.

again and again during their lifetimes.<sup>2</sup> Punishment in the harshest sense of the word was the only reason for state prisons to exist in nineteenth century America; reform and rehabilitation are concepts that had very little actual application or success during the first one hundred years of Tennessee prisons.

What caused early Tennesseans to push for a central penitentiary system? What were the problems of those earliest prisons? Was the penitentiary philosophy that developed unique to Tennessee or was it more regional in scope? What was the condition of Tennessee prisons at the end of the Civil War, and how did that war affect prisons in the South and in Tennessee in particular? What were the particular problems faced by Tennessee prisons during these first 100 years? Were those problems unique to Tennessee and, if so, why? Why was there a need for reform, where did the ideas for reform originate, and how were they implemented? These are the basic questions along with others that developed as the research progressed and that are answered by this study of the first one hundred years of history of the Tennessee state prison system.

Preliminary planning for this work envisioned covering the entire 160 year of Tennessee's prisons but, as the work advanced, it became more logical to break

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<sup>2</sup>See Convict Grade Books Numbers 1 through 15, Tennessee State Library and Archives, Manuscript Division, Nashville, Tennessee.



the study at approximately the end of the first century.  
The changes in penal philosophy, criminal justice  
management, and political systems after 1930 are so  
different from those of the first one hundred years as  
to require a much more in-depth examination in a  
separate work now in progress.

## TABLE OF CONTENTS

### VOLUME I

Dedication .....	ii
Acknowledgements .....	iv
Preface .....	vi
Table of Contents .....	ix
List of Tables .....	xi
Abstract .....	xii
Chapter I: Introduction .....	1
Chapter II: An Overview of the Criminal Justice System in America and Tennessee, 1682-1830 .....	9
Chapter III: The Tennessee State Penitentiary, The Early Years: 1830-1865 .....	33
Chapter IV: The Tennessee State Penitentiary during the Convict Leasing Period: 1865-1893 .....	61
Chapter V: Brushy Mountain State Penitentiary in the State's Coal Mining Era: 1893-1930 .....	118
Chapter VI: Tennessee State Penitentiary, 1893-1930: The New Tennessee State Penitentiary .....	162
Chapter VII: A Move Toward Reformation: Fort Pillow State Prison and Farm, 1930-1960 .....	201

## VOLUME II

Chapter VIII:	Race and Race Relations in Tennessee Prisons .....	231
Chapter IX:	Women and Children in Prison .....	253
Chapter X:	The Bat, The Box, and The Dark .....	279
Chapter XI:	The Keepers of the Convicts .....	301
Chapter XII:	The Kept and Their Subcultures .....	322
Chapter XIII:	The Tennessee State Prison System: The First 100 Years .....	348
	Bibliography .....	374
	Vita .....	400

## List of Tables

Table 4.1	Convict Deaths in Tennessee Prison System .....	83
Table 7.1	Prison Expenditures by Selected States on Population Basis .....	218
Table 8.1	Population and Racial Composition of the Tennessee State Penitentiary, 1831-1865 .....	233
Table 8.2	Population and Racial Composition of the Tennessee State Penitentiary, 1865-1896 .....	236
Table 8.3	Population and Racial Composition of the Tennessee State Penitentiary, 1898-1936 .....	246
Table 8.4	Executions in Tennessee, 1913-1938, by Crime, Race, and Region of the State.....	250

## Abstract

Tennessee built its first state penitentiary in Nashville in 1830 on Sixteenth and Church Streets on land that is now a downtown parking lot. Revisions in the criminal code made many offenses punishable by imprisonment instead of corporal or capital punishment, and the convict population grew steadily. Continuing concern was expressed by the General Assembly that the penitentiary be self-supporting, and much effort was expended at all levels of government to accomplish that end.

This study covers the history of approximately the first one hundred years of the Tennessee State Prison System. It begins with an overview of the criminal justice system in the state prior to the building of the state's first penitentiary, details the history of the penitentiary system, and concludes with a summary of the first one hundred years.

Public opinion as gleaned from the state's major daily newspapers, political opinion as determined from the records of the Tennessee General Assembly and addresses by the state's governors, and organizational history as determined by official reports and records of the various management entities that have controlled Tennessee prisons are all intertwined in this history. Individual chapters place particular emphasis on convict

labor and the outcries from organized labor against the "travesty" of allowing common criminals to compete with free labor, women and juveniles in the prison system, and the system of prison discipline. Additional chapters emphasize the racial overtones of Tennessee prisons following the end of the Civil War, convict subcultures, and the guard force over time.

The work concludes that four major problems faced the Tennessee prisons from the outset in 1831 and were still there at the end of the first one hundred years. The four continuing problems are discussed in detail in the final chapter. The work also poses new questions to be answered by an additional study now in progress of the Tennessee prison system since the 1930s.

## Chapter I

### Introduction

This study traces the evolution of Tennessee prisons from the inception of a central prison through the early 1950s, essentially the first one hundred years of the prison system. It focuses not only on penological theories but also on the daily operations of the institutions, the prisoners, and the political actions of the Tennessee legislature and politicians. Special emphasis is given to the issues of race, women and juveniles, prison discipline, convict labor, and the guard force. Attention is also given to prison life and the various subcultures created by the convicts.

Much of this study comes from an analysis of the "official reports" of the various entities controlling Tennessee's prisons. These reports are quite detailed in the early years of the system, and a reasonably accurate picture of prison life may be drawn. There are gaps, however, in the official reports either because none were filed or because those filed are so skimpy in fact and substance. In these instances, newspapers, official correspondence files, and the proceedings of the General Assembly provide insight for those periods. These additional sources are also used to confirm and support findings from the official reports. All records pertaining to prisons have to be approached with a level

of skepticism and distrust. Reports by institutions to the legislatures often glossed over internal turmoil, for example, and the descriptions of purpose and administrative structure that appear in laws establishing the prisons seldom coincide with later realities. By using a variety of sources, however, one can piece together a picture of both origins and early development; by being alert to variances among the sources, one can even detect minor problems that the institutions were reluctant to mention in their reports.

The level of activity by Tennessee governors in regard to the state's prisons varied widely over the period. Papers of the governors served as a valuable source of official thinking on the subject of the state's prisons. Papers of prominent Tennessee legislators and local politicians, however, are strikingly free of comments concerning the prisons; there are occasional requests for intervention in matters of clemency, but little else exists. These personal letters, however self-serving they may be, are an additional source of insight to daily prison routine.

Even the state's newspapers were widely inconsistent in their reporting on the state prison system. During times of trouble or rumored corruption, the newspapers covered the prisons extremely well, even editorializing about successes and failures. When things were "normal", however, the media, much like the



General Assembly and the public, put prisons and prisoners out of mind.

Studies of prison systems in other countries and across broad regions are limited. The best published works to date are Patricia O'Brien's The Promise of Punishment: Prisons in Nineteenth-Century France (Princeton: Princeton University Press, 1982) and Michael Ignatieff's A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850 (New York: Pantheon Books, 1978). Michel Foucault's Discipline and Punish: The Birth of the Prison (New York: Random House, 1979) does an excellent job of laying out the origins of the modern penitentiary system. The best United States' effort is Jane Zimmerman's 1947 University of North Carolina Ph.D. dissertation, "Penal Systems and Penal Reforms in the South since the Civil War." There are few published works dealing with the nation's prison system as a single entity. Blake McKelvey's American Prisons: A Study in American Social History Prior to 1915 (Chicago: The University of Chicago Press, 1936) and American Prisons: A History of Good Intentions (Montclair, NJ: Patterson Smith, 1977, reprint of 1936 edition with additional information and chapters) and Harry Elmer Barnes' The Story of Punishment (Montclair, NJ: Patterson Smith, 1972 reprint) are somewhat dated historical studies but quite good for the origins of

American prisons. David J. Rothman's The Discovery of the Asylum (Boston: Little, Brown Publishers, 1980) is an excellent work on the early American prisons. There is also at least one historical study currently underway of the United States federal prison system.

Numerous studies of modern prison systems have been completed such as Ben M. Crouch and James W. Marquart, An Appeal to Justice: Litigated Reform of Texas Prisons (University of Texas Press, Austin, 1989); Peter Maas, Marie: A True Story (New York: Random House, 1983); Negley K. Teeters, The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773-1835 (Philadelphia: Temple University Press, 1955); and Negley K. Teeters and John D. Shearer, The Prison at Philadelphia's Cherry Hill: The Separate System of Prison Discipline, 1829-1913 (New York: Columbia University Press, 1957). Each of these deals with a system in the short term or with a single prison entity.

Studies of state prison systems over time, however, are very limited. Mark T. Carleton's Politics and Punishment: The History of the Louisiana State Penal System (Baton Rouge: Louisiana State University Press, 1971) was for at least fifteen years the only published state prison history. Paul W. Keve's The History of Corrections in Virginia (Charlottesville: University Press of Virginia, 1986) added to Carleton's work, and Donald R. Walker's Penology for Profit: A History of

the Texas Prison System, 1867-1912 (College Station, TX: Texas A & M University Press, 1988) is the most recently published work.

The Tennessee prison system is the basis for two non-published book length studies by historians. Edwin B. Thompson's Vanderbilt University M.A. thesis, "Humanitarian Reforms in Tennessee, 1820-1850," contains a major section on the origins of the first Tennessee prison and is an excellent source for the period. Jesse Crawford Crowe's 1954 Vanderbilt University dissertation, "Agitation for Penal Reform in Tennessee, 1870-1900," covers the end of the convict leasing era and the return of Tennessee's convicts to state control. Verdel Nicley's 1933 University of Tennessee M.A. thesis, "The History of the Tennessee Penitentiary, 1865-1890," gives a somewhat slim look at Tennessee prisons during the leasing era. Several master's theses have used individual Tennessee prisons or individual topics for the focus of study. Helen Kathleen Rankin's George Peabody College M.A. thesis in history, "Penal Legislation in Tennessee," provides valuable insight into the pattern of prison legislation across the period. Ruth Winton's 1937 University of Tennessee M.A. thesis in sociology, "Brushy Mountain State Penitentiary, 1896-1935," is useless for other researchers as it contains no documentation of sources. The author's own 1988 Louisiana State University M.A. thesis in history,

"Tennessee's Fort Pillow State Prison and Farm, 1935-1986," furnishes considerable material for the present study.

Various journal articles provide specialized information on the Tennessee prison system, but the great majority of these are from sociologists, criminologists, and political scientists. While these works are valuable for interdisciplinary insight and perspective, most are too narrow in scope to be considered historical studies. A sizeable listing of journal articles is included in the bibliography hereto.

The present study extends the work accomplished by previous authors, covering both a longer period of time and involving a more detailed study of institutional, social, and political history. The work is divided into thirteen chapters. Following this introduction and literature review, Chapter II presents an overview of the criminal justice system in the United States and Tennessee prior to 1830. The call for major changes in the criminal justice system in Tennessee is documented as is the decision to build a central state penitentiary. Chapter III details the operation of the Tennessee State Penitentiary from its inception through the Civil War. Chapter IV covers the period of 1865-1893, the convict leasing period in Tennessee. Chapters V and VI study the Brushy Mountain State Penitentiary and the Tennessee State Penitentiary respectively from

1893-1930. Chapter VII details a shift in the state's penal philosophy with the decision to build a reformatory institution. The six chapters, II-VII, are primarily institutional history; there are few convicts or guards found in these chapters. The details are necessary, however, to provide a structure for the chapters that follow.

The next five chapters contain social as well as political and institutional history. Convicts and guards come to life here and have real stories to tell. Chapter VIII is a study of race and race relations in Tennessee prisons, Chapter IX studies women and juveniles in the prison system, and Chapter X details the system of prison discipline over time. Chapter XI examines the prison guard force and the changing interactions between convicts and guards over twelve decades. Chapter XII provides a glimpse of prison life and convict subcultures in the period from 1830-1950. There is some repetition of facts and incidents in these thematic chapters: it is extremely difficult to discuss such topics and not repeat certain information. There is no intent to be tedious, but a certain utility does come from reinforcing certain facts in various chapters. It is hoped that the method will not be seen as redundancy but rather as an attempt to tell the complete story.

The final chapter of this study presents a summary of the first one-hundred years of Tennessee prisons. It tallies the successes and the failures of the penal system in achieving the legislatively-mandated goals, and it establishes a strong base for a future study of recent Tennessee prison history.

Most states, including Tennessee, build their prisons far from the major population centers (even the original Nashville penitentiary was to be "located at least two miles from the center" of town). The isolation often serves two purposes: prison escapes are less likely to be successful if they occur in rural isolated areas and prisoners are "out of sight and out of mind." But the isolation also keeps down public awareness of the convicts and their lives behind the walls and fences. It is hoped that this study will change, however slightly, that lack of awareness in Tennessee. Telling the story of Tennessee prisons from both inside/out and outside/in, this study is a history of "the keepers and the kept" during the period of 1830-1936.

Chapter II  
An Overview of the Criminal Justice System  
in America and Tennessee,  
1682-1830

Prisons are an everyday fact-of-life in the United States. However unsavory or unsatisfactory that fact might be, no one in this country is ready to attempt surviving without them. In fact, prisons play such an important role in the nation's criminal justice system that the United States now incarcerates a greater percentage of its population than does any other nation in the world except the Soviet Union and South Africa.<sup>1</sup> The terms of incarceration in this nation are also much longer than those in any other nation, and the United States is the last major Western nation to still impose the death penalty.<sup>2</sup> Ironically, for all the shortcomings and faults within this nation's prison systems, the concept of the penitentiary as a complete form of punishment is primarily an American invention, and the history of the country's prisons is a troubled search for solutions to many long-standing problems.

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<sup>1</sup>The Associated Press, Washington, D.C. as cited in The Murray Ledger and Times, Saturday, January 5, 1991, p. 11.

<sup>2</sup>Hugo Adam Bedau, Death is Different: Studies in the Morality, Law, and Politics of Capital Punishment (Boston: Northeastern University Press, 1987).

Punishment for criminal misconduct in the American colonies followed long-established patterns imported from the same European nations that provided immigrants to the new land. Death by hanging was the most likely punishment for any crime considered serious such as stealing, homicide of any type including manslaughter, and perjury.<sup>3</sup> Less serious crimes such as rape, fornication, and criminal mischief were normally punished by public dunkings, floggings, brandings, or cropping of ears or hands.<sup>4</sup> Some countries such as England and France practiced the punishment of transportation or banishment from the home country, but since the American colonies had no foreign colonial possessions, transportation was not an American option.<sup>5</sup>

The prison, viewed as a place to detain persons against their will, probably originated before the start of written history. When cannibals secured their future victims in stockades for fattening or to await their turn on the dinner table of their captors, the setting was certainly a prison of sorts. Political and religious offenders were held in jails or prisons throughout

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<sup>3</sup>Harry E. Allen and Clifford E. Simonsen, Corrections in America: An Introduction (5th ed.; New York: Macmillan Publishing Company, 1989), pp. 3-14.

<sup>4</sup>Rape has only become a "serious" crime in the 20th century and was dealt with rather casually in the early days of the nation.

<sup>5</sup>Allen, Corrections, pp. 24-26.



early recorded history.<sup>6</sup> By 1704 at the papal prison of San Michele in Rome, established by Pope Clement X, and at the prison in Ghent, Belgium, established by Hippolyte Vilain XIII in 1773, the origins of the modern prison can be found. Rudimentary classification systems and at least some segregation of offenders by age, sex, and class of crime were practiced in each instance, and labor and reformation were announced as the primary goals of incarceration.<sup>7</sup>

Jails or "gaols" in England were primarily designed to house those accused of crimes awaiting trial.<sup>8</sup> There was little or no segregation of offenders with men, women, and children sharing the same cramped and often dingy spaces. Hardened criminals shared open cells with incidental or accidental offenders, and many a casual criminal became a skilled professional while awaiting trial.<sup>9</sup> Those incarcerated for debt and those too poor to provide housing for themselves also shared the overcrowded spaces. At each session of the court, a "gaol delivery" occurred that practically emptied the place of

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<sup>6</sup>F. H. Wines, Punishment and Reformation (Boston: National Prison Association of the United States, 1888).

<sup>7</sup>Harry Elmer Barnes, "The Historical Origins of the Prison System in America," The Journal of Criminal Law and Police Science (May 1921), pp. 35-60, 43.

<sup>8</sup>Allen, Corrections, pp. 16-24.

<sup>9</sup>Michel Foucault, Discipline and Punish: The Birth of the Prison (New York: Random House, 1979), pp. 20-21.

its prisoners. Debtors and political prisoners were about the only carry-over population of the jails from one session of the court to the next, but the jail would soon fill up again awaiting the next term of the court. These traditions followed the immigrants to America, and jails in every colony were built to hold the accused, the poor, and debtors awaiting trials and punishment.<sup>10</sup>

The first American colony to attempt major reforms of its criminal code was Pennsylvania. William Penn, the colony's founder, signed the Great Law of 1682 which outlawed capital punishment for all crimes except first-degree or premeditated murder and provided for fines and imprisonment for most criminal offenses although second offenses of the same serious crime did result in the death penalty.<sup>11</sup> Adultery, rape, and arson (relatively minor crimes for the day) were still punished by public flogging. The imprisoned spent their sentences in overcrowded jails, often with little or no food, clothing, or proper ventilation. Nonetheless, Penn's code was the

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<sup>10</sup>Allen, Corrections, pp. 16-32; Barnes, "Origins of Prisons."

<sup>11</sup>The Charter and Laws of Pennsylvania, 1682-1700, pp. 14-15.

first relatively humane penal code enacted in this country.<sup>12</sup>

The Code of the Duke of York superseded Penn's Great Law in 1718, and it returned to capital punishment as the major punishment for all serious crimes and named thirteen specific capital offenses. Larceny was the only serious felony not punishable by death.<sup>13</sup> As they did under Penn's Great Law, second offenses of even minor crimes resulted in the death penalty. Fines and imprisonment became things of the past, and public punishments returned to the forefront. Attempts at reform were all defeated until well after the American Revolution when the Law of September 15, 1786 provided for "continuous hard labor, publicly and disgracefully imposed" for all felons lodged in jails throughout Pennsylvania.<sup>14</sup> The Walnut Street Jail in Philadelphia was one facility used for the housing of felons under the new criminal code.

Construction on the Walnut Street Jail in Philadelphia began in 1773, but it was not finished because of the outbreak of the American Revolution. Both the

<sup>12</sup>Thomas L. Dumm, Democracy and Punishment (Madison: University of Wisconsin Press, 1987), pp. 65-66.

<sup>13</sup>Michael Ignatieff, A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850 (New York: Pantheon Books, 1978), pp. 16-17.

<sup>14</sup>Ibid.; Statutes at Large of Pennsylvania, Vol. 12, pp. 280-281.

English and Americans used the jail to house prisoners of war during separate occupations of Philadelphia, but by 1780 it was completed and used to house convicted felons.<sup>15</sup> The jail was mean at best and cruel at worst: the jailer operated a bar inside the jail, sold food to those prisoners with money and gave none to those who could not pay, housed men and women in the same rooms, kept no control over the sexual activities that occurred, and took bribes for clothing and medicine.<sup>16</sup>

The provision of the Law of September 15 requiring public hard labor for all felons in the jail caused the streets of Philadelphia to be full of "wheelbarrow men" as the convicts were called. The hard labor portion of the sentences consisted of digging ditches, putting in cellars and basements, digging sewers, and breaking rock. Reformers and other civic minded people thought that the spectacle of public labor for convicts was degrading to the city of Philadelphia and called for an end to the practice. In a memorial to the Pennsylvania legislature in 1788, the Philadelphia Prison Society called for "punishment more private or even solitary labour" in order to better effect rehabilitation on the

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<sup>15</sup>Blake McKelvey, American Prisons (Montclair, NJ: Patterson Smith, 1977, reprint of 1937 edition).

<sup>16</sup>Ibid.

offenders.<sup>17</sup> The idea of solitary confinement was combined with a requirement of total silence and was based on a penal system in use at Wymondham Gaol in England. This institution practiced segregation of the sexes and of classes of offenders, separated hardened criminals from first-offenders, used solitary cells for confinement of all prisoners at night and for securing recalcitrant prisoners at all times, and provided large, well-equipped workrooms for the employment of all able-bodied prisoners.<sup>18</sup>

While certainly not the originator of the idea of using solitary confinement as punishment (monasteries had used it for hundreds of years), Englishman John Howard, the principal architect of the gaol at Wymondham, is credited with being the first to advocate this system for public use.<sup>19</sup> Howard visited gaols and prisons throughout Europe between 1773 and 1790 and included several visits to San Michele and Ghent. His descriptions of these two institutions in particular contain vivid details of both construction and prison administration. Howard's writings were well circulated

<sup>17</sup>Negley K. Teeters, The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773-1835 (Philadelphia: Temple University Press, 1955).

<sup>18</sup>Anthony Babington, The English Bastille: A History of Newgate Gaol and Prison Conditions in Britain, 1188-1902 (New York: St. Martin's Press, 1971), p. 26.

<sup>19</sup>Ibid.

in America, and especially in Philadelphia, by the Society of Friends, more commonly known in America as the Quakers.<sup>20</sup> The Quakers were extremely influential in both the Philadelphia Prison Society and the Philadelphia Society for Alleviating the Miseries of Public Prisons. The membership rolls of each group indicated that about fifty percent of the two societies' members were also members of the Society of Friends.<sup>21</sup> It has been long recognized that the most active American group in prison reform in the 18th century was the Quakers, and the leading and most outspoken advocates of prison reform in Pennsylvania for over fifty years, Roberts and Richard Vaux, were both members of the Quakers.<sup>22</sup>

The reform efforts of the various Philadelphia groups were successful and on May 27, 1789, the state legislature enacted laws designating the Walnut Street Jail as the place of penal confinement for all serious criminal offenders throughout Pennsylvania.<sup>23</sup> On April

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<sup>20</sup>Robert Vaux, Notices of the Original and Successive Attempts to Improve the Discipline of the Prison at Philadelphia and to Reform the Criminal Code of Pennsylvania (Philadelphia: Carrs Bookpress Company, 1810), pp. 24-25.

<sup>21</sup>Barnes, "Origins of Prisons," p. 47.

<sup>22</sup>Ibid.

<sup>23</sup>Negley K. Teeters and John D. Shearer, The Prison at Philadelphia's Cherry Hill: The Separate System of Prison Discipline, 1829-1913 (New York: Columbia University Press, 1957).

5, 1790, the legislature ordered solitary confinement for all "hardened and atrocious offenders." For the first time in history, all punishments for criminal offenses were to be administered by confinement at hard labor, and this date marks the beginning of the penitentiary system in the United States.<sup>24</sup>

The legislature provided the funds for building a "suitable number of cells" at the Walnut Street Jail to house the felons sentenced to solitary confinement. A three-story cellhouse was built in the yard of the jail with each cell being "six feet in width, eight feet in length, and nine feet in height, without unnecessary exclusion of air and light, will prevent all external communication."<sup>25</sup> It was thought at the time that total isolation from contact with any person other than jail guards and with only a Bible to read would force the incarcerated men to become introspective enough to repent and turn from their evil ways. As noted above many of the reformers in the Philadelphia Prison Society were Quakers, and the religious emphasis that continues today

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<sup>24</sup>Ibid., p. 10.; For a much more complete accounting of the origins of the penitentiary movement in America, see Harry Elmer Barnes, The Story of Punishment (2nd ed., Montclair, NJ: Patterson Smith, 1972); David J. Rothman, The Discovery of the Asylum (Boston: Little, Brown Publishers, 1980); and although now somewhat dated, the history of prison origins is still quite good in Blake McKelvey's American Prisons (Montclair, NJ: Patterson Smith, 1977).

<sup>25</sup>Ibid.; Teeters, Cradle, pp. 17-19.

in American penitentiaries is largely a result of the efforts of this group in Pennsylvania in the late-eighteenth and early-nineteenth-centuries.<sup>26</sup>

The jail was built of stone blocks set with iron bars and plate. Every prisoner had a solitary cell in which to sleep and work with access to the outside air and sunshine through a small window set in the wall. There were also solitary dungeon cells under the three wings of the jail. The only reading material allowed was the Bible, and no visitors, not even immediate family members, were allowed at any time during a prisoner's stay. All contact with the outside world ended as convicts were not allowed to receive mail during their incarceration period. Meals were taken inside the individual rooms, and body wastes were removed at will by a stream of water in an open channel that passed through the cells.<sup>27</sup> Work such as hand sewing of garments, metalsmithing of pots and pans, leatherworking for harnesses and saddlery, or a similar individual task was provided for each convict. Every convict was expected to work, to read the Bible, and to make "penance" for his misdeeds (hence the name 'penitentiary' for the jail system). The work was intended to reduce the cost of keeping the convict in jail, and

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<sup>26</sup>Teeters, Cradle, pp. 18-19.

<sup>27</sup>Ibid., p. 40.



the legislature had long, difficult debates about the number of hours that should be worked, how the manufactured products should be sold, how the money received should be allocated, and other similar minor details.<sup>28</sup> A strict code of total silence was enforced upon the convicts: no prisoner could speak to another convict under any circumstances. A convict could only speak to employees and guards when addressed by the employee or guard first.<sup>29</sup>

There was no system of parole for prisoners incarcerated in the Walnut Street Jail, and every man was required to serve the entire sentence imposed, normally a period ranging from two to twenty years, in solitary silence. The governor could exercise his pardoning power, however, and many prisoners enjoyed his clemency each year.<sup>30</sup>

Tennessee joined the United States in 1796 at about the time the Walnut Street Jail experiment was undertaken in Philadelphia.<sup>31</sup> Punishments for violation of the existing laws in Tennessee were very similar to those in place prior to the Law of September 15 in Pennsylvania. According to Bruce Thompson, when

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<sup>28</sup>Ibid.

<sup>29</sup>Teeters, Cherry Hill, pp. 20-22.

<sup>30</sup>Teeters, Cradle, p. 42.

<sup>31</sup>Robert S. Corlew, Tennessee: A Short History (Knoxville: University of Tennessee Press, 1981).

Governor John Sevier called upon the General Assembly in the "name of humanity" to revise the state's vicious and sanguinary criminal code, he gave the first official notice of a reform movement in the state.<sup>32</sup> Liberal-minded persons in the new state began advocating a system of criminal punishments based on reform and incarceration instead of public mutilation, stocks, hanging, and other punishments that seemed far better suited for more medieval times. The state constitution provided that each county seat in the state should build a courthouse and a "substantial jail" for the housing of the county's criminal offenders.<sup>33</sup> Specifications for the jail at Jamestown, Fentress County, declared that "double walls of twelve-inch thick logs, well-skint [sic], and hardened with fire" were to be buried four feet in the ground and topped with a ceiling of a double thickness of twelve inch logs. Hardware for the locks, hinges, and doors was to be "of the best material available" and of a standard commercial manufacture.<sup>34</sup>

As well-built as they were, these Tennessee jails were never meant as places of long-term incarceration

<sup>32</sup>Edwin Bruce Thompson, "Reforms in the Penal System of Tennessee, 1820-1850," Tennessee Historical Quarterly, Vol. 1, pp. 291-308, 291.

<sup>33</sup>The Constitution of the State of Tennessee, Tennessee Code Annotated.

<sup>34</sup>Philip M. Hamer, editor, Tennessee: A History, 1673-1932, four volumes, (New York: The American Historical Society, 1933), Volume 1.

for punishment. Constructed only as short-term holding places for offenders awaiting trial and for debtors, all of the prisoners -- men, women, and children -- were locked together in the same room with absolutely no privacy. Armed guards sat outside the barred fronts of the jails twenty-four hours a day only to prevent escapes and did nothing to control what went on inside the cells.<sup>35</sup> Women and children were at the mercy of often violent male criminals, and beatings, rapes, and even deaths were common. Records from the Davidson County Jail in Nashville indicate that some guards were more than willing to turn their heads to violent rapes and beatings being administered upon women by the jail toughs.<sup>36</sup>

Following conviction, punishments such as whipping, confinement in the public stocks, branding, cropping of ears or hands, or death by hanging were the order of the day. Many of these punishments were repulsive to the general public even for those offenders seen as below the bottom of society.<sup>37</sup> Religious orders in particular advocated forgiveness and reform of the criminal element

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<sup>35</sup>National Banner and Nashville Whig, January 13, 1802; hereinafter Whig.

<sup>36</sup>Ibid., March 4, 1825.

<sup>37</sup>Robert H. White, editor, Messages of the Governors of Tennessee, 8 volumes (Nashville: The Tennessee Historical Commission, 1954), 2, p. 206.

as opposed to brutal punishments.<sup>38</sup> Such minor crimes by today's standards as the theft of a horse, cow, or chicken could result in death by hanging regardless of the age of the offender. Adultery was dealt with by branding both parties, petty theft with the cropping of fingers or hands, and criminal mischief by cutting off an ear or branding. An entire litany of misdeeds led to the stocks, the dunking stool, or the whipping post.<sup>39</sup> Calls for reforms of the criminal code in Tennessee began as early as 1800 with incarceration in lieu of other punishments as the central core of the reformers' efforts.<sup>40</sup>

The move from Tennessee's frontier society to one more in accord with that in the major northeastern states of the country was slow and laborious. Communication was extremely difficult, newspapers were very expensive, mail delivery was sporadic and inconsistent, and transportation was hazardous at best. Attempts to popularize any reform idea had to face the difficult problems of organizing the public under trying

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<sup>38</sup>History of Tennessee ... with a Sketch of Davidson County (Nashville: Goodspeed Publishing Company, 1887).

<sup>39</sup>Acts of Tennessee, Chapter 73, pp. 120-124, 1807.

<sup>40</sup>Papers of Governor John Sevier, Location I-B-I, Ac. No. 13, 1462, 1840, 1841, 1842; Location V-K-1, Box 1, Ac. No. 76-5, Manuscript Division, Tennessee State Library and Archives, Nashville; hereinafter Archive Manuscripts.

conditions. Nonetheless, progress was made by various groups, and reforms in the criminal justice process slowly began to take shape. State legislatures in Tennessee revised the criminal code numerous times between 1800 and 1829, each time modifying or eliminating certain acts from the perils of public punishment. Tennessee counties argued for several terms of the legislature that a central prison was needed to accommodate convicts confined under the new criminal code.<sup>41</sup>

In response to pressure from the counties, the General Assembly in 1816 called for subscriptions by the "counties and any interested Persons" to underwrite the costs of building a central prison. Each county tax assessor was to maintain a list of subscriptions for the purpose of building a central prison to house each county's criminal offenders.<sup>42</sup> Four years later, the General Assembly noted that a total of \$117.17 had been subscribed by the citizenry of the state and extended the term for subscriptions for another two years. At the expiration of the subscription term, just over \$1600 had been pledged by taxpayers to underwrite the cost of

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<sup>41</sup>Acts of Tennessee, Chapter 73, pp. 120-124, 1807; Ch. 76, pp. 100-101, 1813; Ch. 72, p. 89, 1819; Ch. 19, pp. 24-28, 1821; Ch. 5, pp. 5-7 and Ch. 10, pp. 12-13, 1829.

<sup>42</sup>Ibid., Chapter 76, pp. 100-101, 1813.

a state prison.<sup>43</sup> It was obvious that, if there were to be a penitentiary in the state, the legislature would have to mandate it and finance its construction.

The General Assembly considered another criminal justice reform bill on October 14, 1819, to change the state's criminal code because the existing laws were "too sanguinary in their character, and better calculated for the early, than the advanced stages of society; and from their severity frequently tend to an entire exemption of the guilty from punishment." The bill called for the elimination of the death penalty for all offenses except first degree murder and provided prison terms, rather than branding, whipping, and cropping, for all other offenses. Most of the prison terms ranged between two and fifteen years. For example horse stealing, formerly a death penalty offense, was punishable by "not less than two nor more than seven years" under the new criminal code."<sup>44</sup>

In addition to modifying the criminal code, the bill authorized construction of a central prison for the state. The bill provided that any six of ten named persons were "authorized to select a suitable scite [sic] for said jail or penitentiary house within two miles of the Court-house in Knoxville in the county of

<sup>43</sup>Hamer, Tennessee, I, p. 327.

<sup>44</sup>A Bill, published in Acts of Tennessee, 1819, pp. 194-208.

Knox," and twenty thousand dollars was appropriated for its construction. The bill also described in some detail the conditions expected by the legislature once the penitentiary was built. It was to have solitary cells, but the convicts were to be worked every day except Sunday with the work hours set at "... as many as the season of the year will permit."<sup>45</sup>

Much like the Pennsylvania legislature, the Tennessee General Assembly was very concerned about the costs of keeping the convicts in the penitentiary and meant to ensure that the convict paid his own way as much as possible.<sup>46</sup> Many penitentiary regulations were also described. Meals were to be "inferior food with one meal of wholesome meat in each day," dress was to be "habits of coarse materials, uniform in colour and make," and the types of work were to be those "least liable to be spoiled by ignorance, neglect, or obstinacy, and where the materials are not easily embezzled or destroyed."<sup>47</sup>

The revision of the state's criminal code was a major step toward reform in the State of Tennessee, but it had one huge shortcoming: the section of the bill "which respect the change in the mode of punishment [is]

<sup>45</sup>Ibid.

<sup>46</sup>House Journal, 1819.

<sup>47</sup>A Bill, published in Acts of Tennessee, 1819, pp. 194-208.

suspended until the Governor by his proclamation [announces] the said buildings ... erected."<sup>48</sup>

Unfortunately for the state's lawbreakers, the penitentiary authorized by the new law was never constructed. Two weeks after the bill was introduced in the House of Representatives, a Nashville newspaper reported: "The subject of a Penitentiary is said to be popular; and it is believed that nothing but a variety of opinion as to its location, will prevent the passage of a law to that effect."<sup>49</sup> On November 3, 1819, the Nashville Gazette noted in a short article that "the public voice [was] more unanimously in favor" of the bill but that "disagreement ... as to the scite [sic]" had caused it to be tabled.<sup>50</sup> The legislators from East Tennessee could not agree with those from Middle Tennessee on a suitable location for the penitentiary. Both sections wanted the prison, and debates over the location of a prison ended the session without a decision on where to build the penitentiary.<sup>51</sup>

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<sup>48</sup>Ibid.

<sup>49</sup>Nashville Whig and Tennessee Advertiser, October 27, 1819; hereinafter Advertiser.

<sup>50</sup>Nashville Gazette, November 3, 1819; hereinafter Gazette.

<sup>51</sup>Edwin Bruce Thompson, "Humanitarian Reforms in Tennessee, 1820-1850," M.A. thesis, Vanderbilt University, 1935, pp. 11-19.



The State of Tennessee has always been considered a tripartite entity politically, geographically, and economically. At the turn of the nineteenth century, the mountainous eastern portion of the state, roughly divided from the middle section by the Cumberland Plateau, was extremely conservative, relied primarily on textile mills and agriculture for its economy, and would become staunchly Republican during and after the Civil War. The coastal plain western region of the state, bounded by the Tennessee River on the east and the Mississippi River on the west, was much less conservative, relied almost exclusively on agriculture for its income, and would become almost totally Democratic in later political affiliations. The middle region of the state lay somewhere in between the extremes of the other two sections: a mixing of liberals and conservatives, devoting the major portion of its industry to agriculture and transportation, and ending up with an unpredictable mixture of Democrats and Republicans in later years.<sup>52</sup>

A central prison was seen as a political prize because of potential jobs and government expenditures, and the legislative delegations from each region fought hard to secure the location of the penitentiary

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<sup>52</sup>Hamer, Tennessee.

building.<sup>53</sup> The various factions were able to prevent passage of at least six separate prison bills in the General Assembly between 1819 and 1827 because of the site selection argument. Sites as diverse as Knoxville, Kingston, and Shipping Port were considered before the legislature finally decided to locate it near the capitol city of Nashville.<sup>54</sup>

The Tennessee General Assembly in 1829 enacted a statute providing the state with a penitentiary for "confining such persons as shall be convicted of offenses made punishable by imprisonment and hard labor." The law provided twenty-five thousand dollars to construct the penitentiary, and an additional act was passed on November 5, 1829, providing for three commissioners of the penitentiary to be elected by the General Assembly.<sup>55</sup> The commissioners were instructed to buy four to ten acres of land within "two miles of Nashville [and] to procure from other states the best and most approved plans of building for a public Jail and Penitentiary House, and to erect the one for this state ...

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<sup>53</sup>Jesse Crawford Crowe, "Agitation for Penal Reform in Tennessee, 1870-1900," Ph.D. dissertation, Vanderbilt University, 1954.

<sup>54</sup>Thompson, "Humanitarian Reforms in Tennessee, 1820-1850."

<sup>55</sup>Public Acts of Tennessee, 1829, Chapter 5, pp. 5-7.

sufficiently large to contain at least two hundred convicts."<sup>56</sup>

An additional act was passed on December 28, 1829, "prescribing the mode of conveying criminals to the public Jail and Penitentiary House established in this State, and for their government therein." This same law described the officers of the penitentiary, their duties, and salaries -- "one thousand dollars per annum for the Agent, who shall also be the Principal Keeper." The Agent was given total management responsibility for the penitentiary, and a Board of Inspectors was established with the requirement that the inspectors report a "complete and comprehensive view of the [penitentiary's] transactions" to each legislature.<sup>57</sup>

This same section established regulations for the new penitentiary's convicts: segregation of the sexes, complete silence during work, no letters or visitors for convicts, prohibition against "spiritous or fermented liquor," and unannounced inspection of the living quarters by the Agent. It also detailed the requirement

<sup>56</sup>Ibid., Chapter 10, Section 1, pp. 12-13.

<sup>57</sup>Ibid., Section 25, p. 31; The names of the official reports of the managers of the Tennessee penitentiary system have changed even more frequently than the official name of the managers. A copy of every report is appended to the Journal of the Proceedings of the House of Representatives of the General Assembly for the State of Tennessee for each appropriate term of the legislature. References herein are made both to the independent reports and to the reports appended to the House Journal interchangeably.

that the inspectors should search out the "best employments available" for the prisoners to reduce the costs to the state for their upkeep.<sup>58</sup>

To complete the act of reform that was begun by the penitentiary bill, a law was passed on December 8, 1829, to "reform and amend the Penal Laws of the State of Tennessee." Under this act all felonies were listed, and punishment was prescribed as "imprisonment at hard labour in the Jail and Penitentiary House" except for the crimes of first-degree murder and accessory before the fact to first-degree murder which remained capital offenses.<sup>59</sup> Sentences under the act were typically for three to fifteen years. Robbery carried a penalty of five to fifteen years, horse stealing carried three to ten years, perjury carried three to fifteen years, and rape carried a penalty of ten to twenty-one years in the penitentiary. As noted previously rape did not become a "major" crime, i.e., fifty years to life sentences or even the death penalty, until after the turn of the twentieth century.<sup>60</sup>

Robert C. Foster, Joseph Woods, and Moses Ridley were elected by the General Assembly as the first

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<sup>58</sup>Public Acts of Tennessee, Chapter 5, pp. 5-7, 1829.

<sup>59</sup>Ibid., Chapter 23, pp. 27-45.

<sup>60</sup>Ibid., Sections 14, 20, 23, 42, pp. 27-45.

commissioners of the penitentiary.<sup>61</sup> They selected a very experienced and respected Nashville architect, David Morrison, to travel to several states, gathering information on existing penitentiaries for the construction of the Tennessee penitentiary.<sup>62</sup> Morrison had designed the Davidson County Courthouse in Nashville and would later design the Nashville State Hospital and numerous other Federal-style buildings in the city.<sup>63</sup> Meanwhile the commissioners undertook a search of available properties within the limits set by the legislature. After a rather exhaustive process, they located ten acres of suitable land lying one mile west of the Davidson County Courthouse between Lower Franklin and Charlotte Roads on what is now Church Street in downtown Nashville. The commissioners contracted to buy the site from Major John Boyd and Colonel Andrew Haynes for twenty-five hundred dollars. Since the law provided for a maximum price for the land of one thousand dollars, the commissioners called upon the citizens of Davidson County who then voluntarily subscribed the

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<sup>61</sup>Senate Journal, 1829, p. 406; Whig, November 27, 1829.

<sup>62</sup>Advertiser, December 2, 1829.

<sup>63</sup>Papers of David Morrison, Tennessee Historical Society Collection, Mf, Ac. No. 678, Archive Manuscripts.

additional money needed to meet the purchase price and donated the land to the state.<sup>64</sup>

With the purchase of suitable land, the selection of an architect to design the penitentiary, and an appropriation to build it once it was designed, Tennessee entered the era of modern criminal justice, and the prison commissioners began the process of implementing the new laws without further delay.

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<sup>64</sup>Senate Journal, 1841-42, p. 53; Whig, November 27, 1829.

### Chapter III

#### The Tennessee State Penitentiary,

The Early Years: 1830-1865

The penitentiary commissioners selected David Morrison of Nashville as the architect for the new jail and penitentiary house, and he promptly left for a tour of the northeastern states to investigate the designs of existing penitentiaries. He traveled to New York, Pennsylvania, Connecticut, Maryland, and Massachusetts, and he investigated both Pennsylvania and Auburn style penitentiaries. Each of the two penitentiary systems had its advocates and detractors, and Morrison indicated at least a passing interest in every opinion offered.<sup>1</sup> The two penitentiary styles shared some features -- total silence, no visitors, forced labor -- but differed in one key and costly aspect: the Pennsylvania System utilized strict solitary confinement at all times while the Auburn System provided for silent, congregate work areas with solitary confinement for sleeping and resting.<sup>2</sup> The Pennsylvania system was deemed much too costly for the state to consider; solitary confinement and individual work required larger cells, more guard supervision, and was less flexible in the hiring out of convict labor.

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<sup>1</sup>Whig, January 8, 1830.

<sup>2</sup>McKelvey, American Prisons.

Morrison reported that he was "received gracefully by the prison officials" in all his travels,<sup>3</sup> and upon his return in March, 1830, he recommended a cell-block, congregate labor Auburn-type penitentiary based on the design of the prison at Wethersfield, Connecticut. The prison commissioners were very interested in the possibility of profitable prison labor and quickly supported the architect's recommendations and proposed design for the Auburn-type facility.<sup>4</sup> Contracts were signed within days, and construction began on April 1, 1830, and advanced rapidly.<sup>5</sup>

When completed and ready for convicts in January, 1831, the new penitentiary consisted of a front building and two wings built of large limestone blocks. It contained two hundred cells measuring seven and one-half feet in length, three and one-half feet in width, and seven feet high, and the entire prison was surrounded by a wall twenty feet high that averaged four feet in thickness.<sup>6</sup> Reports of the costs of the penitentiary after its completion stated the amount at \$50,000 or

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<sup>3</sup>Whig, January 8, 1830.

<sup>4</sup>Edwin Bruce Thompson, "Reforms in the Penal System of Tennessee, 1820-1850," Tennessee Historical Quarterly 1 (December 1942), pp. 291-308, 300.

<sup>5</sup>House Journal, 1831.

<sup>6</sup>Nashville Republican and State Gazette, December 7, 1830; hereinafter Republican.



double the original appropriation,<sup>7</sup> but at least one group of Tennessee historians have reported that the costs exceeded \$65,000. The dispute exists because the records concerning the actual costs of construction were lost in a fire in 1848.<sup>8</sup> For a state pressed by the enormous financial demands of coping with the frontier, an expenditure of this amount was no small undertaking, but no official grumbling can be found concerning the cost overrun. Whatever the final cost of the penitentiary, perhaps a Nashville newspaper editor most accurately expressed the views of those citizens who had fought for penal reform when he said, "... we doubt whether there can be found a building of the same value, materials, and dimensions constructed for the same amount of money."<sup>9</sup>

On January 1, 1831, the Nashville Gazette published a statement from the governor that stated (in part),

... I, William Carroll, ... do  
hereby issue this my proclamation  
and hereby declare and make known

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<sup>7</sup>Robert H. White, editor, Messages of the Governors of Tennessee, 8 volumes (Nashville: The Tennessee Historical Commission, 1954), 2, p. 206.

<sup>8</sup>Stanley J. Folmsbee, Robert E. Corlew, and Enoch L. Mitchell, History of Tennessee, 4 volumes (New York: Lewis Historical Publishing Company, 1960), 1, p. 495.

<sup>9</sup>Republican, January 1, 1831.

that the jail and penitentiary house  
... is now in a proper state and  
condition for the reception of  
convicts.<sup>10</sup>

In accordance with the laws establishing the penitentiary, upon the Governor's proclamation that the penitentiary was ready for convicts, the new criminal and penal code took effect. Within the same month, the following report appeared in the National Banner and Nashville Whig,

... the first convict under the new criminal code has arrived... He is a young man, apparently not more than 22 or 23 years of age. His name, we understand, is George Washington Cook; he is from Madison County, and was convicted, at the late session of the Circuit Court in Jackson, of the too free use of his dirk.<sup>11</sup>

His sentence for malicious stabbing was for two years at hard labor. Cook was a tailor by trade, and he was required to make his own prison uniform, thus performing the first labor for punishment in Tennessee under the new laws.<sup>12</sup> After almost twenty-five years of action toward reform of Tennessee's penal code, the state had finally revised its criminal laws and instituted a penitentiary system. Governor William Carroll had personally campaigned for reforms to the

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<sup>10</sup>Nashville Gazette, January 1, 1831; hereinafter Gazette.

<sup>11</sup>Whig, January 24, 1831.

<sup>12</sup>Convict Grade Book 1, Archive Manuscripts.

Criminal Code of 1807 and for a penitentiary for more than ten years. Although the new system would soon be burdened with problems of its own, in contrast to the old system of punishments, the new penitentiary was indeed "a proud moment of [Tennessee's] early legislative wisdom."<sup>13</sup> By adopting many progressive new ideas in penal management, Tennessee thus became the Southern leader in penal reform, preceding some of its Southern neighbors by at least fifteen years in the building of a state penitentiary.<sup>14</sup>

During the daylight hours convicts, black and white and young and old, labored together in workshops but spent nights and Sundays in solitary cells. Under no circumstances were prisoners allowed to communicate with each other, and communication between guards and convicts followed very strict guidelines. Communication with the outside world was extremely circumscribed, and visits from family members were allowed only in extreme emergencies. Religious instruction and moral training were seen as the basis for all reform programs, and the General Assembly made the prison agent totally responsible for the moral conduct of the convicts, requiring

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<sup>13</sup>The Recorder and Law Journal (Sparta, Tennessee), December 4, 1830.

<sup>14</sup>Virginia, 1797; Kentucky, 1798; Georgia, 1817; New York, 1819; Louisiana, 1835; Arkansas, 1840; Alabama, 1841; Texas, 1841; South Carolina, 1866; North Carolina, 1868; Florida, 1921.

him to supply Bibles, conduct Sunday services, and furnish "cheap books, calculated to improve the mind and meliorate [sic] the heart" of the convicted felons.<sup>15</sup>

Severe corporeal punishment was used to force compliance with the penitentiary rules: normal punishment was five to thirty lashes laid on the bare back with a three-inch wide thick leather strap fitted with a long wooden handle. Unruly prisoners could also receive time in the box, a small iron box in the direct sunlight designed to induce sweating and misery for the convict. Recalcitrant convicts were placed in solitary confinement in dark, dungeon-like cells on a diet of bread and water for up to thirty days at a time.<sup>16</sup>

The state's desire to erect a modern penitentiary was now accomplished, and most reformers turned their attention to other matters.<sup>17</sup> The majority of the state's citizens were satisfied with the new penitentiary, but a very vocal minority criticized the state for abandoning a system of criminal justice built on "the wisdom of the ages" for one that was untested over time and that would require the expenditure of large

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<sup>15</sup>Acts of Tennessee, Ch. 282, p. 230, 1830.

<sup>16</sup>Ibid., pp. 27-45, 1829.

<sup>17</sup>Crowe, "Agitation for Penal Reform in Tennessee, 1870-1900."

sums of tax money for upkeep and maintenance.<sup>18</sup> Eager to prove their point, the penitentiary opponents spread rumors that discipline was lax, that the penitentiary workshops were unprofitable, and that the conduct of the felons was "improper and uncontrolled".<sup>19</sup> Advocates of the system, however, as well as humanitarians in general, had nothing but praise for the new penitentiary.

Tennessee governors almost without exception from 1830 through the 1840s expressed nothing but satisfaction with the penitentiary system. Governor William Carroll declared "with pleasure" that several convicts, contrite for their evil ways, had professed religion in "anxious concern" for their future happiness.<sup>20</sup> Then, even as today, many "religious conversions" took place between arrest and prison release. For the vast majority of the general public, the success of the penitentiary system in the early years went far beyond the anticipations when it was built.

However, the new prison was not without problems that were very similar to the old county jails. Men and juveniles were all incarcerated together. Women were housed behind the common wall but in a separate

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<sup>18</sup>Gazette, December 15, 1831.

<sup>19</sup>Ibid.

<sup>20</sup>Senate Journal, 1837, p. 17.

building. It was only a matter of months until the prison was overcrowded, and required the housing of two convicts in small cells designed for one man. This overcrowding soundly defeated the principle of silence and solitary confinement that was basic to the Auburn system.

In the second year of the penitentiary's operation, a cholera outbreak killed almost 25% of the convicts.<sup>21</sup> Sanitation was a major concern of both the prison supervisors and the inspectors from Nashville's health department. There was no inside plumbing in the prison, and night-soil and other refuse was dumped on the grounds inside the prison. There was only minimum health care available inside the prison, and the overcrowding caused any infectious outbreak to reach epidemic proportions almost overnight. Rules requiring the convicts to wash before every meal, to shave at least once a week, and to regularly clean their cells with "tar and vinegar" were enacted in an attempt to control future outbreaks of disease.<sup>22</sup> The Nashville Daily Advertiser carried regular reports of the "distressing" conditions in the penitentiary but made sure that every report was balanced by statements from

<sup>21</sup>"Report of the Prison Directors," Appendix to the House Journal (Nashville: 1832).

<sup>22</sup>"Report of the Nashville Health Department," Appendix to the "Report of the Prison Directors," House Journal, 1832.

the prison managers that all necessary steps were being taken to prevent future outbreaks of disease.<sup>23</sup>

In spite of the problems with overcrowding, Governor James Polk petitioned the legislature for the power to commute death sentences to life imprisonment even though he knew it would add to the crowded conditions. Polk's message to the legislature said that many men received death sentences from "angry juries and judges" without regard for the circumstances of the crime and that under the existing system he could only completely pardon the convict or allow him to be killed by the state. The power was granted to the governor in 1841, but it did little to improve the lot of those criminals sentenced to death as the power of commutation was used so infrequently.<sup>24</sup>

The overcrowded conditions continued in the penitentiary, and it became necessary to build additional workshops behind the prison fences. These buildings occupied the area where the prison's refuse had been dumped for years. Officials began dumping the raw sewage and other waste materials on a vacant lot

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<sup>23</sup>The Nashville Daily Advertiser, June 6, June 18, June 30, 1833.

<sup>24</sup>Acts of Tennessee, Ch. 55, p. 75, 1841.

adjacent to the penitentiary, a practice that continued through the early 1850s.<sup>25</sup>

State health officials as well as the penitentiary agent asked the General Assembly to authorize a subterranean sewer system for the prison to replace the system of dumping refuse on nearby lands. In his annual report to the legislature, the agent said,

... the people living in the vicinity are complaining of the nuisance, and say, it is detrimental to their interests, and I am sorry to say, such is the case. This can only be remedied by means of a subterranean sewer, commencing within the walls of our grounds, where it will intersect with a branch. The grounds are well located for the sewer, having a decline that will carry off everything rapidly.<sup>26</sup>

Appended to the agent's report for 1859 was an architect's estimate stating that a "proper sewer" could be constructed for approximately \$ 8,000. Rather than spend the money, however, the prison officials were instructed to haul the sewage in "airtight barrels for dumping" into either the Cumberland River or Lick Branch, a small stream near the penitentiary that flowed into the Cumberland River.<sup>27</sup>

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<sup>25</sup>"Report of the Physician of the Tennessee Penitentiary," House Journal, 1844, 1853.

<sup>26</sup>"Report of the Penitentiary Agent and Keeper," House Journal, 1853.

<sup>27</sup>*Ibid.*, 1859.



The penitentiary's water supply was woefully inadequate as well. For the most part, outside sources furnished the prison's water, supplementing a small well on the penitentiary grounds. The added demands of increased numbers of convicts and new workshops put a severe strain on the ability of the suppliers to furnish a sufficient amount of water. Prison officials worried about water purity and quality, especially in light of the previous cholera epidemic, and added slaked lime to the water as a precautionary measure. On numerous occasions but especially during the high water demand months of summer, excessive amounts of lime were added to the water. Because of demand and the lack of adequate storage facilities, the water was consumed without sufficient time for the lime to settle out.<sup>28</sup> In 1853, the penitentiary physician reported that "a very large proportion of the diseases" that he contended with were "no doubt" caused by the excessive lime in the water. Three large water storage tanks along with a system to capture rainwater were constructed on the penitentiary compound prior to 1859 in response to the problem, but regular demands by the authorities for a sewer system went unheeded.<sup>29</sup>

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<sup>28</sup>Ibid.

<sup>29</sup>"Report of the Physician of the Tennessee Penitentiary to the General Assembly," House Journal, 1853.

For several years, the penitentiary physicians also stated their concern that the convict living quarters contributed greatly to the generally unhealthy condition of the prison and its population. The Biennial Report for 1857 clearly stated what should have been obvious: the living quarters were built for economy and isolation with no regard for comfort, ventilation, proper heating, or sanitation. Each cell had just over twenty-six square feet of space to contain the convict's bed, toilet bucket, extra winter clothing, and all other necessary items for his existence. There was a small steel grate over each door for air circulation. Otherwise, the cell was solid, dark, and extremely rank due to lack of air flow and sanitary facilities. The workshops and housing units were all enclosed within an area 375 feet by 375 feet and surrounded by a solid-rock fence twenty feet high; there were no trees, and air circulation was almost non-existent especially in the summer. Considering the conditions in which the convicts were forced to live within the penitentiary, the physician remarked that the health of the convicts was "surprisingly good."<sup>30</sup>

The physician was also critical of the state's practice of housing the criminally insane in the penitentiary. Tennessee built an insane asylum shortly

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<sup>30</sup>Ibid., 1857.

after the penitentiary opened, but very few insane convicts were ever sent there. The legislature in 1860 enacted a bill allowing the transfer of insane convicts to the asylum, but the asylum was even more overcrowded than the penitentiary and very few transfers ever took place.<sup>31</sup>

The physician requested the legislature to consider an enlargement of the penitentiary hospital to provide additional space for treating the convicts. Convicts who died in the penitentiary were prepared for burial in open view of the hospital wards and, until 1865, were then buried on the prison grounds. The cemetery could also be seen from the hospital wards, a sight that must have been terribly demoralizing to the sick convicts. Access to the cemetery by the prison's hogs who rooted in the area must have also been disheartening to those who were seriously ill.<sup>32</sup>

Throughout the early years of the penitentiary and even to the near-present time, the reports of the penitentiary agents and inspectors were much more concerned with financial matters than with the welfare and actual reformation of the convicts. The initial penitentiary

<sup>31</sup>Ibid.

<sup>32</sup>"Report of the Agent and Keeper," House Journal, 1860, 1856; According to the annual reports for these years, the prison's hogs and other livestock had free access to the grounds and roamed at will, foraging for food not only in the cemetery but also in the waste dumping area.

legislation first considered in 1819 required the agent to work every convict as "much as the season of the year will permit" in order to lessen the cost of the penitentiary upkeep on the state. The bill enacted in 1829 that actually resulted in the penitentiary being constructed contained very similar language.<sup>33</sup>

Many of the predictions of the early reform advocates and the desires of the General Assembly concerning the cost of operation of the penitentiary proved conservative. The penitentiary system, with its never-ending supply of cheap labor, was not only self-sustaining but actually returned a sizeable profit to the state treasury in the early years. With the concurrence of the prison commissioners, the agent and principal keeper bought raw materials for the penitentiary account, processed them with the cheap convict labor in the penitentiary workshops, and then sold the finished products on the open market in direct competition with the products produced by free labor.<sup>34</sup>

By 1836, the handsome profits had accumulated to the point that a prison hospital was authorized to be built from the proceeds of the convicts' labor at "no expense to the state." In 1844, the General Assembly

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<sup>33</sup>Acts of Tennessee, Ch. 72, pp. 100-101, 1819; Ch. 5, pp. 5-7 and Ch. 10, pp. 12-13, 1829.

<sup>34</sup>"Report of the Agent and Keeper," House Journal, 1832, 1835.

applied \$10,000 from the penitentiary's profits as a contribution to the building of the new State Capitol in Nashville.<sup>35</sup>

The operation of workshops and mechanical industries in the penitentiary on the state-account system not only provided work for the convicts but was also extremely profitable for the state. The "Protestant work ethic" demanded that everyone have a job to perform, and compulsory convict labor was a major principle of the founders of the penitentiary system in America. The profitability of the convicts' labor was a side benefit and a blessing to the relatively new state of Tennessee. However, it was the ability to gain easy profits that quickly became the driving force behind the operation of the penitentiary, replacing the humanitarian ideals of reform and rehabilitation that were present at the outset of the penitentiary era.<sup>36</sup>

Criminals were sent to prison to protect society, for retribution by society for their crimes, and to discourage others in similar situations from violating the laws of the state. Even the early reformers, however, never intended for the convicts to be idle: as they were paying their debt to society by their

<sup>35</sup>Acts of Tennessee, Ch. 63, Sec. 6, p. 172, 1835-1836; Ch. 205, pp. 235-302, 1843-1844.

<sup>36</sup>Jesse Crawford Crowe, "The Origin and Development of Tennessee's Prison Problem 1831-1871," Tennessee Historical Quarterly, 15, June, 1956, pp. 111-135.

incarceration, they were expected to contribute to their own upkeep through forced labor. The nation's first penitentiary, the Walnut Street Jail in Philadelphia, utilized convict labor to produce saddles, harnesses, metal pots and pans, handsewn garments, and many other handcrafted products.<sup>37</sup> Some the trades practiced in the Tennessee penitentiary could be followed upon the convict's release from prison, but many of the jobs were related only to the operation of the prison and were solely for the benefit of the state.<sup>38</sup> Free labor was very outspoken about the convict labor system in Tennessee and was extremely critical of the practice of teaching trades to the convicts.<sup>39</sup>

One of the fundamental principles of every prison reform program since 1794 has been the teaching of employable skills to the convicts so that they might become self-supporting upon their eventual release from prison. Many of Tennessee's citizens, however, seemed much more concerned with the exclusion of convict competition from free labor than with rehabilitation or meaningful reform of the prisoners. Most complaints about convict labor took the form of memorials or

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<sup>37</sup>Teeters, The Cradle of the Penitentiary.

<sup>38</sup>"Report of the Joint Committee on the Penitentiary," House Journal, 1837.

<sup>39</sup>See numerous memorials and petitions to the General Assembly, Archive Manuscripts.

petitions to either the governor or the General Assembly. As early as 1837 the "mechanics and tradesmen" of Nashville memorialized the legislature, claiming that the existing system of convict labor was "detrimental to the interests of free labor."<sup>40</sup> The legislature also received a memorial from the "Mechanics of Tennessee Regarding Convict Labor" decrying the teaching of "honest trades to common criminals."<sup>41</sup>

Complaints of the penitentiary system always came from a minority, but the protestors were reasonably well organized. They called for better regulation of prices on convict-made goods to lessen the competition with free labor, for the working of convicts in trades that were not in direct competition with the free tradesmen, and for the reduction of the number of convicts working in any given trade. The General Assembly appointed several special committees from time to time to investigate the labor situation, but little was actually done to change the very profitable system of convict labor.<sup>42</sup>

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<sup>40</sup>"Memorial from the Mechanics and Tradesmen of Nashville," Memorials and Petitions to the General Assembly, 1837, Archive Manuscripts.

<sup>41</sup>"Memorial from Mechanics of Tennessee Regarding Convict Labor," Memorials and Petitions to the General Assembly, undated but in great similarity to a memorial published in the Nashville Gazette in July 1837, Archive Manuscripts.

<sup>42</sup>"Report of the Joint Committee on the Penitentiary", House Journal, 1837, 1841, 1845.

In 1843 Governor James Jones called for the General Assembly to change the convict labor system to "lessen the direct competition with our free citizens."<sup>43</sup> Later governors would say much the same thing, but a joint committee appointed by the General Assembly in 1844 recommended few changes in the system.<sup>44</sup> A memorial to the governor from Franklin County contained over two hundred signatures and claimed the convict labor system was "a direct interference and infringement upon the rights and interests of Mechanics of Tennessee."<sup>45</sup>

Various members of the legislature proposed ways to lessen the complaints of free labor. The proposals included such things as the sale of the penitentiary and the subsequent purchase of a "large farm" to provide agricultural work for the convicts, the manufacture in the penitentiary of only those items "currently being imported into the state", and the use of the convicts in the coal and iron mines of East Tennessee.<sup>46</sup> In 1843 the General Assembly authorized the use of convict labor

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<sup>43</sup>"Messages of the Governor to the General Assembly of Tennessee", House Journal, 1843.

<sup>44</sup>"Report of the Joint Committee on the Penitentiary", House Journal, 1844-1845.

<sup>45</sup>"Memorial from the Citizens of Franklin County", Memorials and Petitions to the General Assembly, 1845, Archive Manuscripts. See also a "Memorial from the Mechanics of Nashville" published in the Whig, December 6, 1845.

<sup>46</sup>House Journal, 1837, 1839, 1841, 1845



on the construction of the new state capitol building in Nashville, and this project employed a large number of convicts for almost twenty years.<sup>47</sup>

But even the use of the convicts on public works projects such as the state capitol failed to satisfy the demands of free labor. Additional items were added to the list of prison-made goods thus lowering the quantity of all the other goods and likewise reducing the number of convicts working at any given trade. By 1857 only four trades had more than twenty-five convicts engaged at any one time, and three of those four trades were involved in the construction of the state capitol. Only the cooperage trade, making wooden barrels that were in constant short supply for the free market and which employed twenty-nine convicts in 1857, was in direct competition with free labor. The other three trades employing more than twenty-five convicts were stone cutters (sixty-eight), quarry hands (thirty-one), and yard hands (thirty-seven).<sup>48</sup> These stone-working convicts did not really compete with free labor as there was an extreme shortage of these trades at all times during these years in Tennessee. The complaints of free labor continued until the outbreak of the Civil War silenced them for a time, but the idea of leasing out

<sup>47</sup>Ibid., 1843.

<sup>48</sup>"Report of the Agent and Keeper of the Penitentiary", House Journal, 1857-1858.

the convicts to the coal and iron mines of East Tennessee would rise to the surface again in the years to come.

A major fire at the penitentiary in 1848 that destroyed several workshops as well as all of the central offices gave fresh impetus to the demands of free labor that the convict labor system be changed.<sup>49</sup> The General Assembly, however, had become addicted to the steady income from the penitentiary after almost sixteen profitable years in a row. A decision to rebuild the penitentiary workshops was made quickly, and the prison was soon back at full speed.<sup>50</sup> It was not long, however, until overcrowding was seriously hampering the work of the penitentiary.

By 1850 the penitentiary agent and keeper insisted that an "enlarged and improved" penitentiary be provided by the General Assembly.<sup>51</sup> Instead of a new facility as requested, the legislature approved the construction of an additional thirty-two cells in 1853, but this added capacity only put more strain on the already overtaxed

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<sup>49</sup>House Journal, 1849. The fire destroyed all the records of the early years of the penitentiary, forcing reliance on the somewhat sketchy annual reports and newspaper accounts for much of the information on this period.

<sup>50</sup>Ibid., 1851.

<sup>51</sup>"Report of the Agent and Keeper of the Penitentiary", House Journal, 1850.

facilities of the penitentiary.<sup>52</sup> The agent requested "Suitable Apartments" and matrons to guard and care for the female convicts, but the women continued to be housed on the upper floor of the main office building away from the men, and no matrons would be hired by the penitentiary until the 1890s.<sup>53</sup> Conditions were so bad for the women convicts that the warden of the penitentiary told the legislature in one report,

... No woman should be sentenced to the Tennessee penitentiary until the State makes better provision for their care. Had I the pardoning power, I would reprieve every woman now in the penitentiary and those who may be sentenced, until the State can or will provide a place to keep them in keeping with the age in which we live.<sup>54</sup>

In 1858 the General Assembly authorized an additional wing of cells, raising the penitentiary's capacity by one hundred-twenty new cells to a total of three hundred-fifty-two beds. This increase in housing capacity without additional facilities for health care, sanitation, and refuse control only raised the level of

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<sup>52</sup>Acts of Tennessee, Ch. 26, p. 99 and Ch. 30, p. 101, 1854.

<sup>53</sup>"Report of the Agent and Keeper", House Journal, 1862; "Biennial Report of the Tennessee State Penitentiary", House Journal, 1898.

<sup>54</sup>"Report of the Warden of the Tennessee Penitentiary to the Board of Directors", House Journal, 1857.

distress for the convict population and the penitentiary's officials. The front of the prison was extended to Church Street, and it would remain there unchanged until 1898.<sup>55</sup>

Numerous reform groups and legislators called for the establishment of a reform institution in Tennessee to house young first-offenders separately from the more hardened, older criminals. Other states, in particular New York and Pennsylvania, had begun reform institutions in the 1840s and 1850s with some success. Tennessee had adopted the rather common "rule of sevens" when dealing with young offenders: children under the age of seven were categorically considered totally incapable of forming criminal intent, children between seven and fourteen were merely presumed to be incapable of forming criminal intent but intent could be proven by the state, and those over fourteen were treated no differently than adults.<sup>56</sup>

Governor Robert L. Taylor denounced the "practice of consigning children to the penitentiary" as not only cruel but also "shameful and inhuman."<sup>57</sup> The warden

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<sup>55</sup>"Report of the Agent and Keeper", House Journal, 1859.

<sup>56</sup>Gary Shockley, "A History of the Incarceration of Juveniles in Tennessee, 1796-1970", Tennessee Historical Quarterly 43 (Fall 1984), pp. 229-249, p. 230.

<sup>57</sup>White, Messages, 2.

called for an end to the practice of sending criminally-convicted children to the penitentiary and said that not one of them left the penitentiary "but for being worse than when he arrived."<sup>58</sup> The calls for a reformatory institution, however, would not be answered by the General Assembly until well into the 20th century. Every early proposal for the institution of a reformatory was met with the argument that the money was not available to implement such a program. After 1850 the young convicts were also treated as able-bodied workers and as such provided valuable additions to the state's income; prior to 1850 the prison factories paid only half wages for the labor of very young convicts.<sup>59</sup>

The General Assembly considered numerous proposals for improvements to the penitentiary but refused to fund any of them. In fact, the appropriations were less than was needed to operate a humane institution and forced the prison director to cut back on food and other supplies when demand for prison-made goods declined and

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<sup>58</sup>"Report of the Warden of the Penitentiary to the Agent and Principal Keeper", appended to the "Report of the Agent", House Journal, 1847.

<sup>59</sup>Shockley, "Incarceration of Juveniles".

cut operating revenues.<sup>60</sup> Conditions in the penitentiary deteriorated steadily until early 1861 when the Civil War broke out. The Confederacy contracted to use Tennessee's convict labor to produce war supplies, but shortages of raw material led to much idleness among the convicts. Many convicts were pardoned on the condition that they enlist in the Confederate Army, and many others were released as federal troops neared the city.<sup>61</sup> When federal troops captured Nashville in early 1862, they converted the penitentiary into a military prison to hold Confederate prisoners of war. At one point in 1864 the penitentiary actually had more than 2400 Confederate prisoners crowded into the confines of the three-and-one-half acre compound.<sup>62</sup>

During the state's initial thirty-five year period of prison operations and in spite of the legislature's preoccupation with the financial operations of the penitentiary, the welfare and reformation of the convicts were not totally ignored. The rule of total silence, difficult to enforce under the overcrowded conditions that often saw two men in a single cell, was not enforced as rigidly as in some of the earlier years

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<sup>60</sup>House Journal, 1841, 1845, 1851, et al.

<sup>61</sup>Whig, November 12, 1861.

<sup>62</sup>"Proceedings of the General Assembly of Tennessee", Appendix to the Journal of the Senate, 1865-1866.

although it remained the official policy of the penitentiary until the late 1950s.<sup>63</sup> Solitary confinement, authorized by the legislation of 1829 to be used in lieu of corporeal punishment, was used much less under some administrations than others. Some reformers including Dorothea Dix were highly critical of the debilitating effects of solitary confinement on the mental condition of those confined.<sup>64</sup>

A system to reward convicts who comported themselves properly within the rules was instituted in 1836 when the Tennessee General Assembly enacted the nation's first "good conduct" legislation.<sup>65</sup> Under this law, any convict who obeyed all the rules was entitled to have two days removed from the expiration date of his sentence for each month of good behavior. Later violations of the rules could result in the good conduct days being "taken away" or added back to the expiration date, but infractions could not extend the original sentence expiration date.<sup>66</sup>

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<sup>63</sup>See various entries in the Warden's Log Book, Tennessee State Penitentiary, Nashville, Tennessee, 1840, 1851, 1859, et al.

<sup>64</sup>*Ibid.* See also Harry E. Allen and Clifford E. Simonsen, Corrections in America: An Introduction, Fifth Edition (New York: Macmillan Publishing Company, 1989), pp. 45-46.

<sup>65</sup>Acts of Tennessee, Ch. 63, Sec. 6, p. 172, 1836.

<sup>66</sup>*Ibid.*; Warden's Log Book, 1840.

Discipline as a whole relaxed or tightened according to the changing whims of the prison officials. The political turnover of prison officials, coming and going with each new administration, did little to promote reform programs. Most reformation attempts, such as the teaching of trades, teaching literacy, or just replacing old bad habits with new ones required a major commitment to the continuation of programs. Since official tenure was generally very short, reform efforts suffered greatly.

The bulk of all reformation and rehabilitation programs became the responsibility of the penitentiary chaplain. These men, generally ministers from the Nashville area, were for the most part hard-working, conscientious, and concerned about the welfare of the convicts,<sup>67</sup> but they were severely hampered in their efforts by a lack of funds, high rates of illiteracy among the convicts (only twenty-five percent of those in prison in Tennessee in 1860 could read and write), and an official attitude that was much more concerned with money than with the convicts.<sup>68</sup>

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<sup>67</sup>See the "Report of the Agent and Principal Keeper of the Tennessee Penitentiary", House Journal, 1833, 1839, 1845, 1851, et al.

<sup>68</sup>See the "Report of the Chaplain of the Tennessee State Penitentiary" attached to the "Report of the Agent and Keeper", House Journal, 1839, 1846, 1853, 1856, et al.



Escapes were frequent, and escape attempts occurred almost daily. According to one report, there were more escapes and attempted escapes in Tennessee in one year than in the penitentiaries of New York, New Jersey, Pennsylvania, Maryland, Ohio, Indiana, and Illinois.<sup>69</sup> These numbers cannot be confirmed from the official reports but appear to be corroborated by a visiting Texas prison official's letter to a superior noting more than 257 escapes out of a total Tennessee penitentiary population of 600 convicts in a two-year period.<sup>70</sup> On numerous occasions, the escapees jeopardized the lives of all their fellow convicts while attempting to make good their escape. The penitentiary agent reported in 1858 that "in the past two years, there have been no less than four well concerted plots to burn the prison, two of them which came very near effecting their object."<sup>71</sup>

Tennessee's penitentiary during this period was horrible: the idea of retribution and punishment as well as the profit motive far overshadowed humane treatment and reformation of the convicts from the outset of the penitentiary system in 1831. Overcrowding was an

<sup>69</sup>Century Magazine, February, 1884, p. 587.

<sup>70</sup>J. B. McGrath to Healey, Correspondence File Box, "Texas State Prisons", Texas State Library and Archives, Austin, Texas.

<sup>71</sup>"Report of the Agent and Keeper", House Journal, 1858-1859.

ever-present fact of life after 1833, sanitation was poor or non-existent, health care was meager at best and woefully inadequate under extremely stressful conditions, education and moral instruction was sporadic and mostly inept, and there was no attempt to segregate youthful and possibly incidental offenders from hardened criminals. But even in the face of all these problems, Tennessee was still far ahead of many other Southern states: by 1850 Tennessee's penitentiary was almost twenty years old while Florida, North Carolina, and South Carolina had yet to build their first prison.<sup>72</sup>

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<sup>72</sup>Edwin Bruce Thompson, "Humanitarian Reforms in Tennessee, 1820-1850," M.A. thesis, Vanderbilt University, 1935, pp. 11-19.

## Chapter IV

### **The Tennessee State Penitentiary during the Convict Leasing Period: 1865-1893**

The history of the prison system in Tennessee is not so much a study of changing basic philosophies about crime, criminology, and punishment as it is:

1. a study of the desire of prison directors and legislatures for profitable work for the convicts,
2. the relationships between free labor and prison industries, and
3. the legislation that grossly affected these other two concerns.

The Tennessee General Assembly declared from its earliest debates on a central prison that the institution must support itself through the work of its convict population.<sup>1</sup> This philosophy was not unique to Tennessee even though it was obviously not applied to other state institutions such as public schools, public hospitals, and the public roads. French writer Alexis de Tocqueville found no problem with the philosophy, and he observed that the American prisons worked to "make the labor of the convicts as productive as possible." He noted that this system was quite correct for America

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<sup>1</sup>Journal of the Proceedings of the House of Representatives of the General Assembly of the State of Tennessee, 1819, hereinafter "House Journal".

where the "price of labor was high and where there was no danger that the establishment of prison manufactories would injure the free workers."<sup>2</sup> As discussed in Chapter III herein, the Tennessee penitentiary initially used the state-account system of working the convicts: the agent and principal keeper of the penitentiary bought raw materials, converted those materials into finished products using convict labor, and then sold those goods in competition with the products of free labor in the open market.

By the 1850s, however, the legislature had enacted laws allowing the directors of the penitentiary to contract with outside private manufacturers to employ the convicts to work in shops and factories behind the walls of the penitentiary.<sup>3</sup> Under the labor-contract system, convicts remained under the control of the state and all security, food, clothing, medical care, and record-keeping were provided by state employees. A Nashville furniture maker, a hosiery company, and a company making soles, heels, and taps for shoes were all active in working the convicts behind the fences of the Tennessee

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<sup>2</sup>G. Rusche and O. Kirchheimer, Punishment and Social Structure (New York: Russell and Russell, 1939) cited by Martin B. Miller, "At Hard Labor: Rediscovering the 19th Century Prison," Issues in Criminology 9 (Spring 1974), pp. 91-114, 97.

<sup>3</sup>Acts of Tennessee, Ch. 117, pp. 130-132, 1856; Ch. 28, p. 24 and Ch. 63, p. 47, 1859.

State Penitentiary prior to the Civil War.<sup>4</sup> Both the state-account and labor-contract systems were very successful for various reasons during the early years, and the state only infrequently had to supplement the penitentiary's upkeep with biannual appropriations.<sup>5</sup>

Convicts were used from 1843 through the late 1860s in construction work on the new state capitol building in Nashville, but there was much legislative debate over the proper accounting procedure to reimburse the penitentiary for its labor.<sup>6</sup> At least one historian doubts that the penitentiary showed a real profit during these years because the payment for labor on the state capitol building was merely a transfer on paper and not a payment in real terms.<sup>7</sup>

The coming of the Civil War in 1861 saw the convicts being used to make supplies for the Confederate army, but there were many problems obtaining sufficient raw material to keep all of the convicts busy.<sup>8</sup> There

<sup>4</sup>"Report of the Agent of the Penitentiary", House Journal, 1856-1857.

<sup>5</sup>House Journal, 1830, 1834, 1838, 1840, et al.

<sup>6</sup>Report of the Superintendent of the State Penitentiary for the Biennium ending December 1, 1851 (Nashville: G. C. Torbett and Company, Printers, 1852); Obviously, very little work was done on the capitol during the years of 1861-1865 while the Civil War was in progress.

<sup>7</sup>See Crowe, "The Origin and Development of Tennessee's Prison Problem, 1831-1871."

<sup>8</sup>House Journal, 1862.

was also a very real concern among the prison officials about using convicts to manufacture weapons since they might easily be used to effect escapes from the penitentiary.<sup>9</sup> By the time federal troops occupied Nashville in late 1862 and the Union Army commandeered the penitentiary to house Confederate prisoners of war, almost all of Tennessee's convicted felons had been released by the governor, and many were serving in the rebel army. Overcrowded conditions continued after the federal army takeover and, at one point in 1864, more than 2400 Confederate prisoners were housed in the state's decrepit penitentiary.<sup>10</sup>

Several notorious Confederate rebels were confined there. The most infamous was Champ Ferguson, a guerrilla fighter blamed for the deaths of fifty-six Union soldiers and officers.<sup>11</sup> Shortly before the penitentiary was returned to state control in 1865, Ferguson was sentenced to death for his crimes and hanged on a gallows inside the penitentiary compound.<sup>12</sup>

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<sup>9</sup>The Agent and Principal Keeper to the Board of Prison Inspectors, May, 1861, Correspondence File, Archive Manuscripts.

<sup>10</sup>"Proceedings of the General Assembly of Tennessee," Appendix to the Journal of the Senate, 1865-1866.

<sup>11</sup>The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington, D.C.: Government Printing Office, 1880-1901).

<sup>12</sup>Daily Sun, August 11, 1865.

The condition of the penitentiary at the outbreak of the Civil War was miserable, and the entire facility needed remodeling and repairs.<sup>13</sup> No work was done to maintain the factories or other buildings during the war period and, when Tennessee took control of the prison again after the removal of Union troops, the place was in a state of general disrepair.<sup>14</sup>

The penitentiary was also deeply in debt at the end of the war; early wartime appropriations for prison operations were never enough to even maintain the convicts, much less to pay for supplies for the workshops and factories.<sup>15</sup> When the war ended, Tennessee was so fiscally ruined that there was no way to bring the penitentiary accounts current. The net result was that most suppliers of raw materials had placed the prison account on a "cash only" basis, and the agent saw little or no hope of restoring the institution's credit rating in the immediate future. One problem with the credit situation was that, due to the existence of very poor record-keeping during the war, no one knew for certain just how large the debt was or even to whom it was due.<sup>16</sup> The state acknowledged a total debt of

<sup>13</sup>"Report of the Agent and Keeper," House Journal, 1853, 1859.

<sup>14</sup>Annual Report, 1866.

<sup>15</sup>Ibid.

<sup>16</sup>"Report of the Agent," House Journal, 1866-1867.

\$43,052,625.25 in 1870 that was primarily a carryover from the years before the Civil War, and almost \$4 million of this was directly attributable to the penitentiary.<sup>17</sup>

Another major problem for the penitentiary was the change in the nature of the convict population. The Civil War was extremely demoralizing on Tennessee, and the end of the conflict saw a rise in the crime rate with a corresponding increase in the penitentiary population. Blacks, comprising less than three percent (3%) of the prison population in 1860, began to appear on the convict rolls in Tennessee in ever-increasing numbers from 1865 forward. By 1880 the state's black prisoners accounted for more than 66 percent of the total population of the penitentiary.<sup>18</sup>

The "freedom" of blacks after the Civil War represented a challenge to the supremacy of the white race in the South. Those blacks who left the farms and tried to make on their own were viewed by the whites as being "uppity."<sup>19</sup> These free blacks became fair game for the white police and criminal justice system to deal

<sup>17</sup>Philip M. Hamer, ed., Tennessee: A History, 1673-1932, 4 volumes, (New York: The American Historical Society, 1933), Volume 1.

<sup>18</sup>Convict Grade Books, various serial numbers, Archive Manuscripts.

<sup>19</sup>Lawrence J. Friedman, The White Savage: Racial Fantasies in the Post-Bellum South (New Jersey: Prentice-Hall, 1970).



with harshly. One way to control blacks and thus force them to continue in subservient positions was by using the existing vagrancy, loitering and petty theft laws to arrest blacks and sentence them to prison. Those blacks unfortunate enough to commit serious crimes were often lynched, and lynching increased in Tennessee following the Civil War.<sup>20</sup>

The net result of this practice of using the criminal justice system to subjugate blacks was that the penitentiary population shifted suddenly to a black majority following the end of the war. Records of the Tennessee penitentiary indicate that only thirty-three percent of the prisoners were black on October 1, 1866, while on November 29, 1867, the percentage had increased to more than fifty-eight percent. By contrast in 1859, less than three percent of the Tennessee convict population was black.<sup>21</sup>

The number of black convicts continued to grow, and blacks averaged over sixty percent throughout the remainder of the 19th century and well into the 1930s. Even today, the percentage of blacks in the Tennessee penitentiaries is over sixty percent. Throughout this entire period (1865-1990), the black population of

<sup>20</sup>Altrutheus Ambush Taylor, The Negro in Tennessee, 1865-1880 (Washington, D.C.: Associated Publishers, 1941).

<sup>21</sup>"Report of the Agent and Keeper," House Journal, 1859, 1865-1866, 1867-1868.

Tennessee has never exceeded twenty-five percent and was generally around fifteen percent of the total population of the state.<sup>22</sup>

There existed in Tennessee and across the South a dual image of blacks. They were viewed by whites alternately as "dependent children" and as "savage beasts."<sup>23</sup> This dual image determined to a great extent the level of punishment that a black would receive from the whites in power. Serious crimes, i.e., those that represented the "savage beast" image including the "crime of acting uppity", were dealt with severely; however, crimes that represented the "dependent child" were handled leniently by the paternalistic whites. The enactment of the Black Codes in 1865 and 1866 set up a "system of social control that would be a substitute for slavery" since it put blacks in a permanently subservient position to whites and, through the use of the criminal justice system, continued to provide a "manageable and inexpensive labor force" especially through the use of vagrancy laws.<sup>24</sup> One important result of the process of

<sup>22</sup>Ibid., 1898; "Annual Report of the Department of Institutions," House Journal, 1930; Annual Report of the Department of Correction for the State of Tennessee (Nashville: State Printing Office, 1970); Official Statistics of the United States Census Bureau (Washington, D.C.: Government Printing Office, various years).

<sup>23</sup>Friedman, The White Savage.

<sup>24</sup>August Meier and Elliott Rudwick, From Plantation to Ghetto, 3rd ed. (New York: Hill and Wang, 1976).

convicting great numbers of blacks was their removal from the voter lists: conviction of a felony in Tennessee was grounds for taking away the right to vote. The federal courts held over many years that conviction for a crime was the only exception allowable under the Fifteenth Amendment to the United States Constitution for depriving a citizen of the right to vote.<sup>25</sup> Many of the blacks coming into prison were little more than "political prisoners" -- since, according to one report of the penitentiary directors, they had been "sent here for offenses ranging from eight cents, the value of a fence rail, to all intermediate sums not reaching \$5, from remote counties of the state ... ." <sup>26</sup>

Discussion in the General Assembly centered on the proper utilization of convict labor, and requests for bids for the refurbishing of the prison factories and the leasing of all the convicts to operate them were circulated throughout the state. No responsive bids were immediately received for the restoration of the factories, and the General Assembly named a committee to investigate how other states were dealing with convict labor.<sup>27</sup> Kentucky, Missouri, Alabama, Illinois, and

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<sup>25</sup>Acts of Tennessee, Ch. 16, pp. 32-36, 1865-1866; Fifteenth Amendment, United States Constitution.

<sup>26</sup>"Report of the Directors of the Tennessee State Penitentiary," House Journal, 1868.

<sup>27</sup>House Journal, 1866.

Indiana had all experimented with leasing out their prisoners before the Civil War,<sup>28</sup> but only the Southern states of Alabama and Kentucky continued to operate convict lease systems: both Illinois and Indiana had cancelled their leases after very short periods because of public outcries against the abuses of the system and Missouri abandoned the idea when no potential lessees responded to advertisements in 1859.<sup>29</sup> Tennessee's committee investigated the operations of each of these other states as a way to offset the costs of operating the penitentiary. Costs were all that interested the legislature: no one during the recorded debates discussed the abuses of the system that led to the lease cancellations in Illinois and Indiana.<sup>30</sup>

Laws were passed authorizing the Board of Prison Supervisors to advertise for bids "in at least one major newspaper in each of the three grand divisions" of the state as well as in surrounding states.<sup>31</sup> Labor factions in the state protested, decrying competition from "common criminals," but the state was intent on operating self-sufficient prisons. Prisoners were expected

<sup>28</sup>Based on an investigation by the author, Kentucky signed the nation's first convict lease in 1825, Missouri followed in 1842, and the others had leased their convicts by 1850.

<sup>29</sup>Miller, "At Hard Labor."

<sup>30</sup>House Journal, 1866.

<sup>31</sup>Acts of Tennessee, Ch. 34, pp. 48-52, 1866.

to defray a large portion of the cost of their upkeep, and there was more emphasis on reducing costs than on reformation or correction. Discussions of reformatory programs were restricted to newspapers and political speeches and did not appear in the General Assembly debates or committee minutes and reports.<sup>32</sup>

During the investigation period, the state received a bid from a Nashville furniture manufacturer to rebuild the prison factories and to work the convicts behind the penitentiary walls. Leases were signed on 16 July 1866 for a contract-labor system as opposed to a full convict leasing system such as was being used by Kentucky and Alabama. Under the contract-labor system, convicts were to be worked inside the penitentiary on crafts and outside the penitentiary only with the approval of the prison supervisors.<sup>33</sup>

One ongoing outside project utilizing convict labor was the construction of the state capitol building in Nashville. Even though no money appeared to change hands in this operation, the state's prison officials were very concerned about the continuation of what they saw as an excellent use of the convict labor.<sup>34</sup> Under the contract-labor system, the state was responsible for

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<sup>32</sup>Crowe, "Agitation for Penal Reform in Tennessee, 1870-1900."

<sup>33</sup>House Journal, 1866.

<sup>34</sup>Daily Sun, August 22, 1866.

the total care and custody of the convicts. A full convict lease system, on the other hand, gave almost complete control over the convicts to the lessees who had to provide total care for the convicts and keep them in custody. The contract-labor lessees were J. L. Hyatt and C. M. Briggs, Nashville furniture makers, who agreed to rebuild the factory inside the Church Street prison and employ the convicts in the operation.<sup>35</sup>

The shift to contract-labor and convict leasing in Tennessee came at almost exactly the same time that the penitentiary population became primarily black. As Walter Wilson has written,

... the prison population rapidly became black workers and peasants. Negroes convicted of minor "crimes" were hired out to private businessmen under slavery conditions. It was undoubtedly a deliberate move by the ruling class to secure forced labor on a large scale as a partial substitute for chattel slavery.<sup>36</sup>

Every convict was to be hired whether skilled or not, and the state was to receive forty-three cents per day for each convict's labor.<sup>37</sup> There were numerous disputes during the first year of the lease concerning reimbursement by the state to the private lessees, but almost everyone officially concerned with the Tennessee

<sup>35</sup>House Journal, 1866.

<sup>36</sup>Walter Wilson, Forced Labor in the United States (London: Oxford University Press, 1935).

<sup>37</sup>Ibid.

penitentiary was pleased with the new arrangements. One of the directors of the penitentiary stated in the annual report on the condition of the penitentiary,

... Now, every convict, old or young, skilled or unpracticed, clumsy, indolent, or vicious, is at once turned over, at forty-three cents per day; and it is the lessee's business, to provide work profitable or otherwise, without regard to the character, condition, or competency of the laborer. Possibly the convict may have been a good field hand, to plow, hoe, or chop wood, but within the walls of the prison, no such employment is to be had, and the laborer may be said to be both green and raw. Hence to instruct and to put mechanical tools into the hands of a novice, and pay forty cents per day, besides, is compensation greater than at first appears.<sup>38</sup>

The first year of the labor-contract was a minor success, earning the state \$17,000, but a fire that destroyed the factory in the second year left the convicts idle and the state with no income.<sup>39</sup> After lengthy negotiations with Hyatt and Briggs who contended that the state should erect new workshops and who refused to pay the daily charge for the convicts until the state did, the legislature agreed to appropriate approximately \$125,000 to rebuild the factory, and the

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<sup>38</sup>"Report of the Directors of the Tennessee State Penitentiary to the Tennessee General Assembly," House Journal, 1866-1867.

<sup>39</sup>House Journal, 1868.

work of the convicts began anew.<sup>40</sup> More disputes erupted between the furniture manufacturers and the prison managers, and protesting laborers continued to besiege the General Assembly, the state's major newspapers, and the governor. Even the directors of the penitentiary petitioned the legislature to repeal the contract-labor law because the directors claimed that the contractors essentially had control of the prison, effectively ending the state's attempts at discipline and order.<sup>41</sup>

Further difficulties arose between the furniture company and the state over services such as machine repair and maintenance rendered to the state by the contractors for which the state refused to pay. When the original four-year contract came up for renewal, both the state and the furniture manufacturers agreed to end the contract one year early, effective July 1, 1869.<sup>42</sup> The state once again had control of its convicts, but it also had the very expensive burden of maintaining those convicts without an easy way to employ them.

The state was also faced with a lawsuit from Hyatt and Briggs claiming the state owed them several hundred

<sup>40</sup>Ibid.

<sup>41</sup>"Report of the Directors of the Penitentiary to the General Assembly," Senate Journal, 1869-1870.

<sup>42</sup>House Journal, 1869-1870.



thousands of dollars. The legislature appointed a special committee to negotiate a settlement with its former prison labor contractors and enacted a special appropriation of \$132,200 on December 18, 1869, in order to settle the lawsuit and return control of the penitentiary to the state.<sup>43</sup>

Public challenges to the convict leasing program took the form of letters to the editors of the newspapers, both written and personal pleas to individual legislators and the governor, and formal memorials of protest to the General Assembly. The memorials were often from citizens groups as well as organized labor.<sup>44</sup> The state again started looking for a way to employ the convicts that would not cause labor unrest but that would be still be profitable to the state.

It was obvious after the fiasco with Hyatt and Briggs that leasing all of the convicts to a single firm might not be in the best interests of the state: if a problem occurred, the entire prison population would be idle, and there would be no income for the state treasury. The idea of using the state's convicts to rebuild the railroad system that had been almost completely

<sup>43</sup>Acts of Tennessee, Ch. 40, pp. 52-55, 1869-1870.

<sup>44</sup>Cf. Daily Sun, October 2, 1869; John Davis to Governor DeWitt Clinton Senter, May 12, 1869, Correspondence File, Archive Manuscripts; "Memorial from the Mechanics of Davidson County and Memorial from the Citizens of Franklin County," Memorials to the Tennessee General Assembly, Archive Manuscripts.

destroyed by the Civil War became popular with the General Assembly. Between 1870 and 1880 the Tennessee General Assembly appropriated more than \$14 million to the various railroads in the state in an effort to restore them to pre-war efficiency.<sup>45</sup>

Lengthy debates ensued in the General Assembly the next year concerning the management of the penitentiary and its convicts. Private individuals argued for the leasing of the convicts as was being done in other Southern states at the time. Organized labor continued the clamor about "common criminals" competing with honest men and driving down wages for free mechanics.<sup>46</sup>

In 1870, the General Assembly decided to lease the convicts for railroad construction and to operators of iron and coal mines in the eastern division of the state. This same statute changed the position of prison director to "prison inspector." There was a provision in the legislation requiring the prison inspectors to operate the penitentiary on the state-account system if profitable, but those in charge of the prison ignored it.<sup>47</sup>

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<sup>45</sup>Acts of Tennessee, Ch. 6, pp. 6-52, 1869-1870; Ch. 30, p. 211, 1873-1874; Ch. 2, p. 15, 1879-1880.

<sup>46</sup>House Journal, 1869-1870.

<sup>47</sup>Acts of Tennessee, Ch. 50, pp. 257-259, 1869-1870.

The decision to turn totally to convict leasing was reached for several reasons, but foremost among these were that the railroads were in desperate need of labor and that the state's coal miners were not well organized. The General Assembly also thought that the free mechanics and tradesmen and miners would accept the competition quietly.<sup>48</sup>

Another major reason for the decision to lease out the convicts was that there were a number of firms which were interested in leasing all of the state's convicts and that had enough operations in the state to keep them all employed at great profit to the state.<sup>49</sup> The overriding concern of the legislature was to offset the cost of operating the prison. Reformation and rehabilitation were given little notice during this era. With huge debts left unpaid during the Civil War hanging over the state, it became almost imperative to the legislators that the penitentiary not only be self-supporting but to contribute as much income as possible to the state.<sup>50</sup>

There was one provision in the new leasing law that dealt with rehabilitation. As was discussed in Chapter III herein, Tennessee was the first state in the nation to authorize the reward of sentence reductions for good

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<sup>48</sup>House Journal, 1869-1870.

<sup>49</sup>Ibid., 1869.

<sup>50</sup>Crowe, "Agitation for Penal Reform in Tennessee, 1870-1900."

conduct. The original legislation provided that a convict's sentence would be reduced two days for each month of good behavior.<sup>51</sup> The legislation of 1870 directed the prison inspectors to deduct one month the first year, two months for the second year, and three months for all subsequent years including the tenth, and four months for every year after the tenth in which the "convict shall demean himself uprightly ...".<sup>52</sup>

Critics of the convict lease system and of competition between the convicts and free labor realized that the proposal to lease the convicts for railroad work and coal mining would find less public disfavor than the state-account system because of the lack of organized labor unions in either area. Well-established unions were very quick to send memorials to the legislature and the governor when they were upset by anything the government was doing.<sup>53</sup> Both the railroads and the mining industry of East Tennessee were grossly underdeveloped, and the convicts could be used to achieve much needed expansion in both industries.

The state advertised for the leasing of the convicts in major newspapers across Tennessee and in the surrounding states, and at least five competitive bids

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<sup>51</sup>Acts of Tennessee, pp. 27-45, 1829.

<sup>52</sup>Ibid., Ch. 59, pp. 74-78, 1869-1870.

<sup>53</sup>Daily Sun, October 3, 1873.

resulted. The Penitentiary Board of Inspectors and the General Assembly were much more concerned about financial solvency and the ability to pay for the lease as well as a guarantee against liability than it was about the reputation of the potential lessees or what work the convicts would be doing.<sup>54</sup>

Much of the discussion in the General Assembly centered on the need to avoid future problems such as the lawsuit brought by Hyatt and Briggs over the state's liability for problems with the penitentiary facilities and operations. The legislation allowing the leasing operation to begin anew said merely that "by the proceeds of their labor the convicts shall make the Penitentiary self-sustaining."<sup>55</sup>

A decision on a lessee was made in early November 1871, and contracts were submitted to the State Attorney General for his approval.<sup>56</sup> Following minor legal revisions, leases were signed on 2 December 1871 between the State and Thomas O'Connor of Knoxville and Robert Looney of Memphis which gave the lessees almost total control of the state penitentiary and the convicts for the next five years.<sup>57</sup> O'Connor and Looney were owners

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<sup>54</sup>House Journal, 1869-1870.

<sup>55</sup>Acts of Tennessee, Ch. 59, p. 75, 1869-1870.

<sup>56</sup>Nashville Republican Banner, December 1, 1871.

<sup>57</sup>House Journal, 1871-1872.

of an agricultural implement factory as well as operators of coal and iron mines in East Tennessee.<sup>58</sup>

Thus began one of the most infamous chapters of Tennessee penal history - the convict leasing era which spanned the period from 1872 to 1896. The lease called for an annual payment to the state of \$30,000 with the requirement that the lessees provide food, shelter, and clothing to the convicts, and the lease placed no restrictions on the type of work that the convicts could be required to perform.<sup>59</sup>

In 1877 Cherry, O'Connor and Company -- both Looney and O'Connor held interests in the successor firm -- took over the lease with an increase in the annual rent to \$55,000.<sup>60</sup> The successful bidder in 1883 at a price of \$101,000 per year was the Tennessee Coal, Iron, and Railroad Company, a subsidiary of the Tennessee Coal and Railroad Company of which O'Connor, Looney, and Cherry were the principal stockholders.<sup>61</sup> Cherry along with two other partners was also the successful bidder for the lease of the Rusk Penitentiary in Texas in the same

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<sup>58</sup>Annual Report of the Tennessee Coal and Railroad Company (successors to O'Connor and Looney), Nashville, 1891, Archive Manuscripts.

<sup>59</sup>Ibid.

<sup>60</sup>House Journal, 1878.

<sup>61</sup>House Journal, 1884; Annual Report of the Tennessee Coal and Railroad Company, 1891, Archive Manuscripts.

year.<sup>62</sup> The Tennessee Coal, Iron, and Railroad Company would remain the lessees of the Tennessee penitentiary and its convicts until the end of the convict leasing era on January 1, 1896.<sup>63</sup>

The lessees were required to submit their operations to inspection by the prison inspectors on demand, but the state's inspectors rarely found anything of consequence wrong with the operations. Hours of work were from sunup to dark, six days a week, with enough time at midday to eat a cold lunch brought to the work site. The work included almost every form of hard manual labor: mining coal and iron ore, digging ditches along roadways and railroads for drainage, laying cross-ties for railroad construction, driving spikes for the rails, cutting timber and clearing rights-of-way, working in manufacturing shops, and working on the farms owned by the lessees.<sup>64</sup>

Work camps were located all across the state, and the sites varied from coal and iron mines near Coal Creek in Eastern Tennessee to a farm near Memphis in the extreme western section of the state. There were few

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<sup>62</sup>Donald R. Walker, Penology for Profit: A History of the Texas Prison System, 1867-1912 (College Station: Texas A & M University Press, 1988), p. 72.

<sup>63</sup>Annual Report of the Tennessee Coal and Railroad Company, 1896, Archive Manuscripts.

<sup>64</sup>"Report of the Penitentiary Inspectors," House Journal, 1871, 1879, 1883, et al.

guards at these remote camps, but the brutality reported was immense. In order to prevent escapes with as few guards as possible, the lessees often kept the men in steel-barred cages on wagons, worked them with heavy chains fastened to each man around one ankle, and shot to death any convict who "appeared" to be escaping.<sup>65</sup>

Nonetheless, escapes were common, and the statistics show there was very little effort made to recapture the escapees. The mortality rate during the leasing period was horrendous: in 1890, there was not a single convict who had lived long enough to complete ten years on the rolls of the penitentiary, and there were only two who had survived nine years under the lessees.<sup>66</sup> Table 4.1 shows the mortality rates under the different management systems of the Tennessee penitentiary system for various years from 1833 to 1930.

Conditions at the different lease work camps varied considerably depending upon the leader of the guard detail at the particular camp. Living conditions ranged from circus-like animal cages mounted on wagons in the railroad and timber camps to open stockades in the East Tennessee coal fields. Some of the convicts were permitted to live in houses on the farms maintained

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<sup>65</sup>Ibid.

<sup>66</sup>"Report of the Warden of the Tennessee State Penitentiary," attached to the "Report of the Penitentiary Inspectors," House Journal, 1891-1892.



across the state by the lessees.<sup>67</sup> Food was typically poor in quality and quantity, and the inspectors' reports paid considerable attention to complaints from

CONVICT DEATHS IN TENNESSEE PRISON SYSTEM				
Year	Accidental	Natural	Violent	Total
1833	2	92	1	95
1859	2	23	2	27
1880	29	153	21	236
1886	27	240	64	331
1892	86	268	79	433
1906	1	121	1	123
1930	11	187	16	214

**Table 4.1: Convict deaths in the Tennessee state prison system for various years. Compiled from the Annual Reports of the prison supervisors for the years involved.**

the convicts. Little, however, was ever done to correct the problems. A menu depicted as "typical" in one

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<sup>67</sup>Report of the Superintendent of the State Penitentiary, various years.

inspector's report indicated that breakfast consisted of fried bacon, "raised" gravy, and biscuits; lunch was generally a piece of fried cured pork, cold beans, and bread; supper was soup or stew or beans with boiled meat and bread. Water was the only beverage available for the convicts, and fruits and green vegetables were noticeably absent from the diet.<sup>68</sup>

By the late 1880s the organized labor movement was growing in East Tennessee. The Knights of Labor were especially successful in the coal mining areas, and several thousand dues-paying miners from Tennessee joined the group.<sup>69</sup> The Knights worked for recognition of the labor organization as a bargaining agent for the miners but were summarily rejected by the mine owners. Organized protests against the worst ills of the coal mines --- scrip payment in lieu of cash for wages, no check-weighmen at the scales to verify each miner's output, high prices at the company stores where the miners were forced to shop on credit --- accomplished little.<sup>70</sup>

An annual national meeting of the Knights of Labor held in Nashville in June, 1885, passed several resolutions in favor of the free-world miners and opposing the

<sup>68</sup>Ibid.

<sup>69</sup>Knoxville (Tennessee) Sentinel, January 3, 1884.

<sup>70</sup>Annual Report of the Meeting of the Knights of Labor (Nashville: Parker Printing Company, 1885).

use of convict labor. But the annual report from the meeting noted rather dishearteningly that only one of seven mining strikes ever accomplished anything of consequence for its members.<sup>71</sup>

The life of the area's coal miners was precarious at best. They worked for wages that were miserably low and often irregular in payment, and they were paid in scrip. The mine owners had an extreme advantage in any negotiation with the miners. They could say, in effect, 'take what we offer and do not cause trouble, or we will bring in convict labor to do the mining.'<sup>72</sup>

The miners were justifiably upset by the convicts coming into the coal fields. Miners at the time were being paid an average of less than fifty cents a day for twelve hours work in the mines. Most miners lived in company-owned houses, the scrip they were paid was redeemable only at company-owned stores for goods with grossly inflated prices or at huge discounts at other stores, and there was not enough work at most mines to employ everyone who wanted or needed a job.<sup>73</sup>

The miners saw the convicts as usurpers of their own meager livelihoods and began to organize against the

<sup>71</sup>Ibid.

<sup>72</sup>Knoxville Journal, April 6, 1886.

<sup>73</sup>A. C. Hutson, Jr., "The Coal Miner's Insurrections of 1891 in Anderson County, Tennessee," East Tennessee Historical Society Publications 7 (1935), pp. 103-121.

convict leasing system both with and without the support of the Knights of Labor. It took a number of years for the situation to reach the crisis point, but there were numerous work stoppages by the miners during the 1880s. Some but certainly not all of these stoppages were because of the protests of the free miners over convict labor. The miners also had many other complaints as enumerated above.<sup>74</sup>

After work stoppages and protests over the policies of the mine owners for several years, in 1891 a violent situation erupted at Coal Creek in Anderson County. There were three primary reasons for the violence that arose in the coal fields:

1. the Tennessee Coal Mine Company near Briceville refused to allow a check-weighman for the miners,
2. the continuation of the company's policy of the payment of wages in scrip, and
3. a company requirement that the miners sign a so-called "iron-clad agreement" that said the company was always right and fair and that there would be no future work stoppages during disagreements.

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<sup>74</sup>Corlew, Tennessee: A Short History.

All three conditions had to be accepted before the company would allow the miners to return to work after a shutdown caused by repairs to the mine.<sup>75</sup>

To fully appreciate the significance of these events, one must understand something about early coal mining operations in Tennessee. Miners were paid a wage based on the actual amount of coal that they mined. Weighing of the coal took place outside the mine at a site called the tipple. Because the miner was deep in the ground as his various carts of coal were brought out of the mine and weighed, he never knew for sure that he was not being cheated by the company. Tennessee law provided that the miners could hire and pay (with their own money) a check-weighman who would ensure the fairness of the company in crediting each miner's account.<sup>76</sup> The refusal of the company to allow the check-weighman hired and certified by the miners to be their representative was not only in bad faith but also a violation of state law. To circumvent the law, the company quietly announced that, if the miners did not dismiss the check-weighman, mining operations would be suspended. The representative was dismissed by a vote of fifty-one to fifty.<sup>77</sup>

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<sup>75</sup>Knoxville Journal, July 11, 1891.

<sup>76</sup>Acts of Tennessee, Ch. 181, p. 292, 1853.

<sup>77</sup>"Special Report of the Commissioner of Labor to the Tennessee General Assembly," House Journal, 1891.

Payment in scrip was another common practice of coal mining companies during the period. Tennessee law as early as 1860 required the miners to be paid in cash, but times were so hard that the miners accepted the scrip in order to keep their jobs.<sup>78</sup> Scrip was redeemable at face value in the company's store although prices there averaged at least twenty percent more than other stores in the area. Scrip was also redeemable at a few other merchants but only at a twenty percent discount from face value. Most of the coal companies, however, had an unwritten rule that the miners must trade at the company store. Those miners who did not trade there would either be replaced or given an extremely hard area of the mine in which to work. Since the wages received were based on the amount of coal mined, these hard areas effectively reduced a miner's wages to almost nothing. The miner was thus locked in to accepting scrip for his labor and trading at the company store in order to keep his job and support his family.<sup>79</sup>

The third grievance concerned the "iron-clad agreement" that the miners had to sign in order to again receive work from the Tennessee Coal Mine Company following the reopening of the mine after repairs in

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<sup>78</sup>Acts of Tennessee, HR 103, 1859-1860.

<sup>79</sup>Knoxville Journal, July 18, 1891.

early June, 1891. The agreement required the miners to relinquish the right to a check-weighman, to accept scrip in lieu of cash for wages, and to agree not to stop work if a grievance arose with the company. The miner also had to agree to surrender to the company without payment all coal over 2,200 pounds on any coal car coming out of the mine and to certify that they had "implicit confidence in the integrity" of the Tennessee Coal Mine Company.<sup>80</sup>

Most of the miners refused to sign the contract as they had no confidence in the company's honesty without a check-weighman and had grave doubts over the company's integrity.<sup>81</sup> The mine owners immediately threatened to bring in convict miners, and the miners walked out. When the miners walked off the job, the company immediately evicted them from their houses and cut off credit at the company stores.<sup>82</sup> On July 5, 1891, forty convicts arrived from Nashville at Briceville and were immediately put to work tearing down the company-owned houses where the free miners had lived and building a stockade for their own confinement.<sup>83</sup>

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<sup>80</sup>"Special Report of the Commissioner of Labor to the Tennessee General Assembly," House Journal, 1891.

<sup>81</sup>Knoxville Journal, July 18, 1891.

<sup>82</sup>Hutson, "Coal Miner's Insurrections."

<sup>83</sup>"Special Report of the Commissioner of Labor to the Tennessee General Assembly," House Journal, 1891.

The entire area was aroused over the company's actions, and there were very few citizens of Anderson County who did not think that the company was evil and greedy. The people of the county openly agreed with the miners and supported whatever course of action they decided upon against the company. The mine owners also announced that an additional 150 convicts would be moved into the mines as soon as secure stockades for their confinement were completed.<sup>84</sup>

After several tense days of meetings involving the miners and the area's citizenry that the mine owners refused to attend, early in the morning of July 15, 1891, approximately three hundred armed miners marched on the coal mines and demanded the removal of the convict miners and their guards. Seeing the futility of resistance against such a large force of angry men, the guards relinquished control of the convicts who were then marched overland from Briceville to the railroad station at Coal Creek where both the convicts and the guards were entrained for the prison in Nashville.<sup>85</sup>

Governor John B. Buchanan received almost instant notification of the riot via telegraph from Knoxville. Penitentiary Superintendent E. B. Wade sent word to the governor that the armed miners had released the convicts

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<sup>84</sup>Knoxville Journal, July 11, 1891.

<sup>85</sup>Ibid., July 15, 1891.



from the stockade and that the local sheriff was unable to handle the situation. Wade asked the governor to order out the state militia to quell the disorderly miners since almost "all the citizens of Anderson County around mines are in sympathy with the mob."<sup>86</sup>

Buchanan sent a telegram to the sheriff of Anderson County, Rufus Rutherford, advising him that the governor had no official authority to order the militia into Anderson County without a formal request from the county's elected officials. The sheriff confirmed the report of the penitentiary superintendent that he was unable to control the situation and requested the governor's help.<sup>87</sup>

The governor immediately made plans to travel to East Tennessee and ordered the convicts to be put on the train with him. He ordered three companies of the state militia to meet him and the convicts at Knoxville on July 16, 1891. When the governor arrived in Knoxville, he received a communication from the angry miners at Coal Creek. The message to the governor said, in part,

... five hundred of the citizens of  
Coal Creek and vicinity come  
together to defend families from  
starvation, property from  
depreciation, and people from

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<sup>86</sup>"Special Report of the Commissioner of Labor to the Tennessee General Assembly," House Journal, 1891.

<sup>87</sup>"Report of the Governor to the General Assembly on the Coal Miners' Insurrection," House Journal, 1891-1892.

contamination from the hands of the  
convict labor.<sup>88</sup>

The miners directly requested the intervention of the governor to prevent possible bloodshed and to help bring an end the dispute. The governor, his party, the convicts, and the three companies of militia immediately set out by rail from Knoxville to Coal Creek, the nearest train station to Briceville. A large crowd of Anderson County citizens met the train, but there was no visible demonstration from the crowd.<sup>89</sup>

Buchanan called a meeting for the afternoon of July 16 with the miners and concerned citizens at Thistle Switch between Coal Creek and Briceville. The governor stated that the convict leasing system was the law of the state and that he could do nothing to change that law. He declared that he was obligated by the state constitution to enforce the law with all the power at his disposal and that he was prepared to enforce the law in the present situation. He condemned the miners for taking action against the company in direct conflict with existing state law and advised the miners to air their grievances through the state court system.<sup>90</sup>

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<sup>88</sup>"Special Report of the Commissioner of Labor to the Tennessee General Assembly," House Journal, 1891.

<sup>89</sup>Knoxville Journal, July 17, 1891.

<sup>90</sup>"Report of the Governor to the General Assembly on the Coal Miners' Insurrection," House Journal, 1891-1892.

The miners had elected one of their own as a spokesman to respond to the governor's address. Eugene Merrill made a very reasoned response, acknowledging that the governor was right in most of his statements. But he suggested that the governor was overlooking the fact that the miners had been treated horribly by the company's officials, who had themselves broken the state's laws without hesitation and with no direct action by the government to force the company to obey the existing laws. He claimed that the company's "iron-clad agreement" was nothing more than an attempt to return the miners to a form of legalized slavery. When Merrill asked Buchanan if he would be just as quick to use the militia to force the company to obey the law as he was in the current instance, the governor chose not to reply at all.<sup>91</sup>

Several other citizens addressed the meeting. A member of the Farmers' Alliance, the governor's own political party, asked the governor if the citizens of the state were to turn their backs on the actions of their forefathers who had taken up arms and fought for liberty. Another speaker criticized the governor for bringing along the militia and suggested that no one was going to be hurt by the miners.<sup>92</sup>

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<sup>91</sup>Knoxville Journal, July 18, 1891.

<sup>92</sup>Ibid.

Following the meeting the governor and his party moved the convicts to a stockade at the nearby Knoxville Iron Mine, and the governor spent the night at the home of a militia captain from the area. During the early evening some of the more radical miners fired shots in the direction of the stockade, but no one was injured. The governor himself took up a rifle and was prepared to participate in the defense of the stockade should an attack occur. In fact, most of the miners had formed a group to ensure that no trouble erupted during the night, but the governor admitted to having "spent a restless night".<sup>93</sup>

Early on the morning of July 17, Governor Buchanan declared that he had done all he could under existing state laws and that he would see the laws obeyed no matter what. Claiming a "press of urgent business" in the capitol, he left for Knoxville and the train to Nashville. He ordered the militia companies to remain in Briceville under the command of Colonel Granville Sevier to enforce the law and to maintain order. The militia men had insufficient supplies to make a long stand and most of them had no real desire to enforce the law that was putting honest neighbors out of work. Many of the miners were in sympathy with the awkward position in which the militia had been placed, and some slipped

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<sup>93</sup>Daily Sun, July 21, 1891.

food into the militia camps or quietly entertained the soldiers with meals in their homes.<sup>94</sup>

Governor Buchanan left his Commissioner of Labor, G. W. Ford, in Coal Creek to work with the company and the miners in an attempt to solve the problems peacefully. Ford was a congenial official and worked well with the miners, but he was unable to sway them from the position that the convicts must leave the mines. The citizens of Anderson County almost to a man expressed the belief that, if the miners gave in to the company on the issue of convict leasing, the county's prosperity, freedom, and future would all be ruined.<sup>95</sup>

The miners' revolt accomplished very little; the convicts were back in the mines and the governor had said that he would enforce the law, and the miners were still extremely agitated. Three companies of militia, poorly trained and equipped, were camped in the area. The government had forced the convict lease on the citizens of the area, but the miners wanted redress for their grievances. The governor had promised them nothing except strict enforcement of the law.<sup>96</sup>

The determination to expel the convicts grew stronger each day that the free miners were without

<sup>94</sup>Knoxville Journal, July 20, 1891.

<sup>95</sup>"Special Report of the Commissioner of Labor to the Tennessee General Assembly," House Journal, 1891.

<sup>96</sup>Knoxville Journal, July 19, 1891.

work. In compliance with a promise made to State Commissioner of Labor Ford, the miners remained peaceful over the weekend. By early Monday morning, July 20, 1891, however, miners from the surrounding areas and as far away as Kentucky and West Virginia poured into the area around Coal Creek, Tennessee. They came on foot, by horse and mule, and by train. And they were armed with every type of weapon imaginable: rifles, shotguns, pistols, sticks, and even rocks.<sup>97</sup>

By 7:30 a.m. on July 20, 1891, a line had formed and begun an advance on the Tennessee Coal Mine. Using trees and rock outcroppings for concealment, the miners advanced to good firing range. They selected a committee to enter the mine compound under a flag of truce to talk with Colonel Granville Sevier, the militia commander. Demanding that the convicts be transported back to the state penitentiary in Nashville, the miners interpreted a hesitation by Sevier as an attempt to capture them.<sup>98</sup>

A signal flag was waved, and two thousand angry men swarmed into the mine compound. With only 100 poorly equipped militiamen under his command, Sevier wisely surrendered the camp. The miners promised not to destroy either state or company property and then

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<sup>97</sup>Ibid., July 21, 1891.

<sup>98</sup>Ibid.

marched the convicts, guards, and militiamen overland the five miles to Coal Creek. Arriving at about 1:30 p.m., the group of convicts, guards, and militia were entrained for Knoxville.<sup>99</sup>

Rumors of the impending second revolt circulated wildly around Knoxville all weekend. When news of the militia's surrender and of the convict train's impending arrival was telegraphed to Knoxville by the Coal Creek stationmaster, a huge crowd quickly gathered at the train station. The train arrived about 4:00 p.m., and the convicts were moved uptown for safe-keeping. The militia disbanded in search of the first good meal that many had eaten in several days.<sup>100</sup>

Meanwhile the miners were still busy in the mountains outside Coal Creek. The train was barely underway carrying the convicts to Knoxville when the miners marched on the Knoxville Iron Company mine. Convicts had worked in that mine since 1875 without incident but, despite the pleas of Labor Commissioner Ford and his assistant, the miners were determined to evict all convict labor from the area. The warden of the branch prison, not totally surprised at the visit by the angry miners, quickly surrendered his convicts to the crowd. The miners surrounded the convicts to

<sup>99</sup>Ibid.

<sup>100</sup>Ibid., July 23, 1891; Knoxville Sentinel, July 22, 1891.

prevent escapes and marched the group to Coal Creek to board a second train for Knoxville.<sup>101</sup>

Having taken an oath not to destroy either mine company or state property, the miners set guards around the empty convict stockades at both mines and the balance departed for home. The guards were to prevent the mine operators from wrecking the stockades and then blaming the miners as much as they were to prevent radical miners from breaking the oath. One onlooker at Coal Creek observed that the miners were "determined to wipe out the convict system in East Tennessee at any cost."<sup>102</sup> Taking the matter into their own hands after receiving no assistance from the governor, the miners had acted rationally and with caution. No blood had been spilled, and no property had been destroyed. Unfortunately for the miners, neither the state nor the mine owners would proceed with caution in the days ahead.

Governor Buchanan, informed of the second uprising and the removal of the convicts, immediately ordered fourteen companies of militia under the command of Brigadier General Sam T. Carnes to assemble in Knoxville and wait his arrival. He told Carnes to pack three days of food, ammunition, tents, blankets, and all other

<sup>101</sup>"Report of the Penitentiary Inspectors," House Journal, 1875-1876; Knoxville Journal, July 24, 1891.

<sup>102</sup>Knoxville Journal, July 25, 1891.



necessary supplies. Six hundred armed state militiamen were encamped on the grounds of the University of Tennessee at Knoxville awaiting the governor's arrival.<sup>103</sup>

The miners were also mobilizing. They named a committee of five miners to meet Buchanan in Knoxville, and the committee then recruited several influential Knoxvilleians to accompany them to see the governor. An announcement from the miners published in the Knoxville Journal denounced the governor for sending in the militia a second time not "to preserve the peace, but to see that convict laborers worked in the Tennessee Coal Mining Company's mines."<sup>104</sup>

The governor arrived in Knoxville on Wednesday, July 22 and immediately agreed to meet with the miners' committee. The delegation submitted a request to the governor including the following items:

1. a return to the status quo with the convict miners temporarily returned to the mines,
2. pardons for all crimes, real and alleged, committed by the miners in returning the convicts to Knoxville,

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<sup>103</sup>"Governor's Report to the General Assembly of Tennessee," Senate Journal, 1891-1892.

<sup>104</sup>Knoxville Journal, July 23, 1891.

3. an annulment of the lease contract and the removal of the convicts to the state penitentiary,
4. that the governor call a special session of the General Assembly and recommend the repeal of the convict lease law, and
5. that all convicts in East Tennessee be moved to the state penitentiary in Nashville immediately upon repeal of the law.

The miners promised to protect state and mine company property until their demands could be met.<sup>105</sup>

The governor called in representatives from the lessee, the Tennessee Coal, Iron, and Railroad Company, to discuss the demands of the miners. The lessee refused outright to discuss the removal of the convicts from the coal mines or to annul the contract. Buchanan then notified the miners' delegation that he had no choice but to enforce the existing law. He did promise, however, to convene a special session of the General Assembly to consider the miners' grievances and to consider the convict lease law.<sup>106</sup>

The committee feared returning to Coal Creek to meet the assembled miners as they had won agreement to only one of the five demands. A group of Knoxvilleians

<sup>105</sup>"Governor's Report to the General Assembly of Tennessee," Senate Journal, 1891-1892.

<sup>106</sup>Ibid.

agreed to accompany the committee in an attempt to persuade the miners to await the outcome of the special session of the legislature. The committee members attended a mass labor meeting that night in Knoxville, and they heard numerous speeches in support of the miners' actions.<sup>107</sup>

Knox County Chancellor Henry Gibson commended the miners for their patience, saying that the convict system was like a "sword held over the heads of our laboring people. The miners have been calling upon the Governor for a long time, but he heard them not, for he had corporation cotton in his ears."<sup>108</sup>

On Thursday, July 23, 1891, the committee returned to Coal Creek on the train and then rode to a meeting with the miners at Thistle Switch. The meeting was called to order by committeeman Marshall Ingraham who then introduced J. C. J. Williams of Knoxville to explain the governor's message to the miners. Williams arose from his seat to the cries of "Lets [sic] us fight it out!" and similar shouts, but he delivered a powerful speech with great tact to urge patience on the part of the angry miners. His opening remarks included the following passage.

I hardly know which way to  
turn, I see such a sea of faces

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<sup>107</sup>Knoxville Journal, July 23, 1891.

<sup>108</sup>Ibid.

before me, on either side of me and behind me. I want to say that I occupy a position toward you like that of the Queen of Sheba toward King Solomon. When she saw all the splendor and greatness before her she threw up both hands and said she had heard a great deal about it, but the half had not been told ... I see before me honest assembled labor that ought to wear a crown. You have only to be conservative and a great victory is within your grasp ...<sup>109</sup>

Williams' speech moved the miners to appoint a committee to draft a second set of resolutions to submit to the governor. The new list of demands was much less stringent than the first, and included:

1. the return to the status quo,
2. the immediate removal of the militia back to their homes,
3. the governor to convene a special session of the legislature, and
4. an armistice declared for 60 days while the governor carried out the demands.

But the governor rejected the new proposal on Thursday evening as well, saying that the armistice clause put the state in a position of compromise that lowered its dignity.<sup>110</sup>

Friday was extremely tense as the miners' committee worked hard on a compromise agreement with the governor.

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<sup>109</sup>Ibid., July 25, 1891.

<sup>110</sup>Ibid.

Labor groups from all over the state held meetings of support and denounced the convict lease system as "evil incarnate."<sup>111</sup> Labor Commissioner Ford offered a compromise for the committee to consider.

1. the return to the status quo as requested,
2. the miners to provide protection for the convicts and guards on their return to the mines,
3. the immediate recall of the militia by the governor, and
4. the miners to express confidence in the governor and General Assembly to provide "necessary relief from the repression that now hangs over us."<sup>112</sup>

The agreement was accepted by both sides on Friday, July 24, 1891, and the governor again returned to Nashville. Both sides had accomplished something. The miners had a promise of a special session of the General Assembly to consider ending the convict lease system, and the governor had promised to recommend the end of leasing. But the governor had also won a peace without giving any real concessions to the miners and without bloodshed. The convicts and their guards returned to

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<sup>111</sup>Memphis Scimitar, July 26, 1891.

<sup>112</sup>Knoxville Journal, July 26, 1891.

the mines on Saturday, July 25, 1891, without incident.<sup>113</sup>

True to his word, Governor Buchanan called a special session of the General Assembly in August, 1891. However, the list of items on the agenda went far beyond the convict lease system. The governor asked for power to use state forces in times of insurrection without waiting on requests from county officials, the repeal or major modification of the convict lease law, reform of the state's criminal code, the absolute prohibition of the use of scrip for wages, and a law providing for punishment of anyone who interfered with the use of the state's convicts under valid leases.<sup>114</sup>

The legislature limited its major consideration to the governor's requests for the lease modification. The lessees were adamant that they would not consider a modification of the lease since they had already "lost considerable money this year." They stated that they would consider surrendering the lease, but they also offered an alternate proposal. In return for a thirty-year lease, the lessees would build a new state penitentiary, move the convict miners to the counties of Marion, Bledsoe, and Sequatchie, and pay the state

<sup>113</sup>Ibid.

<sup>114</sup>Ibid., August 7, 1891; Journal of the House of Representatives of the General Assembly of Tennessee for the Extra Session of 1891 (Nashville: Parker Printing, 1892).

\$250,000 per year for maintenance of the penitentiary.<sup>115</sup>

The proposal from the lessees was not acceptable to the legislature for several reasons. The primary reason the proposal was rejected was that the legislators feared its maintenance costs would exceed the lessees' payments, but they also thought it ill-advised to enter into a lease for a thirty-year period. A bill calling for the immediate repeal of the lease law came to a vote in the House of Representatives, but it was soundly defeated by a vote of 59-23.<sup>116</sup> The General Assembly did enact new legislation demanding the payment of lawful United States currency for all wages by all companies in Tennessee.<sup>117</sup> (The Tennessee Supreme Court nullified the law in 1892, however, claiming that it might result in the imprisonment for debt). The governor also received the requested power to act without requests from local officials in cases of insurrection or riot. Persons convicted of interfering with the work of convicts were subject to imprisonment for a term not to exceed seven years.<sup>118</sup>

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<sup>115</sup>Knoxville Journal, September 2, 3, 5, 9, 10, 1891.

<sup>116</sup>House Journal, Special Session, 1891.

<sup>117</sup>Acts of Tennessee, Ch. 5, pp. 18-19, Special Session, 1891.

<sup>118</sup>Ibid.

During the special session of the legislature, the state board of prison inspectors removed the convicts from the mines of the Tennessee Coal Mine Company because of mine safety violations. The inspectors found inadequate ventilation, horrible sanitation, insufficient drainage, and only one entrance into the mines. Hope was raised in the minds of the free miners that the convicts might be kept out of the mines, but the mine owners promptly repaired the problems, and the convicts returned.<sup>119</sup>

The free miners in East Tennessee felt betrayed by the governor and the legislature. The overwhelming public sentiment as expressed in newspaper articles and rallies from around the state showed displeasure with the convict leasing system.<sup>120</sup> The governor and legislature, however, were unwilling to take the responsibility for possible tax increases to support the convicts in the penitentiary in lieu of the convict leases. As an additional impetus to keeping the convict lease system, the Tennessee State Treasury had banked over \$771,000 from the penitentiary system between 1870 and 1890, an amount only about \$175,000 short of the

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<sup>119</sup>"Report of the Prison Inspectors to the General Assembly," House Journal, 1893.

<sup>120</sup>Memphis Scimitar, August 11, 1891; Knoxville Journal, May 9, 1891; Nashville Banner, September 6, 1891, hereinafter Banner.



total amount appropriated by the state for its prison operations since 1831.<sup>121</sup>

The miners in desperation decided to try the court system for redress. They smuggled a justice of the peace into one of the Tennessee Coal Company mines and had a convict named William Warren apply for a writ of habeas corpus, claiming that he was being held unconstitutionally. A Knoxville court ruled that the coal mine was an illegal penitentiary and that the convict should be returned to Nashville, but the state Supreme Court reversed the decision on appeal and declared the convict lease law to create a "legal penitentiary" wherever the convicts might be employed in Tennessee.<sup>122</sup>

The miners committee had toured the state during the special session of the General Assembly, they had labored hard for repeal of the convict lease law, and had brought a case before the state's civil courts. The committee addressed the full body of the coal miners and expressed disbelief that only a single grievance -- the outlawing of scrip -- had been redressed by the state government. The entire committee then tendered its

<sup>121</sup>Annual Report of the Commissioner of Labor for the United States (Washington, D. C.: Government Printing Office, 1886); "Annual Reports of the Treasurer of the State of Tennessee," Senate Journal, various years 1831-1890; Knoxville Journal, September 2, 8, 11, 1891; Nashville American, September 21, 27, October 2, 1891, et al.

<sup>122</sup>State ex rel v Jack, Reports of the Tennessee Supreme Court (Nashville: Pickle and Company, 1892).

resignation. The conservative miners were immediately outvoted by the radicals and much more extreme policies were soon in place.<sup>123</sup>

Rumors of yet another miners' revolt had been brewing since the end of the special session of the legislature. The mine operators had demanded additional guards for the convicts, but they had been refused. The miners met in secret for several nights following the takeover by the radical group, and on the evening of October 31, 1891, they were ready to act. Marching on the mines of the Tennessee Coal Mine Company, the miners demanded the removal of the convicts. Once again, the convicts were surrendered to the angry miners, but this time the convicts were freed and ordered by the miners to leave the area. A total of 163 convict miners were released at Briceville, but later in the evening another 120 were turned loose from the Knoxville Iron Mine. Looting a general store in the area for clothes, food, and weapons, the convicts disappeared into the night. The miners burned the stockades and other buildings at both mines, leaving nothing but the stone chimneys standing.<sup>124</sup>

Masked and under cover of darkness, the miners could not be identified by any of the officials, and the

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<sup>123</sup>Knoxville Journal, October 29, 1891.

<sup>124</sup>Ibid., November 2, 1891.

rioters quietly slipped away to their homes. They remained quiet over the next few days, but they had served notice upon the state that they would not idly sit by and watch their lives destroyed. The citizens of Coal Creek themselves expressed amazement that not even they knew the perpetrators of the third revolt.<sup>125</sup>

On Sunday night, November 2, 1891, the citizens of Oliver Springs, located between Coal Creek and Knoxville, were surprised to hear about the midnight liberation of two hundred of the state's toughest convicts from the Cumberland Mine. Refused admittance to the mine compound, a crowd of enraged miners broke down the gate with a sledge hammer and again told the convicts to leave the area. As before, they burned the stockades and other buildings to the ground. Again operating in almost total secrecy, the miners had been successful in carrying out their threats to end the convict leasing one way or another.<sup>126</sup>

While the state's newspapers discussed the events in East Tennessee with fervor -- most of them condemned the violence and ended their sympathetic support of the miners -- the coal mine operators replaced the convicts with free miners and reopened the mines. About 1,000 miners returned quickly to the mines across the area,

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<sup>125</sup>Ibid., November 6, 1891.

<sup>126</sup>Ibid., November 8, 1891.

and the operators announced their intentions not to replace the free miners with convicts in the future.<sup>127</sup>

The state, meanwhile, was in a quandary. The governor had asked for and received a law to punish the rioters, but who was to be punished? None of the miners who had participated in the revolt could be identified by the mine or prison officials. The convicts were scattered far and wide across Tennessee and surrounding states, and more than 140 of the released convicts were never recaptured.<sup>128</sup> The governor blamed Anderson County Sheriff Rufus Rutherford for the insurrection for not immediately notifying the state of the possible revolt and then arresting the guilty parties. The sheriff likewise blamed the governor, noting that he had sent word to the governor some time before the revolt but that the governor ignored his requests.<sup>129</sup> The governor offered a \$5000 reward for the arrest and conviction of the leader of the revolt, a \$50 reward for every participant in the insurrection, and a \$25 reward for the capture of any released convict. To no one's real surprise, all of the rewards went unclaimed.<sup>130</sup>

<sup>127</sup>Ibid.; Clinton (Tennessee) Gazette, November 3, 1891.

<sup>128</sup>"Report of the Inspectors of the Tennessee State Penitentiary," 1892, 1894, 1896, 1898.

<sup>129</sup>Clinton Gazette, November 5, 6, 7, 9, 15, 1891.

<sup>130</sup>"Report of the Governor to the General Assembly," Senate Journal, 1891-1892.

Governor Buchanan came under strong assault by the state's newspapers for his failure to respond quickly to the revolt. On December 14, 1891, the governor publicly announced that 200 convicts would be returned to Oliver Springs, Briceville, and Coal Creek. He said that a combined guard of 175 civilian and militia men would provide protection for the convicts, the additional guards to be jointly paid by the state and the lessees. A state militia force led by General Keller Anderson accompanied the convicts into East Tennessee and then established a base of operations near the Knoxville Iron Mine. Entrenchments were dug, and a Gatling gun was emplaced by the military. The military prepared for a long stay in the mountains, according to the governor not to protect the convicts but to "preserve law and order in the valley."<sup>131</sup>

No convict miners were returned to the Tennessee Coal Mine as the stockade, burned during the revolt, was never rebuilt. Free miners were living in newly rebuilt company houses and working every day in the mines, and the mine operators did not want the convicts back. A major fight ensued between the lessees and the Tennessee Coal Mine Company, but the governor sided with the mine operators and refused to force the convicts back into the mine. The Cumberland Mine also refused to employ

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<sup>131</sup>Knoxville Journal, January 3, 1892.

the convict miners again, but the lessees bought out the Cumberland Mine properties from Big Mountain Coal Company and moved the convicts back into the mine.<sup>132</sup>

The convict mining wars erupted again in the summer of 1892, this time in Grundy County in the middle region of the state. The Tennessee Coal, Iron, and Railroad Company, the lessees of the state's convicts, operated mines in this region at Tracy City and Inman. The company cut the work hours of the free miners in half while continuing to work the 360 convicts twelve hours per day. The free miners began secret meetings and discussed ways to evict the convicts and end the lease system. The branch penitentiary requested extra guards, and very early in the morning of August 10, 1892, the penitentiary superintendent, E. B. Wade, arrived at Tracy City from Nashville. Following a very short meeting, Wade unilaterally decided that the crisis was over and left for Nashville.<sup>133</sup>

Following Wade's departure, a committee of free miners approached the superintendent of the mine and requested work. The mine official told them that additional work would be available in thirty days, but that

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<sup>132</sup>Ibid., January 1, 2, 5; Justin Fuller, "History of the Tennessee Coal, Iron, and Railroad Company, 1852-1907," Ph.D. dissertation, University of North Carolina at Chapel Hill, 1966.

<sup>133</sup>Senate Journal, 1893-1894.

was unacceptable to the miners. At 9:00 a.m. on August 10, 1892, just after Superintendent Wade's train departed the station, a crowd of free miners approached the mine stockade and burned it to the ground. The miners then entered the mine, took control of the convicts, and marched them overland to the train station where they were entrained for Nashville. Enroute to Nashville, thirteen convicts overpowered their guards and made a break for freedom, and six were never recaptured. The miners repeated exactly the same process at the Inman Mines but, because it was built under the railroad bridge, the miners tore down the stockade instead of burning it.<sup>134</sup>

The Tracy City and Inman revolts incited new violence in Anderson County in 1892 as well, although the rumblings of another revolt had been around since January, 1892, when the militia encamped in the county. On the morning of August 15, the guards at Oliver Springs saw about 100 miners approaching the stockade. The miners demanded that the convicts leave the mine, but the guards refused. For the first time in the convict wars, the guards were not bluffed. Rounds of gunfire were exchanged, and the miners raised a flag of

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<sup>134</sup>Knoxville Journal, August 16, 1892; "Report of the Superintendent of the State Penitentiary," House Journal, 1893-1894.

truce and withdrew but not before promising to return with reinforcements.<sup>135</sup>

Governor Buchanan immediately ordered militia regiments from Chattanooga and Knoxville to the scene. Meanwhile the miners gathered reinforcements, returned to Oliver Springs, and demanded anew that the convicts be turned over to them. Realizing the futility of a fight, the warden surrendered the convicts, and the miners put them on board trains for Knoxville with their guards. With this action, the governor capitulated and ordered the convicts removed to Nashville and the penitentiary. When the miners demanded that the soldiers be removed from Anderson County, the governor told them to be patient, and he would work things out.<sup>136</sup>

The miners were so agitated and infuriated with what they considered another delaying tactic from the governor that they attacked the militia encampment. About 1,000 miners laid siege to the post while the state marshalled troops into the area as quickly as possible. General Sam Carnes arrived with more than 500 well-trained men and immediately took charge of the situation. He demanded the surrender of the village and arrested as many of the miners as possible. Carnes accused D. B. Monroe of being the leader of the riotous

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<sup>135</sup>Knoxville Journal, August 18, 1892.

<sup>136</sup>Ibid.



miners, and Monroe was remanded to jail to await trial. Most of the other miners were released pending the next session of the court.<sup>137</sup>

It was obviously the intent of Carnes to intimidate the miners into submission and then to drop charges against all those involved. More than 2,000 miners had been involved in the rioting over the period, and more than 300 were indicted for various crimes. Monroe and a Baptist preacher named S. A. Moore were the only participants ever sentenced under the convict labor interference law. Monroe received seven years for interfering with convict labor and destruction of state property, and Moore received a one year sentence for participating in one of the revolts. Charges were either dropped or reduced to minor fines on all the other defendants. Newspaper accounts of the trials indicated that it was unlikely that either would have gone to prison had they originally been Anderson County residents. Since they were both outsiders, they were treated severely by the courts.<sup>138</sup>

The governor's race in 1892, inasmuch as it was affected by the convict leasing wars in East Tennessee, is important to this study. Many of the state's

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<sup>137</sup>"Report of the Adjutant General," Senate Journal, 1892-1893.

<sup>138</sup>Knoxville Journal, January 3, 1893; Clinton Gazette, January 5, 1893.

citizens as well as its major newspapers blamed the riots and problems on the ineffectual leadership of Governor J. B. Buchanan. But whether Buchanan was directly responsible or not, the violent outbreaks and numerous potentially violent confrontations that occurred during the years of 1891 and 1892 made it politically expedient to alleviate the leasing controversy.<sup>139</sup>

All three gubernatorial candidates in 1892 campaigned on platforms promising to eliminate or reform the leasing system. The incumbent Democratic governor, J. B. Buchanan, campaigned as an independent since the Democrats had selected the Chief Justice of the Supreme Court of Tennessee, Bourbon Democrat Peter Turney, as their candidate. The Republicans chose Dresden attorney George W. Winstead. Turney's platform criticized Buchanan's failure to enforce the convict lease law. Turney said that, if the law sanctioned the lease, it should be enforced by every "able-bodied man in the state" if necessary, but he also declared himself opposed to the convict lease system and pledged to work for its repeal.<sup>140</sup> Buchanan defended his limited use of the militia against the free miners, but public opinion

<sup>139</sup>Corlew, Tennessee: A Short History; Also see A. C. Hutson, Jr., "The Overthrow of the Convict Lease System in Tennessee," East Tennessee Historical Society Publications 8 (1936), pp. 82-103.

<sup>140</sup>Banner, September 6, 1892.

was against him. George Winstead declared himself opposed to the convict lease system but spent most of his campaign criticizing the Democratic regime instead of supporting reform.<sup>141</sup> Peter Turney was the easy victor over Winstead, 126,348 to 100,557 while the incumbent Buchanan received only 29,918 votes.<sup>142</sup>

The General Assembly responded by passing a bill ending the leasing of state convicts effective January 1, 1896.<sup>143</sup> In the same session, bills were passed to erect a "new and thoroughly modern" state penitentiary on farm land outside the city of Nashville and to buy East Tennessee coal lands to be worked by the convicts for the state's account.<sup>144</sup> Committees were appointed to begin the search for suitable lands for both operations, and the state prepared to take charge of its convicts for the first time in almost thirty years.<sup>145</sup>

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<sup>141</sup>See, for example, Chattanooga Weekly-Times, September 8, 1892.

<sup>142</sup>Records of the Secretary of State, 1891-1892, Secretary of State's Office, Nashville, Tennessee.

<sup>143</sup>Crowe, "Agitation for Penal Reform in Tennessee, 1870-1900"; Acts of Tennessee, Ch. 78, pp. 96-105, 1893.

<sup>144</sup>Acts of Tennessee, Ch. 78, pp. 96-105, 1893.

<sup>145</sup>House Journal, 1893.

## Chapter V

### **Brushy Mountain State Penitentiary in The State's Coal Mining Era: 1893-1930**

The coal miners' insurrections in Anderson County in 1891-1892 left the General Assembly with very few options concerning the use of the state's convicts in the coal mines of East Tennessee.<sup>1</sup> The state could either retake control of the convicts, returning them to the delapidated and overcrowded state penitentiary in Nashville, or surround the convict miners with militia and other armed guards to prevent civil war between the free miners and the state. Many of the state's major newspapers carried feature articles and editorials about the convict leasing system. For example, the Chattanooga Weekly Times carried an article written by Dr. P. D. Sims concerning the "opinions of prominent Tennesseans" on the convict lease system.<sup>2</sup> Dr. Sims was the Chairman of the Committee on Prisons of the State Board of Health in Tennessee and a member of the Prison Congress of America. His views, along with those of the Chief Justice of the Tennessee Supreme Court who was also the Democratic contender for governor, a former governor of the state, and a former state senator, outlined the various reasons why the lease should be

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<sup>1</sup>Hutson, "The Coal Miners' Insurrections of 1891 in Anderson County, Tennessee."

<sup>2</sup>Chattanooga Weekly Times, September 8, 1892.

abandoned at the earliest opportunity.<sup>3</sup> The gubernatorial election of 1892 left little doubt about the direction that the voters wanted the state to take: Peter Turney, a Bourbon Democrat who ran on a convict lease reform platform, easily defeated his two opponents, incumbent Governor J. B. Buchanan and Republican challenger George W. Winstead.<sup>4</sup> Following much heated debate and two addresses to the General Assembly from Governor Turney, the legislature enacted the Penitentiary Act of 1893.<sup>5</sup>

The Penitentiary Act of 1893 was the most sweeping penitentiary legislation ever to be enacted by the Tennessee General Assembly. It called for the end of convict leasing on January 1, 1896, and ordered the state to build two new penitentiaries. Since the old Tennessee State Penitentiary in Nashville was surrounded on all sides by homes and businesses and had absolutely no room to expand, it was ordered that suitable land be located near Nashville for the construction of a new central penitentiary. The state was also directed to locate at once "suitable lands for the mining of coal"

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<sup>3</sup>Ibid.

<sup>4</sup>For more details see Chapter III herein.

<sup>5</sup>Papers of Peter Turney, Archive Manuscripts, hereinafter Turney Papers; Acts of Tennessee, Ch. 78, pp. 96-105, 1893.

in order to keep the maximum number of convicts employed at all times.<sup>6</sup>

The penitentiary legislation carried a provision for the appointment by the governor of a Penitentiary Purchasing and Building Committee composed of three members. This committee was authorized to purchase all necessary property, to visit other state penitentiaries for building ideas, to advertise for the erection of all buildings and stockades, to make all necessary contracts, to draw up all necessary regulations for the new penitentiaries, and to lease as many convicts as possible to do the construction work on the penitentiary.<sup>7</sup> In order to save time in locating suitable coal mining lands, the committee was authorized to advertise in one major newspaper in each of the three grand divisions of the state for a minimum of thirty days.<sup>8</sup>

Governor Turney appointed Judge R. J. Morgan of Memphis (Shelby County, West Tennessee), D. R. Young of Coal Fields (Anderson County, East Tennessee), and M. H. McDowell of rural Franklin County in Middle Tennessee to serve on the Penitentiary Purchasing and Building Committee. For the purposes of investigating and purchasing coal mining lands, the committee was empowered

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<sup>6</sup>Acts of Tennessee, Ch. 97, pp. 202-204, 1893.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

to consult with state geologist Dr. James M. Safford and state mining engineer and geology expert Louis E. Bryant; Chattanooga businessman A. S. Colyar had great influence on the committee and was instrumental in the process of selecting potential coal-mining properties.<sup>9</sup> After having posted the necessary bonds required by Tennessee law on April 22, 1893, the committee immediately began its work. The committee established headquarters in a Nashville office but met frequently at places that were more accessible to the farms and coal lands being visited throughout the state.<sup>10</sup>

The General Assembly in 1893 had authorized the sale of \$600,000 of state revenue bonds to finance the coal mining land purchases and construction of necessary buildings and stockades.<sup>11</sup> Until these bonds were actually sold and the monies received by the state treasurer, the committee's work involved little more than planning and investigation. (The bonds were sold in January 1894, and the state treasurer received \$588,000 -- the face amount less \$12,000 sales

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<sup>9</sup>Turney Papers; For an interesting discussion of businessman Colyar, see Clyde L. Ball, "The Public Life of Colonel A. S. Colyar, 1870-1877," Tennessee Historical Quarterly 12 (1953).

<sup>10</sup>"Report of the Penitentiary Purchasing and Building Committee to the General Assembly of Tennessee, 1895," House Journal, 1895; hereinafter Committee Report.

<sup>11</sup>Acts of Tennessee, Ch. 78, pp. 96-105, 1893.

commissions -- on February 22, 1894).<sup>12</sup> Nonetheless, the committee began its work of investigating possible coal lands early in June, 1893.<sup>13</sup>

The committee first visited two mines in the Sequatchie Valley, the Porin Mine and the Whitworth Mine. Both of these properties were working coal mines and were for sale. Three coal fields adjacent to the Sequatchie Valley properties and known as the Myers and Spears coal lands in the Cumberland Mountains were investigated next. The committee then traveled to numerous other properties, including several on the west and east of the Cumberland Mountains. They inspected a field at Standing Stone in Putnam County, one at Bledsoe Stand in Morgan County, one in Overton County, one north of Rockwood in Cumberland County, one at Buffalo Cove in Fentress County, one in Van Buren County, coal lands on Crab Orchard Mountain, one filed near Daisy, two near Chattanooga, and the Brushy Mountain fields near Harriman in Morgan County. In all the committee investigated more than fifteen possible sites for the new penitentiary and its coal mining lands.<sup>14</sup> The investigation was restrained by the necessity for existing contiguous transportation or where transportation

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<sup>12</sup>House Journal, 1895.

<sup>13</sup>Committee Report.

<sup>14</sup>Ibid.



facilities could easily be extended into the area without delay. By August 13, 1893, just two and one-half months after it began, the committee had decided upon the coal land that the state would eventually buy.<sup>15</sup>

The coal fields at Brushy Mountain were revisited by the committee, and a thorough and exhausting examination was conducted. Coal was exposed on the surface at several locations on the land, and in many cases the exposed coal was in the same seam and several miles apart, indicating the vastness of the mineral deposit. Satisfied with both the abundance and the permanence of the coal veins, the committee entered into negotiations with the land owners, the East Tennessee Land Company. The company owned a total of approximately 12,000 acres of land located in parts of four separate 5,000 acre land grants. The land embraced a group of mountains known locally as the "Brushies". The committee wanted to secure as nearly as possible a square tract of land, and it made a special effort to secure title to a 9,000 acre tract free from intervening boundaries of other land owners. There was fee simple title including all surface and mineral rights to approximately 8400 acres and mineral rights only with

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<sup>15</sup>Ibid.

the right of ingress and all mining rights to approximately 600 acres.<sup>16</sup>

In his technical report to the committee dated July 31, 1893, Dr. James Safford, the state geologist, expressed his opinion on the Brushy Mountain coal lands.

... Considering the number of beds of coal and the quality of the coal, I feel justified in saying that, so far as my observations have extended, there is on the whole no better coal property in the State of Tennessee than that purchased by the state. It would appear that we have represented in its great section of strata every coal bearing horizon to be found anywhere within the entire area of our coal fields.<sup>17</sup>

Colonel A. S. Colyar, the Chattanooga businessman involved unofficially in the land search, called the Brushy Mountain coal field "the best deal available in the coal fields of any state."<sup>18</sup> According to the terms of the contract between the State of Tennessee and the East Tennessee Land Company, the 9,000 acre tract, composed of a tract of 8,429.48 acres in fee simple and two smaller tracts totaling 570.52 acres of mineral rights, would transfer to the state in return for the purchase price of \$80,000. An additional stipulation in

<sup>16</sup>Ibid.

<sup>17</sup>"Technical Report of the State Geologist to the Penitentiary Purchasing and Building Committee," affixed to and made a part of the Committee's report to the General Assembly, House Journal, 1895; hereinafter Geologist's Report.

<sup>18</sup>Ball, "The Public Life of Colonel A. S. Colyar."

the purchase agreement required the East Tennessee Land Company immediately to finish construction on the Harriman Coal and Iron Railroad from the town of Harriman to Brushy Mountain. The contract directed the railroad to be complete within six months and for the land company to equip it for service. The title papers were submitted to the State Attorney General's office on August 20, 1893.<sup>19</sup>

It took almost a year for the Attorney General to work out minor conflicts over private liens on the land and to produce a clear title to the 9,000 acres. The deed was drawn up and presented to the Register's Office for Morgan County on August 8, 1894, and the state transferred the sum of \$80,000 to East Tennessee Land Company. The state now owned a major coal field and had ample land to build a branch prison in Morgan County.<sup>20</sup>

In the interim between the signing of the purchase agreement and the title transfer, the East Tennessee Land Company contracted with the Cumberland Construction Company of Harriman to extend the railroad from Harriman to Brushy Mountain, a total of twenty

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<sup>19</sup>Committee Report.

<sup>20</sup>Deed Book, Office of the County Register, Morgan County Courthouse, Wartburg, Tennessee.

miles.<sup>21</sup> On July 1, 1894, the prison camp at Big Mountain was discontinued by the Tennessee Coal, Iron, and Railroad Company, and the convicts and guards under direction of Captain G. H. Crozer were moved to a railroad camp at Joynersville (now Petros) near Harriman to work on the railroad.<sup>22</sup>

On July 2, 1894, the convicts began building their own stockade, made of logs stood upright in the ground, at the site of present day Brushy Mountain State Penitentiary. The stockade building was attached to a log commissary building that had a large platform for loading and unloading supplies for the railroad construction and was just north and west of the present penitentiary site.<sup>23</sup>

On September 1, 1894, free-world miners ("free-world" is prison vernacular for any non-convict) working under the direction of state mining engineer Louis Bryant began the developmental work on the first of the coal seams.<sup>24</sup> By November 1, 1894, the railroad was completed to the area where the state's coal loading

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<sup>21</sup>Records of the East Tennessee Land Company, Archive Manuscripts.

<sup>22</sup>Records of the Tennessee Coal, Iron, and Railroad Company, Archive Manuscripts.

<sup>23</sup>"Plans and Specifications of the Brushy Mountain Coal Mines and State Penitentiary," Archive Manuscripts.

<sup>24</sup>Correspondence File, Brushy Mountain Coal Mines, Archive Manuscripts.

tipple was to be located. The free-world miners were then replaced by the convicts that had been working on the railroad. The seventy-five convicts were under sub-lease from the Tennessee Coal, Iron, and Railroad Company to the Harriman Coal and Iron Railroad Company for seventy-five cents a day, and the sub-lease was transferred to the state.<sup>25</sup> The state was in the very ironic position of paying a contractor for the use of its own convicts. Since there was an appropriation of only \$40,000 for development work on the coal fields, the committee felt some pressure from the payments to the lessee but, in lieu of cash payment, the Tennessee Coal, Iron, and Railroad Company asked for a credit to be applied against their already substantial bill for the lease of the state's convicts in 1894.<sup>26</sup>

The penitentiary committee discovered that the costs of opening the first mine along with the necessary side tracts, switches, mine equipment, and the stockade along with all the necessary buildings, offices, warehouses, and barns would consume the entire appropriation for the penitentiary. With this fact in mind, the committee petitioned the General Assembly for power to operate the mine until January 1, 1896, when the convict

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<sup>25</sup>Records of the East Tennessee Land Company, Archive Manuscripts.

<sup>26</sup>Records of the Tennessee Coal, Iron, and Railroad Company, Archive Manuscripts; Committee Report.

lease with Tennessee Coal, Iron, and Railroad Company would expire and control of all the convicts would revert to the state. The committee requested permission to utilize all proceeds from the sale of coal during this interim period to further develop the coal field in order to employ as many convicts as possible in January, 1896.<sup>27</sup> Governor Turney addressed the same problem in his message to a called special session of the General Assembly in May, 1895:

... As it is absolutely certain in the short time left [about seven months] to the termination of the lease, it will be impossible for the State to take care of the convicts [now about 1700 and increasing], in a way creditable to itself and just to them. The question is, what is to be done? ... I recommend that the stockade at the coal mines be provided for and the mines be opened as fast as possible, that as many convicts may be engaged there as can be advantageously.<sup>28</sup>

The Penitentiary Act of 1893 had provided that convicts could be employed "in-building [if] satisfactory arrangements could be made with the lessee."<sup>29</sup> The "in-building" clause of the Act implied that leasing of the convicts to work inside the penitentiary would be acceptable to the General

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<sup>27</sup>Committee Report.

<sup>28</sup>White, Messages, 1895.

<sup>29</sup>Acts of Tennessee, Ch. 78, Sec. 5, p. 98, 1893.

Assembly. Governor Turney's message stated that in the compromise of the matters under lawsuit between the state and the lessees, such arrangements could and would be made. The sub-contract price for the use of the convicts would be credited against the debt owed to the state by the lessees, and it would help carry out in good faith what had been the understanding among all the parties involved.<sup>30</sup> Even though the state recognized it was politically expedient for the lease to quickly end and while it was the stated purpose of all concerned for the lease to end, it was absolutely necessary for the state to submit to a modification of the plan for a time.

The governor recommended that "if it shall appear to the Commissioners to be absolutely necessary, that there be a temporary leasing of surplus convicts, for it not to extend beyond the closing of the next General Assembly, which meets in January, 1897, the leasing to be open to all on the best terms that can be obtained."<sup>31</sup> A fear of political repercussions over a return to convict leasing on the part of the governor and the General Assembly tended to speed up the work of getting the mine sufficiently developed to care for all the available convicts. Major E. E. McCroskey, a practical coal mine operator extremely familiar with

<sup>30</sup>Turney Papers.

<sup>31</sup>Ibid.

East Tennessee coal operations, visited Brushy Mountain in July, 1895. He said in a letter to the Committee that he thought the entry work should have been pushed from the beginning so as to provide working room for the convicts as there was room at that time for no more than thirty miners in the shaft at one time. His letter also indicated that there was 860 feet of main entry into the mine, 2,000 feet of cross-entry for rooms, one excellent tipple with screens to make four grades of coal and a capacity for dumping 600 tons of coal into rail cars in a ten hour period, 150 first-class rail cars, a stockade for 100 prisoners, and 55 convicts at work on the site.<sup>32</sup> The expense of running the mine that could be properly applied to the production of coal was approximately \$75.00 per day. As the capacity of the mine was 75 tons in ten hours, the cost of production for the coal was \$1.00 per ton. McCroskey noted in his letter that, if the work on the entries was pushed on a double shift, the daily output could be increased to approximately 200 tons by the first of September. In that instance the cost of producing the coal would drop to seventy-five cents per ton.<sup>33</sup>

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<sup>32</sup>Major E. E. McCloskey to the Penitentiary Purchasing and Building Committee, dated July 12, 1895, and attached to Committee Report.

<sup>33</sup>Ibid.



On August 1, 1895, the state mining engineer, Louis E. Bryant, resigned.<sup>34</sup> The committee appointed Major Jesse T. Hill to replace Bryant. Hill had considerable experience working with convict labor in the Birmingham, Alabama, area.<sup>35</sup> When Hill took over the operation, \$41,355.24 had been spent in the development of the mine, but the work was barely begun. In the next five months before the convict lease expired, Hill increased the daily output of coal to over a thousand tons a day and dramatically increased the entry into the mine. The figures for January 1, 1896, the day the lease expired, indicated that there were 1688 feet of main entry way open, 8601 feet of cross-entries, and 206 rooms opened up for mining.<sup>36</sup>

While the work on the opening of the mine was progressing, the construction of adequate housing for the convicts was being carried out by the new Board of Prison Commissioners appointed by Governor Turney in accordance with a legislative act of 1895. The Act replaced the Penitentiary Purchasing and Building Committee with a Board of Prison Commissioners in the first of many name changes that the prison directors

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<sup>34</sup>Records of the Penitentiary Purchasing and Building Committee, Archive Manuscripts.

<sup>35</sup>Ibid.

<sup>36</sup>Committee Report.

would be given.<sup>37</sup> As each of the three grand divisions of the state had to be represented on the committee in accordance with the Act, Turney appointed W. M. Nixon of Chattanooga (Hamilton County, East Tennessee) as the new chairman to replace D. K. Young of Anderson County who had resigned. Samuel R. Simpson of Gallatin (Sumner County, Middle Tennessee) succeeded M. H. McDowell of Franklin County who had also resigned. R. O. Morgan of Memphis (Shelby County, West Tennessee) was reappointed to the committee.<sup>38</sup> According to the Biennial Report of the Superintendent of Prisons for 1894-1896, Superintendent John H. Trice found only sixty-four convicts at work at the mines in June, 1895. Some of these convicts were driving new entries into the mine, others were clearing ground for the building of the new penitentiary, and others were making additional capital improvements of various kinds.<sup>39</sup>

Two tremendous natural assets added to the value of the site chosen for the penitentiary:

- a. the land was heavily covered with virgin timber including poplar, white oak, cherry, chestnut oak, chestnut, and walnut, and

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<sup>37</sup>Acts of Tennessee, Ch. 125, p. 290, 1895.

<sup>38</sup>Ibid.

<sup>39</sup>Biennial Report of the Superintendent of the Prisons to the General Assembly of Tennessee, 1894-1896 (Chattanooga: Times Printing Company, 1897); hereinafter Biennial Report with proper year.

- b. the site chosen for the building was entirely surrounded by high mountains forming a narrow triangle, making escape from the penitentiary extremely difficult.

S. M. Patton of Chattanooga designed the L-shaped building, and it was constructed by free-world labor. The costs for the building was between \$80,000 and \$100,000, depending on whose figures are used from the official records. The figures for the Penitentiary Purchasing and Building Committee indicate a cost of about \$80,000 while the Report of the State Treasurer indicate the building cost about \$100,000.<sup>40</sup> The four-story front wing of the building measured 205 feet by 31 feet while the rear or west wing was three stories high and measured 170 feet by 31 feet.<sup>41</sup> A. W. Evans, the construction engineer, designed the kitchens and the bathroom that contained fifty-two showers. In addition to sleeping quarters for the convicts and the guards, ample space was provided for both tailor and shoe shops.<sup>42</sup>

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<sup>40</sup>Records of the Penitentiary Purchasing and Building Committee, Archive Manuscripts; "Report of the State Treasurer," House Journal, 1896.

<sup>41</sup>"Plans and Specifications for Construction for Brushy Mountain Coal Mines and Penitentiary, 1895," Archive Manuscripts; hereinafter Plans and Specifications.

<sup>42</sup>"Board of Prison Commissioners' Report," House Journal, 1897; hereafter Commissioners' Report.

The construction of the building was of double walls with the outside wall being one inch thick rough lumber set perpendicularly to the framing with all space between the boards being covered carefully with narrow strips. The inner wall was made of crossed pine plank installed diagonally. Between the inner and outer walls was a layer of heavy tar paper. The flooring was also double, the sub-floor made of two-inch thick rough planking and the floor itself made of one-inch thick tongue-and-groove oak boards with a layer of heavy tar paper in between. The windows were securely barred with one-inch diameter round iron bars.<sup>43</sup> The design of the building made it "reasonably comfortable and, except for the hazard of fire, as safe as a building constructed of brick or stone."<sup>44</sup> The five wards used for sleeping were commodious enough to allow 450 cubic feet of air for each of 120 men, and the whole building could accommodate 600 men.<sup>45</sup> The engineer designed unique double swinging beds for reasons concerning "health, sanitation, and security." The beds were suspended from the ceiling on four cables, allowing a clear floor area that was easier to mop and keep clean. Each of the five wards was provided with two large barrel-type coal

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<sup>43</sup>Plans and Specifications.

<sup>44</sup>Commissioners' Report.

<sup>45</sup>Plans and Specifications.

stoves, referred to in the reports as "cannon stoves," extending between the beds for heating, and oil-burning lamps provided the only lighting in the building.<sup>46</sup>

Health and sanitation facilities were the best available at the time considering the resources at hand. A small separate building behind the prison served as a hospital that could accommodate twenty-five convicts. Each of the hospital wards, one 25 feet by 20 feet for white convicts and one 40 feet by 20 feet for colored convicts, was equipped with a bathtub and hot and cold water. The hospital building also included a laboratory, an operating room, a doctor's office, and an additional private office. Water for both the hospital and the penitentiary was piped approximately one-quarter of a mile from a reservoir built in a ravine north of the prison.<sup>47</sup> A system of hydrants and sinks furnished the sleeping and hospital wards with drinking water. Each of the seven wards was provided with a dry closet (outhouse facility) and an urinal with running water in an offset attached to but outside the main building.<sup>48</sup>

Another separate building housed the penitentiary kitchen as well as a smaller kitchen and dining room for

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<sup>46</sup>Commissioners' Report.

<sup>47</sup>Biennial Report, 1897.

<sup>48</sup>Plans and Specifications.

prison officials.<sup>49</sup> This building was located near the front entrance of the mess hall, but it necessitated carrying all the food for the convicts about fifteen feet to the serving line. All of the food was cooked in huge steam kettles, and bread was baked daily in immense coal-fired ovens.<sup>50</sup>

With the exception of five comfortable dwelling houses for penitentiary officials and three temporary "shacks" completed by December, 1896, the entire penitentiary stood in a seven-acre enclosure shaped like a parallelogram formed by an eighteen-foot high wall made of long, upright planks.<sup>51</sup> The gate, over which a guard shack was built, was secured by an extra large strong lock as required by the Penitentiary Act of 1893.<sup>52</sup> The only other opening in the perimeter wall was a "manway" through which the convicts passed to the mine entrance. This manway was a boxed walkway that extended about 100 feet from the penitentiary wall to an opening in the mountain where the convicts loaded into mine cars for transportation underground. This manway not only

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<sup>49</sup>Ibid.

<sup>50</sup>Biennial Report, 1897.

<sup>51</sup>Plans and Specifications.

<sup>52</sup>Biennial Report, 1897; Acts of Tennessee, Ch. 78, p. 102, 1893.

facilitated counting the convicts out and back into the prison but also lessened the chance for escapes.<sup>53</sup>

On December 30, 1895, the day the convict lease was to expire, Commissioner Nixon made the following statement in Nashville:

There have been no bids made by the Tennessee [Coal, Iron, and Railroad] Company for a renewal of their leases, and so far as I am cognizant, neither overtures nor talk of an extension of the contract have been made. Preparations for their removal [the convicts] have been made and officials of the state will carry out the order.

There are now four hundred and forty convicts leased to the Tennessee Coal, Iron, and Railroad [Company], and of these there are three hundred and fifty-five at Tracy City and the remaining eighty-five are at Coal Creek. The contract with the company was for a term of six years, and as is generally known, it expires tonight at 12 o'clock.

Superintendent of Prisons Trice left Nashville for Coal Creek yesterday, and he will escort all the eighty-five there to the barracks at Brushy Mountain, where their labor will be utilized in getting out the coal in the mines belonging to the state.

Mr. Joe Turney will leave for Tracy City today and of the 355 there he will take two car-loads -- about 125 -- to Brushy Mountain, also for the same purpose as the other lot. The remaining 230 will

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<sup>53</sup>Biennial Report, 1897.

be brought to Nashville immediately,  
and domiciled within the prison  
walls.<sup>54</sup>

It took about twenty-four hours for Superintendent Trice to complete the transfer of 125 convicts from Tracy City to Brushy Mountain.<sup>55</sup> Captain Joe Turney, the "long-chain man" (prison vernacular for the captain of the prison transfer team) and the brother of Governor Peter Turney, entrained two carloads of convicts on January 1, 1896, for the transfer to Brushy Mountain. When the train arrived in Harriman, the convicts were required to march about a mile to the terminus of the Harriman and Northeastern Railroad (formerly the Harriman Coal and Iron Railroad).<sup>56</sup> No passenger coaches were available for the twenty mile ride to Brushy Mountain, and the convicts and some of their guards were forced to endure biting cold and wind in open coal cars. Turney was assisted in guarding the convicts by either or six or seven other guards including Jack (Captain Jack) W. H. Nelson, Frank Meriweather, and W. T. Massengale. Captain Jack, who would later become the warden of Brushy Mountain State Penitentiary, was one of the first to volunteer to ride in the open cars with

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<sup>54</sup>Whig, December 30, 1895.

<sup>55</sup>Correspondence File, Archive Manuscripts.

<sup>56</sup>Nashville Daily Sun, January 6, 1896.



"his men."<sup>57</sup> When the train arrived at Brushy Mountain about noon on January 2, 1896, the convicts were fed in the old stockade then marched through knee-deep mud to the new prison. The Daily Sun had the following to say on January 1, 1896, about the passing of the convict lease system:

... The State of Tennessee has received just \$1,659,060.50 for the use of the convicts since 1872.

But last night the dollars ceased to flow into the State Treasury for their employment, and the State must now maintain them, and they take charge of their convicts today ...

The capacity of the prisons will be crowded at first, and the expense of maintaining them will be considerable, but the immense amount of work will materially reduce the expenses, and the turmoil of twenty-four years over the lease system will be over.<sup>58</sup>

On the second day of January, 1896, there were a total of 329 convicts at Brushy Mountain Penitentiary. As working space in the mines increased, the population grew and by December 1, 1896, there were 466 convicts working in the mines and support services.<sup>59</sup> The General Assembly of 1897 directed the Board of Prison

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<sup>57</sup>Different records report six or seven guards, but only these three plus Turney are named in either report; Daily Sun, January 6, 1896.

<sup>58</sup>Daily Sun, January 1, 1896.

<sup>59</sup>Commissioners' Report.

Commissioners to take "personal and direct action" in the various phases of penitentiary operations. Chairman W. M. Nixon was assigned responsibility for the "super-intending and supervising of the state's mining operations at Brushy Mountain."<sup>60</sup>

During the first three years of operation at Brushy Mountain, the state only had one mine open. The coal was from the Jellico or Brushy Mountain vein and was of excellent quality, but difficulties arose over the disposition of the coal produced. The policy of the Board of Prison Commissioners at first was to furnish all state institutions with needed coal and then sell the balance on the open market to the highest bidder.<sup>61</sup> According to Colonel Nixon, selling the coal required a massive effort since the coal was coming on the market at the worst possible time since the depression of 1893 had left the nation's economy in shambles.<sup>62</sup>

Both Chairman Nixon and Major Hill, the state's mining engineer, traveled widely and were able to introduce Brushy Mountain coal throughout a major portion of the country from Cincinnati, Ohio, to Charleston, South Carolina.<sup>63</sup> Railroads and large

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<sup>60</sup>House Journal, 1899.

<sup>61</sup>Ibid.

<sup>62</sup>Correspondence File, Brushy Mountain Mines, Archive Manuscripts.

<sup>63</sup>Commissioners' Report.

manufacturers were the principal buyers of the Brushy Mountain coal, but a major concern was the dirty slack coal that could not be sold to these buyers. Several hundred tons of this slack coal were dumped along the railroad tracks as ballast to hold the tracks down, but it later had to be removed because the high sulphur content was destroying the rails.<sup>64</sup> Major Hill asked for and received permission to begin the manufacture of coke from the slack coal. Two hundred coking ovens were planned, but a decline in the demand for iron led to only 140 ovens ever being completed.

Construction engineer A. W. Evans designed and built the coking ovens along with a coal washing plant and two reservoirs. Mine water could be used to wash the coal and quench the coke, but tremendous amounts of water were needed to operate the boiler operations to make steam for coking and to generate electricity. Two wells were drilled to depths of 2100 and 3000 feet without finding water. A string of drilling tools was lost in each of these wells resulting in large delays and extra expenses in the drilling.<sup>65</sup> A dam was built across a flowing stream to create a reservoir of five million gallons capacity. The water from the reservoir was then pumped to a smaller reservoir on top of a hill

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<sup>64</sup>Ibid.

<sup>65</sup>Ibid.

and fed by gravity into the power house. Machinery was built that would allow the washed slack coal to drop by gravity to the ovens without the need for hauling by mules.<sup>66</sup>

Production of coke began on October 1, 1897, and increased steadily until June 1898, when full capacity from 100 ovens was reached. Profit for the first year's production of coke was \$21,292.31 which exceeded Major Hill's estimate of \$15,000 when he asked for permission to proceed.<sup>67</sup> By 1900 the daily production of coke was about 175 tons of 48-hour coke, coal burned in a limited-oxygen atmosphere for 48 hours, that required approximately 300 tons of washed coal to produce. The finished product was thoroughly tested by several iron manufacturers and found to be "comparable to the well-known and highly desirable Stonega coke of Virginia."<sup>68</sup>

Potable water had to be bought during the extremely dry summers of 1899 and 1900 from the Harriman Water Works. Fifty tank cars of water were used in 1899 at a cost of \$435.31 while sixty tank cars were needed in 1900 at a cost of \$550.55.<sup>69</sup> Excessive rains came in the spring of 1891 and flooded Crooked Fork Creek, the

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<sup>66</sup>Plans and Specifications.

<sup>67</sup>Commissioners' Report.

<sup>68</sup>Correspondence File, Brushy Mountain Mines, Archive Manuscripts.

<sup>69</sup>Commissioners' Report, House Journal, 1901.

dumping point for sludge and the powdered coal called "fines" from the coal washing plant at Brushy Mountain, resulting in \$605.00 worth of damages to individual farm lands downstream of the penitentiary. These damages were paid out of state funds.<sup>70</sup>

The first years of operation at Brushy Mountain saw major progress in the production of coal, and a quieting of the public clamor about the use of the convicts in competition with free labor. The major newspapers in the state were surprisingly quiet about the penitentiary in the period from 1896-1902. However, the penitentiary did not escape these years without problems. The initial problem for the mine operators was to establish a fair price for the Brushy Mountain coal, especially during a time of economic weakness. The final price was generally about five cents a ton under the next lowest bid but, even with this pricing scheme, the state was earning more for its coal than free-world mine owners were getting.<sup>71</sup> Labor contracts with free miners included strike clauses that were expensive to the mine owners and kept the price of coal artificially high. The Operator's Coal Trust of East Tennessee mounted a serious fight against Brushy Mountain coal in late

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<sup>70</sup>Ibid.

<sup>71</sup>Commissioners' Report, House Journal, 1899.

1896.<sup>72</sup> Some member companies of the Trust mined coal with leased convict labor in neighboring states, but the Trust came out against the use of convict labor even in state-owned mines if the coal produced would be in competition with their own.<sup>73</sup> The combination declined to buy the output of the state's mines and, to generate sympathy for their own cause, forced higher prices on consumers for the coal sold by the Trust. Exaggerations of the size of the state's production were used to force down wages of the free-world miners on at least two occasions.<sup>74</sup> Three attempts failed to get the state to abandon mining at Brushy Mountain, and the Trust laid an elaborate scheme of publicity against the state's purchase of the coal lands. Claiming that the coal lands were worth a minimum of \$500,000, they alleged that the state had been a party to fraud and collusion in buying the land from East Tennessee Land Company for only \$80,000.<sup>75</sup> The Trust's arguments failed on all counts; the argument against "cheap" convict labor was the most obvious failure: the state received an average of seven and one-half cents per ton more for its coal

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<sup>72</sup>Whig, July 11, 1896.

<sup>73</sup>Commissioners' Report, House Journal, 1897.

<sup>74</sup>Correspondence File, Archive Manuscripts.

<sup>75</sup>Daily Sun, September 17, 1896.

than did the free-world mine owners during the period.<sup>76</sup> The first eleven months of operation at Brushy Mountain ending November 30, 1896, produced 132,812 tons of coal at an average cost of \$0.39995 per ton, and it was sold at an average price of \$0.50254 per ton, resulting in a net profit to the state of just under \$14,000 for the period.<sup>77</sup> The Commissioners had predicted a "huge loss" for 1896 with the expense of opening up the mine, limited production capability because of working space, and the overhead costs of getting the penitentiary established.<sup>78</sup> One of the primary reasons for the success of the operation was the quality of the coal. The Cincinnati Southern Railroad made extensive tests of two rail car loads of Brushy Mountain coal in 1896 and reported that it was "superior to any coal used by the company in some time." The coal had been exposed to the weather for sixteen days before the testing, and there was no slack coal in it when it was used. The company further reported that, "Most of the engineers say that they can pull the same tonnage the same distance with

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<sup>76</sup>Commissioners' Report, House Journal, 1899.

<sup>77</sup>Ibid., 1897.

<sup>78</sup>"Report of the Penitentiary Purchasing and Building Committee," House Journal, 1895.

seventy-five bushels than they can with one hundred bushels of any other coal they get at Oakdale chute."<sup>79</sup>

The Legislative Investigating Committee of 1897 was of the opinion that the entire output of the mines should be sold to one individual or company for a contract period not to exceed six years in order to eliminate marketing expenses and price fluctuations.<sup>80</sup> The strongest arguments in favor of this position were that it would take the penitentiary out of a commercial business, it would reduce traveling and marketing expenses, and it would eliminate extensive bookkeeping and collection of "bad debts."<sup>81</sup> The greatest objection to the proposal came from legislators who feared that a promoter could reap huge profits at the state's expense. If this occurred, according to the legislators, the amount would be magnified by rumor until the "good faith and business management" of the commissioners would be publicly questioned and the administration responsible for the contract would be vigorously attacked.<sup>82</sup> Nonetheless, the commissioners were directed to receive bids for the total output of the mines with delivery to begin

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<sup>79</sup>Correspondence File, Brushy Mountain Mines, Archive Manuscripts.

<sup>80</sup>House Journal, 1897.

<sup>81</sup>Ibid.

<sup>82</sup>Ibid.



July 1, 1898, and continue for a maximum of six years.<sup>83</sup> Bids received ranged from thirty-five to fifty cents per ton for the six year term . The market at the time fully justified the rejection of all bids as totally inadequate. Had the best bid received been accepted, at prevailing market prices the broker would have cleared a minimum of \$1,500 per month at the state's expense. As bad debts had only totalled \$105 on sales of \$148,000 in 1897, the commissioners decided it was a better risk for the state to write off bad debts than to deal exclusively with coal brokers.<sup>84</sup>

The legislative act had specified that no clause in the proposed contract was to prevent the commissioners from supplying all state institutions with coal or coke direct from the mines at the actual cost for putting the materials on board the rail cars. All state institutions were required by law to utilize Brushy Mountain coal or coke provided that it could be delivered at the institution at the same or a lower price than on the open market.<sup>85</sup>

At the time of the opening of Brushy Mountain State Penitentiary on January 1, 1896, there was only one coal

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<sup>83</sup>Acts of Tennessee, Ch. 93, p. 240, 1897.

<sup>84</sup>Commissioners' Report, House Journal, 1899.

<sup>85</sup>Acts of Tennessee, Ch. 93, p. 240, 1897.

mine in operation.<sup>86</sup> As the demand for coal and the number of convicts at Brushy Mountain increased, five additional mines were opened. Not all were used continuously, however, and only three of the eleven available seams of coal were ever opened up to production.<sup>87</sup> Mine Number One was at its production limit by 1900 because all of its production had to be hauled by mules and because of a fault line that had developed in one of the seams.<sup>88</sup>

Mine Number One continued to be a problem for the state to work, and an additional mine was opened in 1902.<sup>89</sup> Mine Number Three was directly opposite Mine Number One in the north side of Frozen Head Mountain, and it was also opened in the Brushy Mountain coal seam.<sup>90</sup> This mine opening proved to be a much more costly venture than did Mine Number Two. The entire coal area of Frozen Head Mountain was disturbed by a fault line, the top of the coal seam was not safe for workers, and the mine was subject to both squeezes and rolls as well as irregularities in the thickness of the

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<sup>86</sup>Commissioners' Report, House Journal, 1899.

<sup>87</sup>Biennial Report of the Board of Control to the General Assembly of the State of Tennessee, 1955-1957 (Nashville: Oliver Printing Company, 1957).

<sup>88</sup>Ibid.

<sup>89</sup>Ibid., 1903.

<sup>90</sup>Geologist's Report.

coal seam. As the opening into the mountain progressed, some of these problems were easily overcome.<sup>91</sup> In spite of the fact that this mine would be expensive to work, it offered the best opportunity for the state to develop additional coal on its lands. Proximity to the railroad was a limiting factor for production as was housing and facilities for the convicts; Frozen Head Mountain was the only point convenient enough to make production feasible at the time.<sup>92</sup> Seventy-six convicts worked Mine Number Three during 1904, averaging about 200 tons of coal per day. Quality was similar to Mine Number One, but the coal was too brittle for domestic use and was used primarily for coking and steam generating purposes.<sup>93</sup>

Extensive mineral prospecting continued by the Office of the State Geologist on the Brushy Mountain lands, and the Middle Pioneer or Pee Wee seam was located on the south side of Frozen Head Mountain, almost directly due north from Mine Number One. Mine Number Four was opened into the Pee Wee coal seam, which averaged almost five feet in thickness at this location

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<sup>91</sup>Ibid.

<sup>92</sup>Commissioners' Report, House Journal, 1901.

<sup>93</sup>Correspondence File, Brushy Mountain Mines, Archive Manuscripts.

with no overburden, in the fall of 1903.<sup>94</sup> Mining machinery was moved from both Mine Number One and Mine Number Three, and since there was no top to remove every convict could produce almost a third more coal per day than was possible in the Jellico or Brushy Mountain seam. After regular production began in December, 1903, fifty miners were able to achieve an average daily production of about 150 tons of high quality coal.<sup>95</sup> The mine was perched rather precariously on the side of the mountain, reachable on an incline tram spanning 4400 feet with a vertical rise of more than 1150 feet.<sup>96</sup> The coal from Mine Number Four was marketed under the trade name "Hickory Block", and the quality was so good that other coal operators began to flood the governor's office with complaints of unfair competition.<sup>97</sup> By 1905 however, production dropped to about seventy-five tons per day compared with 130 tons per day during the previous year. The coal seam had thinned considerably as the mine tunnels were extended into the mountain, and although it was no longer extremely profitable to do so, the mine was kept open until 1906 to fulfill contractual

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<sup>94</sup>Geologist's Report.

<sup>95</sup>Commissioners' Report, House Journal, 1905.

<sup>96</sup>Ibid.

<sup>97</sup>White, Messages, 1905.

obligations for the coal.<sup>98</sup> The cable drum controlling the mine cars ruptured in early 1906, and the mine was closed; safety was an additional reason for closing the mine as the 4,400 foot tram ride was precarious at the best of times and life-threatening at others.<sup>99</sup>

Based on the work during the 1901 session of the legislature, the 1903 General Assembly enacted a law authorizing the Board of Prison Commissioners to purchase, with the consent and approval of the governor, up to an additional 15,000 acres of coal lands at a maximum price of twelve dollars (\$12.00) per acre. It also stipulated that the purchase price could not be paid in less than six annual installments so that the purchase burden would not rest upon any one year. The payments were to be made in the regular way through the Office of the Comptroller and the Treasury of the state but only from the fund arising from the operation of the state's coal mines.<sup>100</sup> Small strips or tracts of land lying adjacent to or within the state's property that were of importance or might become of importance to development could also be bought; no price limitations were set on these purchases.<sup>101</sup>

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<sup>98</sup>Commissioners' Report, House Journal, 1907.

<sup>99</sup>*Ibid.*

<sup>100</sup>*Ibid.*, 1903.

<sup>101</sup>*Ibid.*

The Board of Prison Commissioners contracted for the purchase of the 2,000 acre Armes Tract in late 1901. The state encountered numerous difficulties in trying to purchase this land because there were so many heirs of the original owner, Bletcher Armes, and numerous lawsuits were filed against the state. The Scott Coal Company owned a nine/elevenths interest in the land needed by the state, and Scott Coal needed the state's Mine Number Two to complete a tract that it held. On March 27, 1902, an exchange of these properties took place with the state paying Miss Ellen Scott an additional \$1500 for her interest in the Armes tract. Under the transfer agreement, the state could continue to operate Mine Number Two until January 1, 1903, with the stipulation that no more than 1,500 tons of coal per week would be produced.<sup>102</sup> In time all the other claims with the Armes heirs would be settled, and this valuable tract of land cost the state a total of \$15,650.20 using a transfer value on Mine Number Two of \$10,000, putting the net cost of the additional land at \$7.82 per acre.<sup>103</sup> This purchase allowed the state to increase the size of Mine Number Three by fifty percent and Mine Number Four by more than twenty-five percent, but more importantly it allowed the expansion and working of

<sup>102</sup>Deed Book, 1902, Office of the County Register, Morgan County Courthouse, Wartburg, Tennessee.

<sup>103</sup>Geologist's Report.

these mines to continue from the existing base of operations on Brushy Mountain.<sup>104</sup>

The commissioners in their report said they felt that they did not "exaggerate the value of the Armes tract" when they stated that it had added at least \$100,000 to the value of the state's mining lands at Brushy Mountain.<sup>105</sup> The deed to the property was recorded on March 29, 1902, and by act of the legislature on March 28, 1903, the Morgan County boundary line was adjusted from the "Wagon Rock on top of the mountain north east into the Tenth Civil District of Anderson County" so that all of the state's coal mining property would be in one county.<sup>106</sup>

Additional tracts of land were purchased over the next few years, and each tract brought its own peculiar problems to the state. Two tracts in particular differed widely in the cost to the state: a 141 acre tract was obtained in 1904 for \$530 while an additional four acres was secured six months later for \$750 or approximately sixty times as much per acre.<sup>107</sup> In 1908, Miss Ellen Scott graciously sold the state an eighteen acre tract where the state had already built a big

<sup>104</sup>Commissioners' Report, House Journal, 1905.

<sup>105</sup>Ibid.

<sup>106</sup>Deed Book, 1902, Morgan County; Acts of Tennessee, Ch. 304, p. 883, 1903.

<sup>107</sup>Acts of Tennessee, Ch. 262, p. 563, 1904-1905.

reservoir by mistake.<sup>108</sup> In 1921 two other tracts totalling about 305 acres were acquired, and the Morgan County line was shifted again by legislative mandate.<sup>109</sup> The state was also compelled to lease the mineral rights on a 300 acre tract adjacent to the most productive portion of Mine Number One in 1904. Several other potential mine operators were negotiating for this property including an Atlanta coal dealer that was one of the state's largest customers.<sup>110</sup> In order to prevent unwanted competition and to secure the greatest possible benefits from the improvements already made to Mine Number One, the state closed a contract with the Scott Coal Company for all minerals rights for "such time as production is profitable enough to warrant a royalty of six and a quarter cents per ton."<sup>111</sup> Considering that the royalty was one-half the normal rate for the time and area and that the state was able to control all production from Brushy Mountain, the lease was fortuitous to say the least.

Mine Number One continued to operate until October 1, 1912, when production fell below the break-even point, and operations were abandoned. The mining

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<sup>108</sup>Ibid., Ch. 535, pp. 1933-1935, 1908-1909.

<sup>109</sup>Ibid., Ch. 65, pp. 101-104, 1921.

<sup>110</sup>Daily Sun, July 14, 1904.

<sup>111</sup>Commissioners' Report, House Journal, 1905.



machinery was pulled out and used in the further development of Mine Number Three, but the entry was left open to protect the ditches through which water flowed from the mine to the surface to feed the coke ovens during the dry season.<sup>112</sup> Mine Number Three was the only producer of coal during the 1912-1914 period and, when the state's contract with its largest customer expired on April 14, 1914, the Board was unable to sell enough coal to keep all the convict miners busy.<sup>113</sup> By the time demand increased late in the year, so many convicts had been discharged that there were not enough miners to fill the needed positions. Long-timers made up the bulk of the convicts remaining at Brushy Mountain in 1914 but, because they were mostly experienced miners, good production averages were achieved even with the manpower shortages.<sup>114</sup> Late in 1917 when a railroad strike seemed unavoidable, demand for Brushy Mountain coal reached an all-time high, and output could not reach the demand levels. The prices of both coal and coke advanced rapidly and for the six-months ending June 30, 1918, the Brushy Mountain operations deposited net

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<sup>112</sup>Ibid., 1913.

<sup>113</sup>Correspondence File, Brushy Mountain Mines, Archive Manuscripts.

<sup>114</sup>"Biennial Report of the Board of Prison Commissioners," House Journal, 1915.

profits of \$255,258 in the state treasury.<sup>115</sup> An extreme shortage of rail cars during this period probably cost the state an additional \$100,000 in potential sales as there was no provision made to stockpile any real quantity of coal for a long period.<sup>116</sup>

The General Assembly enacted legislation in 1913 changing the name of the Board of Prison Commissioners to the Board of Control, and the Board was given responsibility "to manage and govern the penal, reformatory, and charitable institutions controlled and operated by the state."<sup>117</sup> The governor was authorized to name the members of the Board, one from each of the three grand divisions of the state, with one named as president and one as secretary of the Board. The third member was required to personally visit every institution at least once every month. Bi-monthly meetings of the Board were required to review all pending paroles and applications for pardons and discharges under statute. Annual reports of the "acts, proceedings, and conclusions of the Board for the preceding calendar year, giving a complete financial statement of the various institutions" was to be submitted to the governor. Quarterly

<sup>115</sup>"Biennial Report of the State Board of Administration," House Journal, 1919; "Report of the State Treasurer to the General Assembly of Tennessee," House Journal, 1919.

<sup>116</sup>House Journal, 1919.

<sup>117</sup>Acts of Tennessee, Ch. 8, p. 13, 1913.

statements concerning the operations of the Tennessee State Penitentiary and Brushy Mountain Penitentiary were also required.<sup>118</sup>

In 1917, the General Assembly changed the name of the administration again. By legislative mandate, the Tennessee Board of Control became the State Board of Administration on July 1, 1918.<sup>119</sup> This Board had total management of the state's eleven penal and charitable institutions. A. H. Roberts was chair of this board, and the other members were State Treasurer Hill McAlister, and Lewis S. Pope, the general manager of the Nashville penitentiary.<sup>120</sup> In 1921, the legislature again changed the name and this time the administrative management of the penitentiaries as well: the Department of Institutions, created by the General Assembly in 1921, had only one commissioner and his secretary.<sup>121</sup> The general manager of the Tennessee State Penitentiary at Nashville, Lewis S. Pope become the first Commissioner of Institutions.<sup>122</sup> The new commissioner was empowered to name and remove wardens and superintendents

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<sup>118</sup>Ibid.

<sup>119</sup>Ibid., Ch. 121, p. 366, 1917.

<sup>120</sup>House Journal, 1919.

<sup>121</sup>Acts of Tennessee, Ch. 7, pp. 8-44, 1921.

<sup>122</sup>House Journal, 1921.

of the various institutions, a power formerly given only to the state's governor.<sup>123</sup>

The penitentiary's population grew steadily over this period of time as well. On December 1, 1896, or eleven months after the official opening of Brushy Mountain State Penitentiary, the institution housed 466 convicts; fifty-six men had died of various causes during the first year, but this was a vast improvement in the mortality rate over the convict lease system.<sup>124</sup> The biennial report for 1902-1904 indicated that there were 736 convicts in the Brushy Mountain Penitentiary, and the warden made an urgent appeal for a new building to reduce the overcrowding. By December 1, 1906, the number had grown again to 776, and the warden renewed his plea for help with the overcrowding.<sup>125</sup> Blacks grossly outnumbered whites during these early years of the penitentiary at Brushy Mountain: 399 of the 466 in 1896 were black, 577 of the 736 in 1904 were black, and

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<sup>123</sup>Acts of Tennessee, Ch. 7, p. 41, 1921.

<sup>124</sup>Superintendent's Biennial Report of the State Prison and Its Various Branches, December 1, 1894-December 1, 1896 (Chattanooga: Times Printing Company, 1897).

<sup>125</sup>Fifth Biennial Report of the Board of Prison Commissioners to the Governor and the 54th General Assembly (Nashville: Press of Foster, Webb, and Parkes, 1905); Sixth Biennial Report of the Board of Prison Commissioners to the Governor and the 55th General Assembly (Nashville: Press of Foster, Webb, and Parkes, 1907).

634 of the 776 in 1906 were black.<sup>126</sup> The population of the state at the turn of the century was just over 1.3 million with approximately 300,000 blacks or about 23% blacks while the Brushy Mountain population included between 78% to 84% blacks.<sup>127</sup> Chapter VIII herein provides a more complete discussion of the racial aspects of the Tennessee prison system.

The overcrowding continued to worsen until 1917. The biennial report for 1919 indicated that there was a "shortage of skilled convicts" that could be employed in the mines.<sup>128</sup> World War I had drawn off many of the young men of Tennessee that were most likely to commit crimes - the age group of 18-25 year olds has historically been responsible for 75% of all serious crimes in America.<sup>129</sup> By 1921, however, the penitentiary population was again on the increase as was the demand for coal and coke already discussed. The Brushy Mountain population on December 1, 1921, was 819 men, by December 1, 1923, it had grown to 846 men, and by December 1,

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<sup>126</sup>Ibid., 1904, 1906.

<sup>127</sup>Records of the Secretary of State, State Office Building, Nashville, Tennessee.

<sup>128</sup>"Biennial Report of the State Board of Administration," House Journal, 1919.

<sup>129</sup>Sourcebook of Criminal Justice Statistics - 1988 (Washington, D.C.: Bureau of Justice Statistics, 1988).

1927, it stood at 919 men or more than 150% of the capacity of the prison facilities.<sup>130</sup>

Brushy Mountain faced many problems in the early days of the institution: tough market conditions for its coal, overcrowding, poor housing conditions leading to high rates of illness and death, and frequent changes in management and legislative mandates. Nonetheless, the state's coal mining enterprise returned more money in net profit to the state treasury in the first twelve years of its operation (\$1,720,558) than had been received in the entire twenty-four years of the convict lease system (\$1,659,060), and the most profitable years of the mining operation were yet to come in the 1920s. One writer has called the convict lease system the "worst prison system in Christendom" whereby men were worked as slaves to support themselves while incarcerated.<sup>131</sup> The state-account system utilized at Brushy Mountain between 1896-1936 was probably not much better than the lease system as to the amount and type of work performed by the convicts. The physical abuses of solitary confinement in a hole, long back-breaking hours in the mines, and the use of the bat continued unabated

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<sup>130</sup>Report of the Commissioner of the Department of Institutions to the Governor and the General Assembly of the State of Tennessee (Nashville: G. C. Torbett and Company, Printers, 1921, 1923, 1927).

<sup>131</sup>George W. Cable, "The Convict Lease System in the Southern States," Century Magazine, February, 1884, pp. 582-599, 593.

during the period. The quality and quantity of the food, medical care, and clothing, however, were vastly improved. The profit to the state from the labor of its convicts also increased tremendously during the period between 1896-1930 when compared to the annual rents paid by the lessees of the Tennessee prison and its convicts. The convicts indeed contributed mightily to the cost of their own somewhat meager upkeep and returned a profit to the state in accordance with the earliest wishes of the General Assembly.

## Chapter VI

### **Tennessee State Penitentiary,**

**1893-1930:**

#### **The New Tennessee State Penitentiary**

With authorization both to end the convict leasing system and to build a new state penitentiary, the Tennessee prison system once again moved toward reform well ahead of her Southern neighbors. With a general humanitarian reform movement sweeping Europe and the northeastern United States in the 1820s and 1830s, reformers in Tennessee pushed for more humane treatment of the state's misfortunates. The General Assembly relented in 1829 and revised the state's criminal code. A central penitentiary established in Nashville was designed to carry out the state's new criminal laws. In spite of the problems outlined previously in Chapter III, the new penitentiary system was tremendously better than the punishments of public dunking, whipping, cropping, branding, or hanging under the old sanguinary code.<sup>1</sup>

The Civil War left a fiscal wasteland across the South, and Tennessee's public institutions such as the penitentiary suffered along with the people and

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<sup>1</sup>See Chapter III herein for details on the early period of Tennessee prisons.



businesses of the state.<sup>2</sup> The General Assembly studied various systems of employment for its convicted felons but settled on a system of penitentiary leasing to private concerns primarily for economic reasons and to provide a source of cheap labor to its industries. The convict leasing era, 1866-1896, ended in disgrace following two years of violent rebellion by free coal miners in East Tennessee.

Enacting legislation in 1893 to end the convict lease system and again take control of its penitentiary and convicts, the legislature authorized a new central state penitentiary to be constructed in Nashville. The law created a Penitentiary Purchasing and Building Committee jointly elected by the two houses of the General Assembly. The committee was empowered to buy land and select a design for the new penitentiary. The legislature mandated a minimum of 1,000 cells and enough workshops to employ all the convicts behind the secure fences of the prison. Women convicts were to be housed in a separate building for the first time in the state, and matrons were to be hired to work with the female prisoners.<sup>3</sup>

The Penitentiary Committee undertook a lengthy examination of land suitable for the erection of the

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<sup>2</sup>See Corlew, Tennessee, for more details of the fiscal waste left by the Civil War.

<sup>3</sup>Acts of Tennessee, Ch. 78, Sec. 3, p. 97, 1893.

penitentiary. A suitable tract was finally agreed upon by the committee, and a contract price was negotiated. The land purchased was, as it had been in 1830, near the Cumberland River in Nashville, this time along what is called the Cockrill Bend of the River and again well outside the city limits of Nashville proper. Twelve hundred acres were purchased to provide ample room for both the penitentiary and a working farm. The penitentiary committee selected a Chattanooga architect, S. M. Patton, to design the new central prison.<sup>4</sup> The Nashville Banner claimed that irregularities existed in the purchase of the land and called for an investigation of the penitentiary committee.<sup>5</sup> A special joint committee of the General Assembly investigated potential wrongdoing in the land selection process in 1898 but, although there were several possible cases of mismanagement uncovered, no official charges were ever brought against the committee members.<sup>6</sup>

In exactly the same manner as had David Morrison, the architect for the 1829 penitentiary, Patton traveled under legislative authority to several other states to

<sup>4</sup>Superintendent's Biennial Report of the State Prison and its Various Branches, 1894-1896 (Chattanooga: Times Printing Company, 1897).

<sup>5</sup>Banner, November 12, 1897.

<sup>6</sup>Second Biennial Report of the Board of Prison Commissioners of the State of Tennessee to the Governor, 1897-1898 (Nashville: Press of Brandon Printing Company, 1899).

inspect existing prisons and to formulate ideas and plans for Tennessee. Patton's proposed design was for an Auburn-style penitentiary and included plans for an administration building, housing units utilizing individual cells for solitary night-time confinement, and numerous smaller buildings for factories, warehouses, and offices. The entire penitentiary compound was to be surrounded by a rock wall twenty feet high and averaging over three feet in thickness.<sup>7</sup>

Both the Auburn and Pennsylvania plans of prison discipline had been thoroughly tested by this time. The Auburn plan utilized congregate work in factory workshops with individual cells for sleeping and for Sunday rest with total silence rigidly enforced at all times. The Pennsylvania plan utilized solitary work and living quarters and also demanded complete silence from the convicts. The congregate work system was much easier to utilize for factory work, and the necessary buildings were also less expensive to construct as the cells could be much smaller since they would only be used for sleeping. Tennessee's own earlier experience under the Auburn system indicated that it was possible for the

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<sup>7</sup>Ibid.

penitentiary and its convicts to produce a profit for the state treasury.<sup>8</sup>

Patton's design was in the classic fortress style of the period for using the Auburn system of prison discipline. The basic design was very similar in appearance to existing prisons in Eddyville (Kentucky), Auburn (New York), Richmond (Virginia), and Huntsville, Texas. Even though the fortress-like appearance was relatively common, the new Tennessee penitentiary introduced many innovations to the prison industry. The most modern ideas concerning security, sanitation, and self-sufficiency were all addressed by Patton in his design.<sup>9</sup>

Eight hundred small cells, each designed to house a single convict, measuring approximately four feet by seven feet and holding a steel bunk, a sink, and a toilet, allowed almost continuous observation of the convicts by the guards without them ever being in close proximity to the prisoners. Catwalks along the front of the cells allowed the guards to perform required counts and other duties without opening doors or being in physical contact with the convicts. Steel mesh of

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<sup>8</sup>Harry E. Allen and Clifford E. Simonsen, Corrections in America: An Introduction, 5th ed. (New York: Macmillan Publishing Company, 1989), pp. 45-46.

<sup>9</sup>"Architect's Report to the Penitentiary Purchasing and Building Committee," attached to and made a part of that committee's report to the General Assembly, House Journal, 1895, hereinafter Architect's Report.

one-quarter inch squares covered the face of the cells and was the only source of light and ventilation. Patton also designed factories that would allow the prison to employ almost all its convicts manufacturing products to be consumed entirely by the state's prisons and other charitable institutions without directly competing with free labor in the marketplace. There was, however, no obvious intent on the part of the General Assembly or the prison administrators to abandon profit-making enterprises. The legislature mandated that the convicts be gainfully employed either in state-account work or in contract-labor operations. Nonetheless, following the years of disquiet over the convict leasing system in the coal fields, the clamor over the sales of convict-made goods lessened considerably.<sup>10</sup>

A working farm outside the prison walls would provide both employment for trusted convicts and food for the prison's kitchens. The architect's report contained the first suggestion in Tennessee that first-offenders might be segregated from more hardened criminals and that the first-offenders might provide all the labor for the prison farm. Patton had observed similar convict segregation programs in use in several northeastern states that he visited during the design stages

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<sup>10</sup>Banner, March 3, 1898.

of the Nashville penitentiary, and he indicated that the idea had merit for Tennessee.<sup>11</sup>

Even though the final plans and specifications for the penitentiary were considerably different from the legislature's mandate, the penitentiary committee accepted Patton's recommendations and design without modification and referred it to the General Assembly. The legislature had called for a minimum of 1,000 cells and the final plans contained provisions for only 800 cells, each designed to hold one prisoner.<sup>12</sup> Acting with unusual rapidity, the legislature approved the design and authorized the penitentiary committee to advertise for construction bids and estimates. A contract for construction was awarded on October 26, 1895, to H. H. Squair and Company of Rockford, Blount County, Tennessee.<sup>13</sup>

Squair and Company gave "honor to the people and products" of the state:<sup>14</sup> more than eighty percent of the total cost of the new penitentiary was spent for building materials and goods manufactured in Tennessee. Convict labor was used to a great extent on the construction project, and Squair and Company paid the

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<sup>11</sup>Ibid.; Architect's Report.

<sup>12</sup>Compare the requirements of Acts of Tennessee, Ch. 78, pp. 96-105, 1893 with the Architect's Report.

<sup>13</sup>Second Biennial Report.

<sup>14</sup>Banner, March 3, 1898.

Tennessee Iron, Coal, and Railroad Company the standard rate for subleasing the convicts. Pikeville sandstone and granite for foundations and walls were quarried by convicts on state land in Middle and East Tennessee. All of the brick, both common and pressed, were manufactured by convicts on the state prison grounds.<sup>15</sup>

Vitrified brick, a heat-formed ceramic type brick used for the interior walls of the cells, was manufactured at Robbins, Scott County, in upper East Tennessee. Cast and malleable iron was produced in Nashville and Chattanooga. When the Chattanooga manufacturer of malleable iron goods offered to match or undercut the quoted price for out-of-state soft-steel goods, the architect changed the specifications to accommodate the Tennessee product. Doors, sashes, locks, and security hardware were manufactured in Nashville. A Chattanooga company supplied the steam equipment, steel arches, and iron-plate ceilings. A South Pittsburg, Marion County, company produced all of the penitentiary's sanitary piping.<sup>16</sup>

The total cost of construction was in excess of \$500,000 not including land purchase, but the general opinion of the public was that a fair price had been paid. Some additional costs resulted from the fact that

<sup>15</sup>Second Biennial Report.

<sup>16</sup>Ibid.; Banner, February 11, 1899.

the architect, S. M. Patton, died during the latter stages of construction, and a new supervising architect had to be hired. The commissioners reported that, fortunately, Patton's designs and changes were found to be up-to-date, and the additional costs for architectural design work were held to a minimum. A building examiner for the United States government was asked to inspect the penitentiary upon its completion, and he declared it to be in line with the "most modern and up-to-date prisons of the country." He highly praised such items as the heating and ventilation system and the overall "quality construction" of the institution.<sup>17</sup>

An annual meeting of the American Prison Association was held in Nashville in 1898 shortly after the penitentiary opened, and the Association's members were given tours of the facility. The meeting's report praised not only the advanced design for security but also the amount of room and the feeling of "awesomeness" of the penitentiary. Among the association members making the tour was Theodore Roosevelt who declared the penitentiary would put "Tennessee at the head of the nation in modern prison construction".<sup>18</sup>

The prison was declared open for business by Governor Robert Taylor as Tennessee's "main

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<sup>17</sup>Second Biennial Report.

<sup>18</sup>Annual Proceedings of the American Prison Association (Nashville: Parker Printing Company, 1898).



penitentiary" on February 12, 1898. The prison contained 800 cells that were designed to house one person each. Unfortunately, the new penitentiary was overcrowded from the very first day as a total of 1,403 convicts moved into the cells. The population consisted of "377 white males, 985 colored males, 3 white females, and 38 colored females."<sup>19</sup>

The Nashville Banner carried a feature story on the new penitentiary and its security features. It said in part,

... The cell [blocks] are built of Pikesville sandstone and white brick. Each row of cells are [sic] fifteen feet from the other walls in either direction, and facing the windows, so that there is not a dark hole in the building. The cells are built of vitrified brick, non-absorbent, and laid in cement and plastered inside and out with cement and alabastine. The floor is of cement, laid on arches and steel beams. Each cell has a lattice door, made in one quarter inch steel, for light and ventilation. The cells are of an average size of 6 X 8 X 8 [all in feet]. Each cell door has a double-lock, the bolts of file-proof steel. There is no wood in the construction, and it is absolutely impossible for the building to burn. There are guard balconies at each end of the building, and the prisoners can be watched by one to three guards, who can stay completely out of the convicts reach.<sup>20</sup>

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<sup>19</sup>"Report of the Warden of the Tennessee State Penitentiary," House Journal, 1899-1900.

<sup>20</sup>Banner, February 21, 1898.

Tennessee was one of the first states to discontinue the practice of convicts eating meals in their cells. A main dining hall was built, divided in the middle for segregated use by blacks and whites. The dining hall was served from a huge, commercial-type kitchen utilizing "first-class steam cooking equipment."<sup>21</sup> The kitchen was able to prepare at a single time more than one hundred gallons of coffee, two hundred fifty gallons of soup or boiled vegetables, sixteen bushels of cooked vegetables, and five hundred pounds of meat. The Banner reported that the food was "prepared as well as the best hotel kitchens"; nothing was said, however, about the quality or the taste.<sup>22</sup>

The original Tennessee State Penitentiary on Church Street remained in existence until June 1898 when the buildings were demolished, and salvageable materials were used in the construction of factories at the new institution. It was a "hell-hole" right up to the very end: overcrowded from the start, unsanitary, reeking of human excrement and accumulated filth, and totally unsafe.<sup>23</sup> It had seen men, women, and juveniles thrown together under conditions that were absolutely horrible,

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<sup>21</sup>"Report of the Warden of the Tennessee State Penitentiary," House Journal, 1899-1900.

<sup>22</sup>Banner, February 21, 1898.

<sup>23</sup>"Report of the Directors of the Penitentiary," House Journal, 1899-1900.

and the collective conscience of the state had to rest easier once it was closed.

On opening day, the penitentiary grounds enclosed almost three hundred acres behind walls that were twenty feet high and averaged three feet thick. A total of twenty-one buildings were behind the fences. Many of these buildings housed workshops ranging from soap and tobacco factories, a foundry, several hosiery mills, a paper box factory, a baby carriage and wicker chair plant, a tannery, a shoe shop, a saddlery, and a commercial laundry.<sup>24</sup>

An adjacent farm of approximately 1,000 acres was designed to provide work for female convicts and those unable because of physical condition or age to labor in the prison workshops or the East Tennessee coal mines at Brushy Mountain Penitentiary. The farm was also intended to reduce the cost of upkeep for the state's convicts by providing a large portion of the foodstuffs consumed in the dining halls. The farm operated its own cannery for fruit and vegetable processing, a dairy, and a slaughterhouse for its livestock operations including beef, hogs, and chickens.<sup>25</sup>

The state intended for every convict to contribute a major portion of the cost of his upkeep by forced

<sup>24</sup>Second Biennial Report.

<sup>25</sup>"Report of the Directors of the Penitentiary," House Journal, 1899-1900.

labor and, since most of the state's convicts desired some type of job to break the idleness and boredom during their confinement, the prisoners toiled without obvious protest. The new penitentiary, much like a small city in and of itself, was not tremendously different in the use of convict labor from the lease system that had just ended in the state. The major visible difference was the convicts now worked for the state instead of for a lessee. According to official reports and various newspaper accounts, within two years the convicts were working up to sixteen hours a day for meager food rations and uncomfortable sleeping conditions with no heat in the buildings at night during the winter and no ventilation during the summer.<sup>26</sup>

The state contracted with several private concerns to establish factories behind the fences of the penitentiary. These private concerns included a hosiery mill operated by Jacob May and Company that produced "about 7,000 pair of hose daily" and employed the "lame, young, and weaker male, and the female convicts." Other operations employing the state's convicted felons included a foundry operated by Duncan and Company that produced "stoves, castings, hollow ware, etc.," a rattan furniture factory operated by Nashville Chair and

<sup>26</sup>House Journal, 1901-1902, 1903-1904, 1905, et al; Banner, April 11, 17, 1900; Knoxville Sentinel, May 3, 1900.

Carriage Company that produced baby carriages and rattan chairs, and a paper box factory operated by Isaac Wingard that produced boxes for the hosiery mill and shoe factories. A harness and saddlery factory was operated by G. W. Fall, and fifty convicts worked for H. C. Yerkes producing "heel taps, soles, and [other] shoe findings." Ninty-nine convicts working for W. M. Goodbar produced "about 1000 pairs of men's shoes per day."<sup>27</sup>

The prison commissioners also operated several factories within the prison for the manufacture of clothing, sheeting, shoes, bedticks, walking canes, and other supplies needed for the upkeep of the convicts. Scraps from the private manufacturing concerns provided the raw materials for these goods, and the commissioners were generous with self-praise for their ability to hold down the costs of maintaining the convicts.<sup>28</sup>

The Biennial Report for 1900-1902 declared that the conditions of both the Main Prison and Brushy Mountain Penitentiary "compares favorably with the condition of other prisons." However, one can find no reference to visits to other state prisons by the commissioners or inspections of the Tennessee institutions by outsiders. The commissioners indicated a need to build a separate facility to care for the "large number of convicts" with

<sup>27</sup>Second Biennial Report.

<sup>28</sup>Ibid.

tuberculosis. The prison population declined from 1,744 in 1900 to 1,685 at the end of 1902. A total of 124 men died, forty from tuberculosis, at the two prisons during the biennium, and more than 60 escaped. Convicts continued to work in the state-owned coal mines at Brushy Mountain Penitentiary and in factories at the Main Prison in Nashville. A fire destroyed the chair and carriage manufacturing plant in September, 1902, and it was not rebuilt. The convicts that had been employed by the factory were for the most part transferred to the Brushy Mountain coal mines. The factories at the Main Prison returned a profit to the state of \$95,179 over the biennium, and the Brushy Mountain Mines sent more than \$284,281 in profits to the treasury during the same period.<sup>29</sup>

Officials instituted a grading system for the convicts at the State Penitentiary in 1902. Every convict upon his arrival at the prison was assigned a number and was given a book containing all the rules of the institution and the penalty for each infraction of those rules. Under the new grading system, convicts were given "marks" for each infraction of the rules; the number of marks given depended upon the seriousness of the infraction. Even though the book of rules specified

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<sup>29</sup>Fourth Biennial Report of the Board of Prison Commissioners of the State of Tennessee to the Governor, 1900-1902 (Chattanooga: Times Printing Company, 1903).

that each infraction carried a specific penalty in marks, the records indicate that there was a very arbitrary system of assigning marks to convicts. The Convict Grade Books show that convict 399 was given 100 marks and reduced in grade from middle to lower for "fighting." Three days later, convict 611 was given only 20 marks for fighting; the twenty marks did not reduce him in grade.<sup>30</sup>

There were three grades -- upper, middle, and lower. All incoming convicts were assigned to the middle grade. Upon completion of three perfect months in the middle grade, a convict advanced to the upper grade. A convict moved down in grade if he acquired 100 marks in any one month or 33 or more marks in any two successive months. A convict in the lower grade could move to middle grade after completing only one perfect month.<sup>31</sup>

The convicts received privileges based upon their respective grades. An upper grade convict could receive a visit from members of his immediate family once every two weeks, could send or receive two letters per month, and wore a cap of blue-gray cloth. A middle grade convict was allowed a visit once a month, could send or receive one letter per month, and wore a cap of plaid

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<sup>30</sup>Convict Grade Books.

<sup>31</sup>Fourth Biennial Report.

cloth. Lower grade convicts received no visits and had no mail privileges at all and wore caps of regular prison stripes.<sup>32</sup>

According to the commissioners, the grade system was

adopted for one major reason:

... One object of imprisonment is to protect society from men who have shown their enmity to laws framed for society's protection. Another purpose of confinement, of equal importance, is to prepare them to return to society, to reform them and to fit them to return to citizenship.<sup>33</sup>

Declaring that the grading system "instills obedience to rules and fosters good behavior", the commissioners praised the first year's successes. The grading system did little, however, to prevent escapes and escape attempts. Thirty-five convicts successfully escaped from the State Penitentiary in 1902 including sixteen that dynamited a hole in the outer wall of the housing unit and escaped. Ed Carney, one of the alleged gang leaders serving a seventeen-year sentence for robbery, was shot and killed by guards during the escape. At least seven of the escapees carried revolvers and returned the fire of prison guards during the escape.<sup>34</sup>

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<sup>32</sup>Ibid.

<sup>33</sup>Ibid., pg. 21.

<sup>34</sup>Ibid.



The Nashville Tennessean and The Nashville American carried an editorial condemning the prison officials for allowing such an incident to occur almost "within site [sic] of the Capitol" and called for a complete investigation and prosecution of any officials involved in the escape.<sup>35</sup> An internal investigation by prison officials into the method used by the convicts to get the dynamite and revolvers took several months and involved numerous witnesses and allegations but was ultimately inconclusive as to either methods or assistance from within the prison.<sup>36</sup>

Labor contractors at the Main Prison renewed contracts for three additional years in early 1903. The Tennessee Harness Company replaced G. W. Falls as the labor contractor in the leather work factory. The prison workshops were slightly less profitable during this two year period because of a major fire in one workshop and generally depressed economic conditions in the Tennessee markets, returning only a bit more than \$73,000 in profits to the treasury. The coal mines, however, enjoyed a banner year, sending more than \$337,500 in profits to the state treasury. The total prison population was 1680 convicts and included 523 white males, 3 white females, 1100 black males, and 54

<sup>35</sup>The Nashville Tennessean and The Nashville American, October 11, 1902; hereinafter Tennessean.

<sup>36</sup>Fourth Biennial Report.

black females. Escapes numbered 35, and there were 123 inmate deaths during 1903-1904. M. H. Gammon, warden of Brushy Mountain Penitentiary, called for a reformatory institution for youthful offenders, declared a pressing need for a facility to care for tubercular convicts, asked that consideration be given to providing released convicts with enough money to provide immediate needs upon release, and called for a system of parole to be instituted by the state.<sup>37</sup> The Nashville Banner supported a call for a reformatory for youthful offenders in a December editorial.<sup>38</sup>

The Biennial Report for 1904-1906 indicates a good year for both prisons with more than \$106,000 in profits recorded for the Main Prison and more than \$439,500 in profits from the sale of coal and coke at Brushy Mountain. Inmates numbered 1827 at the end of 1906 and included 561 white males, 9 white females, 1197 black males, and 60 black females. Forty-two convicts escaped and 123 died during the two-year period. In an effort to reduce the fire hazards, prison officials installed a sprinkler system "of the most modern design" in all buildings at the Main Prison for a cost of \$17,671. However, similar protection for the wooden barracks and

<sup>37</sup>Fifth Biennial Report of the Board of Prison Commissioners of the State of Tennessee to the Governor, 1903-1904 (Nashville: Press of Brandon Printing Company, 1905).

<sup>38</sup>Banner, December 16, 1904.

buildings at Brushy Mountain State Penitentiary was not approved by the General Assembly even though there had been a number of fires in the old housing units. Labor agreements were renewed in 1906 for an additional three years with all contractors at the Main Prison. The commissioners once again declared the need for a facility to care for tuberculosis patients and for the first time requested a facility to house the state's criminal insane.<sup>39</sup>

The General Assembly modified the criminal code to cause all death penalty hangings to be conducted in private rather than in public.<sup>40</sup> A Nashville paper detailed the first private execution at the state penitentiary in the following front-page story.

... Following a good night's sleep and the eating of a hearty breakfast, Brice McDonald, colored, convicted of killing his sister-in-law in Madison County, was hung at the state penitentiary Monday morning a few minutes before six o'clock. The execution was a private one according to the new law.<sup>41</sup>

Another front-page article in a Nashville newspaper covered a session of the International Prison Congress

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<sup>39</sup>Sixth Biennial Report of the Board of Prison Commissioners of the State of Tennessee to the Governor, 1904-1906 (Nashville: Press of Foster, Webb & Parkes, 1907).

<sup>40</sup>Acts of Tennessee, Ch. 500, pp. 1810-1811, 1910.

<sup>41</sup>Tennessean, October 4, 1910.

in Washington, D.C., in 1910. Visiting the East Room of the White House, President William Howard Taft cautioned delegates not to make prisons "so comfortable as to furnish a motive for violating the law." He also advised the Congress to consider keeping "mere offenders" separate from hardened law-breakers.<sup>42</sup> Three days later a second dispatch from Washington advocated the payment of convicts "according to their industry to ensure protection of their families" and to assist in the rehabilitation process for the convict.<sup>43</sup>

President Taft also issued a statement decrying the number of blacks lynched in the Southern states.<sup>44</sup> Tennessee newspapers detailed numerous lynchings during the period from 1910 through 1914. More than 200 "angry men" participated in the lynching of an eighteen-year-old Negro in Dyer County on November 8, 1913. John Talley was accused of attempted rape involving a white woman and was taken from the county jail and hanged on the courthouse yard. Another Negro, implicated in the "outrage of a white woman," was lynched near Memphis on November 4, 1914. Lynchings in other Southern states were also reported as front-page news including a Montgomery, Alabama, Negro who was burned at the stake

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<sup>42</sup>Ibid., October 1, 1910.

<sup>43</sup>Ibid., October 4, 1910.

<sup>44</sup>Ibid., October 10, 1910.

by a mob of 400 men for the alleged attempted rape of a white woman; the news story reported that "the lynching was conducted in a quiet and orderly manner ... ."

Lynchings also were reported from Kentucky, Georgia, Florida, and Mississippi during the same period.<sup>45</sup> The increase of lynchings was apparently on the minds of the legislators when they convened in Nashville in 1913 as they made several changes in the Tennessee criminal code.

The General Assembly addressed three major reform items in its session of 1913. First, it abolished for all practical purposes the system of determinate sentences and established for all offenses a range of minimum and maximum terms to be served for each crime. Second, the General Assembly created a system of parole, authorizing the release of a convict at any time after the service of the minimum portion of his sentence upon the recommendation of a Board of Paroles and the governor. By statute, the members of the Tennessee Board of Prison Commissioners also served as the Board of Paroles. The third major criminal code reform was the administration of the death penalty by electrocution in "an electric chair to be located at the State

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<sup>45</sup>Banner, October 5, 1910; Tennessean, November 8, 1913, November 4, 1914. Also see George C. Wright, Racial Violence in Kentucky 1865-1940: Lynchings, Mob Rule, and "Legal Lynchings" (Baton Rouge: Louisiana State University Press, 1990).

Penitentiary in Nashville."<sup>46</sup> The state reinstituted the death penalty in 1870 for several crimes including rape, first-degree murder, kidnapping, and malicious torture and, prior to 1916, the penalty was administered by hanging.<sup>47</sup> The General Assembly also enacted legislation authorizing the use of convicts on road crews throughout the state.<sup>48</sup>

A new state agency submitted the biennial reports for 1915-1916. The General Assembly enacted a bill in 1915 replacing the Board of Prison Commissioners with a Board of Control.<sup>49</sup> The new Board of Control found many faults with the administration of the prison commissioners including a lack of special facilities to care for tubercular patients, an error in the inventory account of approximately \$43,323, and generally "run down and deteriorated" machinery and equipment. The Board also decried the "industrial depression extending throughout the whole country, seriously affecting all of the different lines of manufacturing carried on within the walls of the institution, and preventing the employment of the usual number of men engaged under contracts." In spite of the deplorable economic conditions, the two

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<sup>46</sup>Acts of Tennessee, Ch. 36, p. 515, 1913.

<sup>47</sup>Ibid., Ch. 22, p. 123, 1870.

<sup>48</sup>Ibid., Ch. 26, p. 477, 1913.

<sup>49</sup>Ibid., Ch. 20, pp. 44-63, 1915.

prisons returned over \$178,000 in profits for the two-year period.<sup>50</sup>

The population of the two prisons at the beginning of 1917 was 1,989 convicts with 1,259 at the Main Prison and 730 at Brushy Mountain. Of these convicts, more than 400 had tuberculosis. The General Assembly, deaf to the call for a tubercular care facility from the Board of Prison Commissioners for at least three bienniums, responded with an appropriation of \$41,500 to build a care facility of "at least 200 beds."<sup>51</sup> It is interesting to note that, faced with an immediate need for 400 beds, the legislature approved a facility one-half the size needed, a process that is repeated on numerous occasions throughout Tennessee prison history. The Board praised the General Assembly's foresight in authorizing the use of convicts on county road gangs, noting that it had provided work for many who otherwise would have remained idle. They repeated a request of the Prison Commissioners that a facility be provided to care for the state's criminal insane.<sup>52</sup>

The electric chair, authorized for executions by the General Assembly in 1913, was installed in the

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<sup>50</sup>First Biennial Report of Tennessee Board of Control, 1915-1916 (Nashville: Baird-Ward Printing Company, 1917).

<sup>51</sup>Acts of Tennessee, Ch. 121, p. 366, 1917.

<sup>52</sup>First Biennial Report.

summer of 1916. Stating that it was impossible to isolate the exact costs of the electric chair, it was placed on the asset sheet of the penitentiary at \$2,500 although approximately \$10,000 had been spent on its construction and installation.<sup>53</sup> "Ol' Sparky", the nickname given the chair by the convicts, received its first victim only two weeks later on July 13, 1916, when Julius Morgan, a black male convicted of the rape of a white woman in Dyer County, was executed.<sup>54</sup>

Entry into World War I solved the depressed economic situation in Tennessee; in fact, it created a situation that would never again be available to the state's prisons. Every ton of coal and every piece of clothing that could be produced by the convicts was immediately purchased for the highest prices in history. Profits from the sale of coal for the period 1917-1918 totaled more than \$713,000 and manufacturing profits for the same period at the Main Prison totalled more than \$90,000. The convict population declined to 1,735, comprised of 621 white males, 8 white females, 1,063 black males, and 43 black females. Fifty-three convicts died during the period and 80 escaped. Two convicts were executed on July 8, 1918, in the electric chair,

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<sup>53</sup>Ibid.

<sup>54</sup>Banner, July 14, 1916.



both black males from Giles County, convicted of raping a white woman.<sup>55</sup>

The Board made special note of the fact that Tennessee had no facilities for the feeble-minded anywhere in the state. The biennial report listed every state that had made provision for the feeble-minded -- not one Southern state was included -- and then noted that,

... it has been estimated that one person out of every two hundred and fifty of our population belong to the defective class. Our criminals, paupers and prostitutes are largely defective. The social structure of the State is threatened by the spread of mental defectiveness and by mental instability of our population. ... Of this great number the majority are the possible progenitors of defective stocks who may burden the State. ... Suitable action should be taken for establishing a colony for adult males and females to be kept until past the child-bearing period.<sup>56</sup>

The Board of Control suggested that the colony be established on lands owned by the state prison system and be operated by the Board at "minimal expense to the State." Tennessee was not alone in this thinking as numerous other states proposed dealing with "mental defectives" in a similar manner; fortunately such colonies were

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<sup>55</sup>Second Biennial Report of Tennessee Board of Control, 1917-1918 (Nashville: Baird-Ward Printing Company, 1919); Banner, July 9, 1918.

<sup>56</sup>Ibid., pp. 31-32.

never developed in Tennessee. The Board again called for the establishment of a facility for the criminal insane and was critical of the state's indeterminate sentencing and parole system, suggesting that "the punishment fixed by statute for many crimes is out of proportion to the offense."<sup>57</sup>

The Board called for the establishment of a facility for the criminal insane again in 1918-1920 and in 1920-1922. Population of the penitentiary system was level across the four-year period with 1695 convicts in first period and 1696 in the latter. Profits, however, were anything but level for the two bienniums. With the war effort continuing in the 1918-1920 period, coal profits reached more than \$764,700 and manufacturing profits were about \$15,000. When the war ended, the profits for 1920-1922 were only \$277,674 for coal, and manufacturing at the Main Prison posted a loss for the first time since the Civil War. Escapes for the four years totalled more than 210, and there were more than 110 convict deaths from various causes. The electric chair claimed nineteen victims during the four years, eight white and eleven blacks. Two of the blacks were convicted of raping a white women, the other seventeen men were executed for murder.<sup>58</sup>

<sup>57</sup>Ibid., pg. 46.

<sup>58</sup>Biennial Report of State Board of Administration, 1918-1920 and 1920-1922 (Nashville: Tennessee Industrial

The biennium of 1922-1924 saw a slight increase in the prison populations but a significant decrease in the number of black males incarcerated. From 56.4% of the total convict population in 1922, black males represented 53.4% of the total in 1924. More than 120 convicts escaped during the period, 47 died from various causes, and three were executed in the electric chair. Profits from the coal mines continued to slide, yielding only \$191,797 for the period while manufacturing returned to the positive side of the ledger with just over \$92,000 in profits. The General Assembly in 1922 finally authorized an Institution for the Feeble-Minded; it opened on September 10, 1923, and the State Penitentiary transferred its feeble-minded inmates to its care. Lewis S. Pope, the newly named Commissioner of Institutions, called anew for the creation of a facility for the criminal insane.<sup>59</sup>

Numerous recent studies show that the prison population of the United States rises in direct proportion to the unemployment rate and has very little to do

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School Printing Division, 1921, 1923); Banner, June 1, 1919; Banner, February 8, September 3, 1919; Banner, August 4, 18, 1921; Banner, February 18, March 1, March 16, April 12, July 26, August 16, 1922. The General Assembly changed the name of the Board of Control to the State Board of Administration effective in 1918.

<sup>59</sup>Biennial Report of the Department of Institutions, 1922-1924 (Nashville: Tennessee Industrial School, 1925). Changing the name of the controlling agency for the state's penitentiary system was apparently great sport for the Tennessee legislature.

with actual increases in the rate of crime.<sup>60</sup> It then becomes apparent from the increase in the penitentiary population that depressed economic conditions struck Tennessee again in 1924. The convict population increased by more than 250 men in one year, climbing to almost 2,000 by the end of 1926. Profits from the state's coal mines also fell drastically to just over \$75,000 -- the lowest figure since the first two years of operation of the mines which opened in 1896. Manufacturing profits at the Main Prison in Nashville fell to just over \$12,600 for the period. Conditions were so bad on the outside that thirteen paroled convicts voluntarily returned to prison without having violated the conditions of parole.<sup>61</sup> Commissioner Pope made yet another appeal for a facility to house the criminal insane:

... For several biennial periods I have recommended that provisions be made for the criminal insane, and I am again mentioning this matter, which I deem to be necessary for the proper treatment for this character of person, and for the protection of

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<sup>60</sup>Richard A. Cloward, et al, Theoretical Studies in Social Organization of the Prison (n.p.: Social Science Research Council, 1960).

<sup>61</sup>Biennial Report of the Department of Institutions, 1924-1926 (Nashville: Tennessee Industrial School, 1927).

society as well. ... can be built for approximately \$100,000, and I think it is mandatory that this be done at once.<sup>62</sup>

The convict population in Tennessee continued to grow as economic conditions wavered prior to the Great Depression, reaching a total of 2,346 convicts in December 1928. Two more convicts voluntarily returned from parole without violating the conditions set for their release. For the first time since the Civil War, black males numbered less than fifty percent of the total prison population, accounting for only 49.5% of the total. Sixty-three convicts died from various causes, and more than 111 escaped. National prohibition became a major factor in Tennessee's prisons for the first time with more than 200 men convicted of producing illegal liquor and just under 100 men sentenced for transporting illegal liquor. Profits for the two penitentiaries combined reached just over \$200,000 for the two years ending in 1928.<sup>63</sup>

The chaplain of the State Penitentiary in Nashville revealed a significant fact about the philosophy of penitentiaries during the era in the Biennial Report for 1926-1928.

... Early in my work I found the  
prison sown down with infectious

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<sup>62</sup>Ibid.

<sup>63</sup>Biennial Report of the Department of Institutions, 1926-1928 (Nashville: Tennessee Industrial School, 1929).

literature, both subversive to morals and orderly civil government. So I assumed a censorship at once. All sorts of seductive writings, magazines, booklets, pamphlets and papers were put under the ban and under my inspection have been sent to the scrap heap and burned. Within the biennium approximately 7,475 magazines have been distributed, (besides newspapers), to inmates -- many of these contributions from churches, civic bodies and railroad officials.

#### EXPENSE ACCOUNTS

Books, tablets, pencils & crayons	\$ 81.10
Pencils .....	24.25
Crayon .....	2.50
Salaries .....	<u>504.00</u>
Total expense of biennium . \$ 611.85	

This expense account shows strict economy -- being less than eighty cents per pupil. It is proper to say that in the performance of my duties every inmate passing away is accorded Christian rites before burial.<sup>64</sup>

The General Assembly enacted laws in its term of 1929 that created a Board of Pardons for the state. The Board of Prison Commissioners and later the Board of Control members had served as an Advisory Board of Pardons following the 1902 term of the General Assembly, but the Department of Institutions asked for separation of the Board from the administration of the penitentiaries. The governor appointed one citizen from each

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<sup>64</sup>Ibid., pp. 376-377.

of the three grand divisions of the state to serve as the state's official advisory board for all pardon applications.<sup>65</sup>

The prison population was 2811 at the end of 1930, comprised of 1416 white males, 1301 black males, and 94 females. One hundred two inmates died during the two years ending in 1930, and more than 129 escaped from the penitentiaries. Combined profits of the two prisons continued to slide, totalling less than \$150,000 for the two-year period. Commissioner of Institutions Richard H. Lyle called the attention of the legislature to the need to replace the housing buildings at Brushy Mountain Penitentiary, calling the "old wooden barrack" a great fire risk. Brushy Mountain housed 872 men in the old wooden building that was designed for about half that number.<sup>66</sup>

Another point of concern for Commissioner Lyle was the passage in the United States Congress of the Hawes-Cooper Act regulating the interstate transfer of prison-made goods.<sup>67</sup> Lyle stated without reservation that the Act would "revolutionize prison industries in this

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<sup>65</sup>Acts of Tennessee, Ch. 70, pp. 159-161, 1929.

<sup>66</sup>Biennial Report of the Department of Institutions, 1928-1930 (Nashville: Tennessee Industrial School, 1931).

<sup>67</sup>Statutes-at-Large of the United States, Seventieth Congress, Session II, Chapter 79, Section 1 and 2, 1929.

State." Perhaps even more than the commissioner realized, the Act would influence Tennessee prison labor from the 1930s through the 1980s and into the 1990s.<sup>68</sup>

Numerous states, especially in the Northeast and Midwest, prohibited convict-made or mined products from being sold in competition with goods produced by free-labor in those states. The intent of these restrictive statutes was to ensure the employment of the state's own free citizens even if the public were forced to pay higher prices for goods in the marketplace. Several Southern states challenged these restrictive laws as being unconstitutional in view of the interstate commerce provisions of the United States Constitution. Congress responded by enacting the Hawes-Cooper Act of 1929 that specifically exempted convict-made or mined goods from the protection of federal laws governing interstate commerce and instead made those goods --

... subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares and merchandise had been manufactured, produced, or mined in such State or Territory.<sup>69</sup>

The net effect of Hawes-Cooper was to forbid the sale of all convict-made goods on the open market. In order to restrict the sale of prison-made goods brought in from

<sup>68</sup>Biennial Report, 1928-1930, pg. 9.

<sup>69</sup>Statutes-at-Large of the United States, supra. note 65.



other states, the states had to restrict the sale of its own prison-made goods within its boundaries.

The Congress scheduled the Hawes-Cooper Act to go into effect in 1934. By removing the protection of interstate commerce laws from the convict-made goods, prison industries across the South and in Tennessee in particular were grossly affected. A ready market for prison-made goods had existed for more than one hundred years in the United States; private labor contractors as well as factories operated on the state-account system produced quality goods at a much-reduced price compared to goods produced by free-labor. In order to protect its own free workers, Tennessee quickly passed legislation prohibiting the sale of prison-made goods on the open market within its boundaries and permitting convicts to produce only such items as needed by state institutions.<sup>70</sup>

Tennessee had only four years to replace its current factory system with another means of employing its convicts. Prison population was at an all-time high in 1930 and had been rising every year for a number of years. Richard Lyle, the Commissioner of Institutions, asked the legislature to appoint a high-level committee

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<sup>70</sup>See, for example, the "Memorial from the Mechanics and Tradesmen of Nashville," Memorials and Petitions to the General Assembly, 1837, Archive Manuscripts.

of businessmen to evaluate the problem and make recommendations. By the end of 1932 and for the first time since the Civil War, both of the state's penitentiaries operated at a loss, a situation blamed by Commissioner Lyle on both record high convict populations and the market conditions created by the Hawes-Cooper Act. State law did allow the sale of prison-made goods to state and local charitable institutions; in fact, it strongly urged the use of such materials at state institutions whenever they were available at a favorable price. Lyle recommended that the General Assembly immediately enact legislation requiring all city, county, and state agencies and institutions to purchase all of their needs along certain lines from the state's prisons. He indicated that several other states had enacted similar legislation but failed to name any of them in his request.<sup>71</sup>

The General Assembly responded to the commissioner's requests concerning mandated use of prison-made goods at state institutions, but it stopped short of requiring all public institutions in the state to purchase solely from the penitentiary. Legislators from several of the larger counties protested loudly that free labor goods were available at better prices on a

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<sup>71</sup>Biennial Report of the Department of Institutions, 1930-1932 (Nashville: Tennessee Industrial School, 1933).

local basis and that the law would be restrictive against free enterprise.<sup>72</sup>

The prison administration moved very slowly to convert factories from free-market goods to institutional goods. The soap factory, the clothing plant, and the shoe factory at the Main Prison were all expanded and absorbed the majority of the convicts fortunate enough to be allowed to work. Idleness became the order of the day with convicts remaining in their cells on almost total lock-up for days on end. About the only respites that the convicts received outside of the cells were meal-times and weekly shower baths.<sup>73</sup>

Agitation began anew during the early 1930s for the building of a reformatory institution for first-offenders. With the emphasis on prison profits being relegated to the background by federal legislation, the General Assembly began to look for ways to provide meaningful employment for the state's convicts for the first time. The idea that the prisons should cost as little as possible was still foremost in the collective mind of the legislature, however, as is evidenced by

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<sup>72</sup>Acts of Tennessee, Ch. 278, pp. 1106-1111, 1937.

<sup>73</sup>Biennial Report of the Department of Institutions, 1934-1936 (Nashville: Tennessee Industrial School, 1937).

records of debates concerning the federal legislation.<sup>74</sup> Authorization was given to the various counties to maintain groups of state-convicted felons for work on county roads and highways. The state prison farm at Nashville was expanded again in 1933 in order to employ more convicts and to provide more food for state institutions. A prison farm started at Brushy Mountain State Penitentiary during the late 1920s was expanded in 1934 for the same reasons.<sup>75</sup>

Newspapers across the state but especially in the major cities of Nashville, Knoxville, and Memphis called for the establishment of a reformatory institution for young, first-offenders. Citing similar activities in other Southern states, the state legislature was challenged to send an investigative team to several other states to study reformatory institutions and to develop a similar system for Tennessee.<sup>76</sup>

Following intense public pressure from the major newspapers, the General Assembly authorized the Department of Institutions to undertake a fact-finding mission to the Texas Prison System in Huntsville. Texas had

<sup>74</sup>House Journal, 1930-1932.

<sup>75</sup>Biennial Report of the Department of Institutions, 1930-1932, 1934-1936 (Nashville: Tennessee Industrial School, 1933, 1937).

<sup>76</sup>Banner, September 3, October 11, December 6, 1934, et al; Commercial-Appeal, January 13, March 27, 1935, et al; Knoxville Sentinel, May 2, 1934, March 29, 1935, et al.

become the leader in almost totally self-supporting prisons following the passage of the Hawes-Cooper Act, a feat that was duly noted by the fiscally conservative Nashville press.<sup>77</sup> Texas had also developed a comprehensive classification system for its convicts based on the age of the offender, the number of prior convictions, and the seriousness of the crime committed, and it used this system to start an extensive reformatory system.<sup>78</sup> The Department of Institutions selected its chief record clerk, James Glidewell, to go on an extended six-week visit to Huntsville in 1935 not only to observe the operation of the prison farms but also to evaluate the Texas prisoner classification system.<sup>79</sup>

Following requests over a period of at least twenty years, the General Assembly finally authorized construction of an institution for the criminal insane. As has been noted before, however, the General Assembly often used little logic in its authorizations. With a pressing need for at least 250 beds for criminally

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<sup>77</sup>Banner, November 16, 1935.

<sup>78</sup>Report of the Texas Prison Supervisors to the State Legislature, 1935-1936 (Austin: Texas Prison Board, 1939).

<sup>79</sup>Biennial Report of the Department of Institutions, 1934-1936 (Nashville: Tennessee Industrial School, 1937).

insane patients,<sup>80</sup> the General Assembly ordered construction of a facility providing space for only 150 patients.<sup>81</sup>

No authorization was made, however, to replace the almost forty-year old wooden barracks at Brushy Mountain Penitentiary with a more modern, fireproof housing unit. Almost every official report to the General Assembly in the twentieth century asked for funds to replace the wooden dormitory buildings at Brushy Mountain with a modern concrete and brick building. The Biennial Report for 1930-1932 called the dormitory "one of the greatest fire risks of the United States ..." and recommended that the existing building "be torn down and a fireproof building be constructed in its place."<sup>82</sup> After at least fifteen official requests, the General Assembly responded in 1934 with funds to construct a new penitentiary at Brushy Mountain State Penitentiary.<sup>83</sup>

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<sup>80</sup>Based on statistics contained in various Biennial Reports and the notes made in the Convict Grade Books for the period.

<sup>81</sup>Acts of Tennessee, Ch. 48, pp. 151-161, 1937.

<sup>82</sup>Biennial Report of the Department of Institutions, 1930-1932 (Nashville: Tennessee Industrial School, 1933), pp. 8-9.

<sup>83</sup>Acts of Tennessee, Ch. 15, p. 9, 1934-1935.

## Chapter VII

### **A Move Toward Reformation:**

#### **Fort Pillow State Prison and Farm, 1930-1960**

The quadrupling of prison populations following the Civil War caused many problems for the Southern states. A primary concern of each state was that its penitentiary not only cost as little as possible to operate but also, if possible, return a profit to the state. The building of huge new prisons and factories to work the convicts, as had been done in the decades preceding the war, was out of the question for the poverty-stricken Southern states. Moreover, the majority of the convicts were now black, and in most instances their only work experience was on farms. Consequently, most of the former Confederate states including Tennessee turned to agricultural work in one manner or another to profitably employ convict labor.<sup>1</sup>

Some of the states resorted to a form of leasing convicts to private farmers, but other states actually purchased or leased lands for their convicts to work. Texas bought huge farms while North Carolina leased several farms to work convicts as early as 1880, and South Carolina, Alabama, Georgia, and Virginia joined the movement toward agricultural work by convicts on

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<sup>1</sup>Jane Zimmerman, "The Penal Reform Movement in the South during the Progressive Era, 1890-1917," Journal of Southern History (November 1951), p. 462-492.

state-controlled land by the late 1890s.<sup>2</sup> Tennessee expanded its truck-gardening operations at the Tennessee State Penitentiary in Nashville to include traditional farm work for young boys, women, and convicts whose broken-down physical condition prevented them from working in the factories or mines.<sup>3</sup> The principal goal, however, was the employment of convicts. There was no official discussion of intent to use farm work as a means of rehabilitation.<sup>4</sup> Reformation or rehabilitation, especially of youthful convicts, seen by the Quakers and other early prison reform groups as the principal goal of penitentiaries, was ignored in the late 1800s by the Southern states.<sup>5</sup>

Increased political activity by farmers in the South in the 1890s led to demands for better farm-to-market roads which prompted changes in the employment of convict labor. In response to the "Good Roads Movement," most Southern states enacted legislation permitting the use of convicts on road-building crews. These crews became commonly known throughout the

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<sup>2</sup>Ibid.

<sup>3</sup>Biennial Report, Tennessee Board of Control, 1899.

<sup>4</sup>In the style of the period, the terms "rehabilitation" and "reformation" as applied to convicts are used interchangeably.

<sup>5</sup>Convict Labor (Washington: United States Bureau of Labor, 1887).



Southern United States as "chain gangs." By 1913 all of the Southern states were working convicts on the roads.<sup>6</sup>

The earliest penitentiaries saw isolation and hard work as ways to restore the miscreants to good standing as citizens of the community upon their release. With the move toward progressivism at both the state and national levels at the turn of the century, prison reformers in almost every state called for the establishment of reformatory institutions to house young first-offenders.<sup>7</sup> Incarcerating young offenders with more hardened criminals essentially defeated the minimum efforts of the states to rehabilitate the youthful miscreants. Since the Southern states were still largely agricultural, prison farms were seen as a method to instill good work habits in the youthful first-offenders.<sup>8</sup> By 1900 many Southern states established prison farms as a means of employing their convicts and, by the 1920s and 1930s, many were also expressing hope of some form of rehabilitation.<sup>9</sup> Aubry Bradshaw, the

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<sup>6</sup>Ibid.; Southern Good Roads, Vol. 5, February, 1912, pp. 20-21; Acts of Tennessee, Ch. 26, p. 477, 1913.

<sup>7</sup>Zimmerman, "Penal Reform."

<sup>8</sup>Blake McKelvey, "A Half-Century of Southern Prison Exploitation," Social Forces 13 (October 1934), pp. 112-123.

<sup>9</sup>See Carleton, Politics and Punishment; Keve, Corrections in Virginia; Donald R. Walker, Penology for Profit: A History of the Texas Prison System, 1867-1912 (College Station: Texas A & M University Press, 1988).

first warden of Tennessee's Fort Pillow State Prison and Farm, stated without reservation in 1940 that "the hard work, good food, and sunshine will restore these [young] offenders to a useful place in society."<sup>10</sup>

Although North Carolina was the first state to effectively convert their penitentiary system exclusively to agricultural work using leased lands and leasing convicts to private farmers, Texas was the first state to establish large-scale state-owned prison farms in its corrections system.<sup>11</sup> Texas began as early as 1880 to provide work on state-owned farms for those convicts not leased out to private operators. The crops produced by the convicts included cotton, corn, cereal grains, and flax. Most of the produce went either to the dining halls of the prisons or was used in the privately operated prison factories which manufactured crude clothing, sheeting, and other dry goods.<sup>12</sup>

The desire to establish a prison facility in the western portion of Tennessee was strong even as early as 1825 when the original central prison was first proposed.<sup>13</sup> A prison facility was seen as a political prize because of potential jobs and government

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<sup>10</sup>Banner, November 11, 1940.

<sup>11</sup>Zimmerman, "Penal Reform"; Walker, Penology for Profit.

<sup>12</sup>Walker, Penology for Profit.

<sup>13</sup>House Journal, 1825.

expenditures, and both the West Tennessee and East Tennessee legislative delegations fought long and hard to secure the prison for their region.<sup>14</sup> Because of regional political and economic differences, the influx of convicts to the state prison system varied considerably across the state as well. By 1900 the western division of the state and particularly Shelby County represented the most populous region of the state and accounted for some 42.0% of all the convicts entering the system between 1880 and 1900.

The total prison population reflected a racial bias as well with 66.1% being black, while the state's total black population numbered only about 13% in 1900.<sup>15</sup> The majority of Tennessee's black population lived then, as today, around the Shelby County area of Memphis.<sup>16</sup> Farming was the most represented occupation in the prison population with 28.3% of the convicts showing that as their free-world employment.<sup>17</sup> By 1930 West Tennessee's ongoing desire for a prison was fully justified by prison demographics since so many of the

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<sup>14</sup>Crowe, "Agitation for Penal Reform in Tennessee, 1870-1900."

<sup>15</sup>Tennessee Blue Book 1930 (Nashville: Secretary of State's Office, 1930); Convict Grade Book Number 1, Tennessee Department of Correction, Nashville, Tennessee.

<sup>16</sup>Blue Book 1987.

<sup>17</sup>Grade Book Number 1.

convicts arrived into the system from the western region of the state.

In 1934 the Department of Institutions approved the construction of a modern, fireproof prison at Brushy Mountain Coal Mines near Petros in East Tennessee to replace the antiquated and delapidated wooden buildings built in 1896, and the work on the new building was completed in 1936. Designed to house 600 convicts, the prison was crowded with more than 950 men by the end of the first year. The overcrowded conditions at both the Tennessee State Penitentiary in Nashville and Brushy Mountain helped renew agitation for a reformatory system for first-offenders.<sup>18</sup>

The supervisors for the state prisons began investigating both a convict classification system and state-owned prison farms. The State of Texas had developed a classification program in the late 1930s and early 1940s and also had a long history by that time of operating almost self-sufficient prison farms.<sup>19</sup> Tennessee's legislators were encouraged by the other

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<sup>18</sup>"Biennial Report of Department of Institutions of the State of Tennessee, 1928-1930, for the two years ending June 30, 1930." The Government Reorganization Act of 1923, Acts of Tennessee, Ch. 7, pp. 8-44, 1923, created a Department of Institutions with a commissioner to be appointed by the governor. The Department of Institutions had control over prisons, mental institutions, and state hospitals.

<sup>19</sup>Annual Reports of the Texas Prison Board (Austin: Board of Prisons, 1928, 1929, 1930, 1934, 1935, 1936, et al).

state's ability to defray a major portion of its expenses through working farms.<sup>20</sup> Many Southern states, including Alabama, Georgia, and Mississippi sent prison officials to Huntsville, Texas, to observe the operations of the Texas system prior to establishing their own farm operations. Since Texas annually offset large portions of its prison operating budgets by operating farms, it became a model for many other Southern states. Texas was also one of the first states to formally classify convicts according to age, seriousness of offense, and number of prior convictions and incarcerations.<sup>21</sup> Tennessee sent its chief record clerk, James Glidewell, on a visit to Huntsville in 1935 not only to observe the operation of the prison farms but also to evaluate the Texas prisoner classification system.<sup>22</sup>

Glidewell returned to Tennessee full of praise for both the prison farm operations and the classification system. Based on his report, the Commissioner of Institutions during the next session of the General Assembly proposed a prison farm and a classification system for the State of Tennessee.<sup>23</sup>

<sup>20</sup>Biennial Report, 1928-1930.

<sup>21</sup>Texas Revised Statutes, Chapter 28, Section 1609 (1911).

<sup>22</sup>Report of Department of Institutions, State of Tennessee, Fiscal year ending June 30, 1936. (Nashville: Printing Division, Tennessee State Industries, 1936).

<sup>23</sup>Annual Report, 1936.

The Texas classification system was intended to identify and segregate first offenders from recidivists, property offenders from violent offenders, and short-term inmates from those who had little hope of being released. Prior to the 1940s, there was no real segregation of offenders in Tennessee except for those "able bodied men" assigned to the Brushy Mountain coal mines. Juveniles, females, adult men, first offenders, and recidivists were all housed in the same facility in Nashville although there were attempts to keep first offenders on the "upper walks."<sup>24</sup>

The main prison was opened in 1898 with 800 cells sized for one prisoner, and an expansion in the late 1920s added 300 more small cells.<sup>25</sup> By the early 1930s it was extremely overcrowded and was housing almost 2300 people.<sup>26</sup> The overcrowded conditions added to the problems of maintaining order and did not permit any form of segregation among the various offenders since everyone mingled in the workplaces, dining halls, and at recreation time. The discipline of silence was still in effect at this time, but it too was extremely difficult to maintain with the overcrowding.<sup>27</sup>

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<sup>24</sup>Grade Book Number 1; Banner, March 24, 1937.

<sup>25</sup>Biennial Report, 1928-1930.

<sup>26</sup>Ibid., 1932-1934.

<sup>27</sup>Ibid., 1934-1936.

A committee was appointed by the General Assembly to locate suitable land for a working farm. After several weeks of land inspections, the committee decided on a 5200 acre tract in West Tennessee near the Lauderdale County town of Henning. The owners of the farm, J. A. Hutcheson and C. P. McKinney, wanted to sell their complete operation: land, animals, seed, implements, and crops in the field, and they offered the farm to the state for a reasonable price. After very little debate the General Assembly approved the new facility, and final negotiations began between the state and the owners.<sup>28</sup> Title transferred to the state on 9 November 1937 in exchange for the sum of \$138,000. An adjacent tract of approximately 1,000 acres bought from the heirs of M. G. Cartwright for \$42,000 brought the total acquisition to approximately 6,200 acres at a total cost of \$180,000. The state named the new institution Fort Pillow State Prison and Farm after a nearby Civil War fort of that name.<sup>29</sup>

The state specified in its requirements to architects and contractors that a facility of "the most modern design" be furnished. The Tennessee architects selected to design the prison, Heavner & Parish of Jackson, chose a classic cross design. The

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<sup>28</sup>Acts of Tennessee, 1935.

<sup>29</sup>Deed Book B-4, pages 237, et seq., Register of Deeds, Lauderdale County Courthouse, Ripley, Tennessee.

fortress-like penitentiary plan had been in popular use for about twenty years on prison farms in Texas and several other states.<sup>30</sup> The front and shorter end of the cross houses the administrative offices, infirmary, and support services; the two side wings of the cross contain cell blocks for inmate housing; the longer vertical section of the cross houses food services, dining halls, and recreation areas.<sup>31</sup>

The main building's long wing is five hundred-fourteen feet long by one hundred feet wide and the cross wing is three hundred-ninety-seven feet long by one hundred feet wide. The outside walls are constructed of twelve-inch thick reinforced concrete with a layer of steel facing on each side. The original design utilized four open convict dormitories with double bunk beds. Designed for 150 men each, the four units could house a maximum population of 600 convicts. Tennessee prison administrators accepted both the design and the original cost estimate of \$175,000.<sup>32</sup>

Following the pattern set by Texas, Tennessee decided to employ inmate labor in the erection of the

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<sup>30</sup>McKelvey, American Prisons; Walker, Penology for Profit; Keve, Corrections in Virginia.

<sup>31</sup>Ibid.; House Journal, 1936.

<sup>32</sup>"Original Plans of Construction," 1937. Fort Pillow State Prison, Henning, Tennessee.



facility and planned its completion within two years.<sup>33</sup> The first inmates selected for transfer to the new Fort Pillow State Farm were those who had established "clean and exemplary" records inside the walls of the Main Prison in Nashville and who were able to work at heavy construction jobs. These men, housed in a make-shift barracks in an old schoolhouse on the farm, worked to build the prison itself under the direction of free-world construction superintendents.<sup>34</sup> Even though the construction workers had crops in the field and farm animals to maintain, construction progressed rather quickly.

One of the first major buildings completed in early 1938 was a modern dairy barn into which the construction crews moved as they continued to work on the prison building itself. By early 1940 the cellblocks were complete, and the prison was ready to accept its full complement of convicts. The construction crews vacated their dairy barn barracks and moved into the "most imposing building in West Tennessee outside of Memphis."<sup>35</sup>

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<sup>33</sup>Banner, January 27, 1938.

<sup>34</sup>Biennial Report, 1934-1936.

<sup>35</sup>Report of Department of Institutions, State of Tennessee, Fiscal year ending June 30, 1940. (Nashville: Printing Division, Tennessee State Industries, 1940); Banner, September 17, 1941.

Jersey cows replaced the convicts in the dairy barn, and the barn is still in use at the prison today.<sup>36</sup>

The Department of Institutions named Aubry Bradshaw as the first warden of the new facility. Bradshaw's experience was limited to farming in West Tennessee, but he was a loyal Democrat. It is the custom for Southern wardens to live rent-free on the grounds of their prisons, and Bradshaw moved into the newly completed warden's residence at about the same time the inmates moved into the prison proper.<sup>37</sup>

Fort Pillow began operation as a working prison in late 1940 when almost 400 convicts were moved there from the Tennessee State Prison in Nashville and Brushy Mountain State Prison in Petros. Most of the men in this original group were first-offenders, but there were some recidivists among them. "Only able-bodied men were transferred to the prison," and each convict was assigned a job and worked long, hard hours.<sup>38</sup> For purposes of this work, a recidivist is a convict with at least one prior prison term in the Tennessee prison system; a hardened criminal is a convict whose sole means of livelihood is criminal activity.

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<sup>36</sup>Author's interview, 6 August 1988, with Claude Henry, Lauderdale County, Tennessee, retired Fort Pillow State Prison guard hired in 1940.

<sup>37</sup>Annual Report, 1940.

<sup>38</sup>Ibid., 1941.

Three thousand acres of the original 5,200 acre tract were cleared when the farm was bought, and the state planned to clear an additional 100 acres for planting each year. No reference can be found as to the condition of the 1,000 acres added to Fort Pillow in the Cartwright purchase other than a statement that it was "good farm land."<sup>39</sup> The Department of Institutions joined the federal government's land improvement program and planted cover crops on newly cleared land to prevent erosion and to collect federal agricultural subsidies.<sup>40</sup>

Work days were consistently more than ten hours long, often running from 6:00 a.m. until dark, and Sunday was the convicts' only day off. Warden Bradshaw believed, as had the Quakers in the late 1790s, that hard work, sunshine, and good food would restore the felons to full participation in free society.<sup>41</sup> The same sentiment appears in the reports of prison wardens in Texas and Louisiana during the period. Prison officials and legislators alike expressed hopes that, by offering the "good convicts" an opportunity to learn a skill without the debilitating influence of the older convicts, they could reduce the number of recidivists in

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<sup>39</sup>Annual Report, 1941; Correspondence File, Commissioner of Institutions, Department of Correction, Nashville, Tennessee, 1941.

<sup>40</sup>Annual Report, 1943.

<sup>41</sup>Banner, November, 1940.

the criminal justice system. Records of releasees of the state's prisons showed a high rate of return to prison for new crimes which many people thought was due to a lack of job skills.<sup>42</sup>

Living conditions at Fort Pillow were much improved in the early years over the Main Prison in Nashville and Brushy Mountain. The inmates were furnished with "enough clothes appropriate to the season" that they could meet the mandatory prison requirements of a daily bath and clean clothes. Meals, prepared in a modern, restaurant-style kitchen, were served from steam tables in a common dining hall. The food was hot and clean, and there was plenty of it. The convicts were permitted to take all they wanted but faced strict penalties if plates were not completely clean when the meal was finished.<sup>43</sup> The guard force ate the same food, prepared and served by convicts, but in a separate dining room.<sup>44</sup>

Men marched into the dining hall in single file and were required to remain silent in the halls and dining room, the only real attempt by the guards to enforce the rule of silence. On a signal from a guard, the men all

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<sup>42</sup>Ibid.; Report of the Texas Prison Supervisors to the State Legislature, 1941-1942; "Annual Report of the Warden of Angola [Louisiana] State Penitentiary," 1942; House Journal, 1939-1940, 1941-1942.

<sup>43</sup>"Orders to the Guards," Warden Aubry Bradshaw, October 11, 1940.

<sup>44</sup>Henry Interview.

rose at the same time, turned in their plates and spoons, and marched out of the hall. The only eating utensil allowed was a spoon, and spoons were carefully counted by a dining room guard at the end of each meal: metal of any kind could easily be fashioned into a weapon and therefore was contraband of the highest order.<sup>45</sup>

Blacks and whites segregated themselves into two separate and distinct sections of the hall. Segregation was still a major issue in the South in the 1940s and much effort was expended by prison officials to control racial conflicts. The records indicate that racism inspired much of the prison violence of the period, and both housing and work assignments were made on a segregated basis.<sup>46</sup>

By the end of 1941, Fort Pillow had acquired fifty brood sows, an unspecified number of beef cattle, two thousand turkeys, and several hundred hens.<sup>47</sup> By the end of 1942, the institution was almost self-supporting for its foodstuffs and actually produced some vegetable surpluses that were canned and sold to other state institutions.<sup>48</sup> Additional acreage of cash crops as

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<sup>45</sup>"Orders to the Guards,"; Annual Report, 1941.

<sup>46</sup>Banner, November 11, 1940.

<sup>47</sup>Annual Report, 1942.

<sup>48</sup>Ibid., 1943.

well as sheep, goats, and additional poultry were added to the farm's livestock during 1942.<sup>49</sup>

The idea of using Fort Pillow as a first-offender rehabilitation and honor farm soon changed as a result of the tremendous influx of new convicts into the Tennessee prison system. Although Fort Pillow itself remained below capacity, the Annual Report for 1941 showed a strong mixture of first-offenders, recidivists, and hardened criminals residing at Fort Pillow. According to a letter from the warden, the system's elementary classification process identified offenders to be sent to Fort Pillow more on the basis of ability to work than on prior convictions.<sup>50</sup> He protested the use of the prison for any convicts except "honor grade" and said the huge increases in prior offenders in the population would destroy the good he was achieving with "my boys."<sup>51</sup> The new warden of Fort Pillow, Mr. Otis P. Caldwell, called upon the Board of Supervisors to correct the situation as soon as possible and return the institution to a first-offender honor farm. There is no mention in the records as to the fate of Aubry Bradshaw,

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<sup>49</sup>Ibid.

<sup>50</sup>Annual Report, 1941; Correspondence File, Tennessee Department of Institutions, 1942.

<sup>51</sup>Annual Report, 1941.

the original warden of Fort Pillow, but Caldwell was critical of some of the farming techniques in use.<sup>52</sup>

The state prison system in the 1940s was overcrowded, and the system became space-oriented instead of treatment and classification oriented as the professional penologists in the prison administration desired. This change was a direct result of the increases in the convict population and the decision by the state not to build new prisons. A system is said to be "bed-driven" when transfers are done because of available space at the facility rather than to accommodate rehabilitation, education, or security concerns.<sup>53</sup> Nonetheless, there remained at least an official desire to use the facility to house and rehabilitate first-offenders, but the politics and sheer economics of maintaining thousands of convicts in an overcrowded system defeated the principles of separation and rehabilitation.<sup>54</sup> Tennessee during the period spent considerably less per inmate than any of the Northern states for its prisons, but its spending was in line with its Southern regional neighbors. Table 7.1 shows prison expenditures on a per capita basis for nine selected states.

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<sup>52</sup>Ibid.

<sup>53</sup>Grubbs v Bradley, 552 Federal Supplement 1052, United States District Court for the Middle District of Tennessee, 1983).

<sup>54</sup>Annual Report, 1941, 1943, et al.

PRISON EXPENDITURES BY SELECTED STATES ON POPULATION BASIS			
STATE	1940	1980	1980 BUDGET
Tennessee	\$ 3.52	\$ 14.68	\$ 65.09
Texas	1.76	7.35	104.86
Louisiana	5.08	21.19	68.81
New York	6.01	25.06	371.44
Michigan	3.93	16.41	156.47
Illinois	4.46	18.60	192.98
Maryland	7.48	31.19	100.36
Alabama	3.71	15.48	45.85
Mississippi	2.02	8.42	17.93

Table 7.1. Expenditures for corrections on per capita (total state population) basis in selected states. Budget numbers for 1980 are in millions of dollars. Compiled from various state budgets and state almanacs for period involved.

While both overcrowding of the prison system and the inadequate classification process defeated rehabilitation goals at Fort Pillow, the spoils system undermined the state's attempts at effective management. When the state decided to build the prison in West Tennessee, the most staunchly Democratic section of the state, party politics dictated that the West Tennessee Democratic machine fill the patronage positions at the



prison. The warden of the prison was named by the Commissioner of Institutions (a political appointee of the Governor), but all other positions at the prison were filled by the warden and were considered political patronage prizes.<sup>55</sup> The political machine had a major impact on the daily operation of the farm and by the late 1940s, both major and minor scandals had erupted at the prison.<sup>56</sup> An internal investigation in 1949 discovered huge discrepancies in the number of births and deaths of farm animals, the substitution of inferior animals for purebred breeding animals, shortages and apparent misappropriations in canned foods and slaughtered animals, and the personal use of state vehicles and other property. The involvement of the political boss of Memphis, Edward Hull Crump, and his cronies in the mismanagement was stated forthrightly by the investigator.<sup>57</sup> The records do not indicate that Warden Aubry Bradshaw was a Crump man, but the records do show that an unusually high number of employees at the new

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<sup>55</sup>David M. Tucker, Memphis Since Crump: Bossism, Blacks, and Civic Reformers, 1948-1968 (Knoxville: University of Tennessee Press, 1980), p. 23.

<sup>56</sup>Banner, April 8, 1948.

<sup>57</sup>Correspondence between Superintendent of the Prison Hospital, Marvin K. Wilson, and Warden T. B. Wright, 26 May 1949, Associate Warden of Administration records, Fort Pillow State Prison.

prison came from Shelby County.<sup>58</sup> Based on what is known about the Crump Machine, it is a reasonable assumption to conclude that Crump did indeed have men in high places at Fort Pillow in the 1940s.<sup>59</sup>

Edward Crump moved to Memphis from a small-town in Mississippi in the 1890s, married advantageously, and then used his father-in-law's money to buy himself a business. He entered politics first as a councilman, and then won the mayoral race in 1908. Crump inaugurated the commission form of government in Memphis in 1909. Beginning his political career as a middle-class reformer, Crump forged the first political machine in Tennessee through a coalition of the foreign born, blacks, businessmen, and the underworld proprietors of the saloons, prostitution, and gambling. Boss Crump ran the Memphis and Shelby County Democratic machine from 1909 until his death in 1954, without once suffering a defeat at the polls.<sup>60</sup> Crump sought to expand his political control over the entire state of Tennessee in the 1930s. His candidate for governor, Hill McAlister, was an easy victor in 1932, thus securing for Crump an almost absolute control of state politics.<sup>61</sup>

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<sup>58</sup>Time Book Number One, 1937-1942, Associate Warden of Administration Records, Fort Pillow State Prison.

<sup>59</sup>Tucker, Memphis Since Crump.

<sup>60</sup>Ibid., p. 23.

<sup>61</sup>Ibid., p. 29.

The General Assembly in 1949 placed some of the employees at the state's prisons under civil service procedures requiring standardized tests and verifiable skills in an attempt to remove political control from the institutions, but the process of weeding out the entrenched appointees moved very slowly.<sup>62</sup> Illiteracy among the guard force remained a major problem at Fort Pillow until the late 1960s, and not until the 1980s did the Tennessee prison system see its employment practices removed from the patronage process and fully integrated into the state civil service system.<sup>63</sup>

The 1940s brought significant new problems to the administrators of prisons in Tennessee and other Southern states. With the entry of the United States into World War II, many young men in Tennessee entered the military and were soon out of the country. The result was a shortage of qualified prison guards in the state, causing problems for the warden at Fort Pillow in particular. The area around the prison was sparsely populated in the best of times, and the war caused more severe personnel shortages there than in Nashville and East Tennessee.<sup>64</sup>

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<sup>62</sup>Ibid.

<sup>63</sup>Acts of Tennessee, Ch. 485, pp. 96-98, 1980.

<sup>64</sup>Tennessee Blue Book, 1944 (Nashville: Secretary of State's Office, 1943).

The Annual Reports for the period address the problem of hiring enough guards who were neither too old nor below the level of education that the warden desired. At least one guard was hired in 1942 who could neither read nor write; when he came on duty, he was given a bag of marbles that represented each convict under his care. As he performed the required counts during his shift, he removed marbles from the bag and placed them in his pocket. If he had either marbles or convicts left over at the end of his cellblock, he knew he had to get assistance quickly.<sup>65</sup>

Convicts worked in as many of the jobs as possible outside of the security department; unlike Louisiana, Arkansas, Mississippi, and some other Southern states, Tennessee did not resort to arming its inmates to guard other inmates.<sup>66</sup> Young men who might have entered prison as convicts were also involved in the war, and this led to an increase in the proportion of older, hardened convicts in the prison population. There were

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<sup>65</sup>Henry Interview; Warden's Log Book, Fort Pillow State Prison, 1943.

<sup>66</sup>For more on Louisiana, see Carleton, Politics and Punishment: The History of the Louisiana Penal System; for more on Arkansas, see Thomas O. Murton, Accomplices to the Crime (New York: Grove Press, 1969); for more on Mississippi, see William L. McWhorter, Inmate Society: Legs, Half-Pants, and Gunmen -- A Study of Inmate Guards (Saratoga, CA: Century 21 Publishing, 1981); for Southern prisons in general see Zimmerman, "Penal Systems and Penal Reforms in the South since the Civil War."

fewer first offenders in the system as most of the young men who might be tempted into criminal activity had been drafted into the armed forces.<sup>67</sup>

The convict population during the war years was comprised mainly of men above the draft age -- much tougher, older, and more seasoned convicts who knew the ropes of the system and how to use that system to their own advantage. During this era, the old adage about "the convicts running the prison" certainly rang true. The system began to thrive on the work of the inmates who had learned the process during these trying years of war.<sup>68</sup> When the war ended, many jobs that had once been performed by civilians continued to be filled by convicts. Records clerks, hospital aides, orderlies, bookkeepers, timekeepers, dairy clerks, farm clerks, warehousemen, and warden's aides were typical jobs for the inmates of this era.<sup>69</sup> This inmate employment pattern represented a major change in the philosophy of corrections in Tennessee in that inmates were now being trusted to perform jobs previously filled only by civilian employees.

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<sup>67</sup>The Annual Reports for 1942-1946 show an average of 421 convicts at Fort Pillow with the proportion of recidivists rising from 14% to 61% over the same period.

<sup>68</sup>Annual Report, 1946.

<sup>69</sup>Ibid.

With the elimination of income from the sale of convict-made goods after passage of the Hawes-Cooper Act, prison administrators tried to reduce operating expenses in every possible way. Eliminating jobs traditionally filled by civilians and replacing them with unpaid convict workers certainly reduced expenses. While the documentation herein covers only Fort Pillow, there are records indicating that the same pattern prevailed at all three of Tennessee's prisons.<sup>70</sup>

Whether in response to continued requests from Warden Caldwell or as a modernization move, the Board of Institutions decided to implement a more comprehensive classification system,<sup>71</sup> and they once again sent the main prison records clerk, James Glidewell, to the Texas State Penitentiary at Huntsville, Texas, on an extended visit of six weeks to observe the workings of the classification system in use there and to report his findings. Based upon his recommendation when he returned, the board engaged Carl Basland, the director of the Texas prison classification department, to establish a similar classification system in the Tennessee prison system.<sup>72</sup>

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<sup>70</sup>Annual Report, 1956.

<sup>71</sup>Ibid.

<sup>72</sup>Tennessean, October 8, 1944.

A classification bureau was created within the prison system, and it was comprised of Warden Tom Gore, Deputy Warden W. G. Swafford, and Dr. James Hays, prison medical supervisor, all on the staff of the main prison in Nashville. When the new board met for the first time, it immediately named Glidewell as director of prisoner classification.<sup>73</sup> This bureau had as its goals the separation of first-offenders from recidivists, the segregation of violent offenders from non-violent, the testing of convicts for mental and physical prowess, and the development of rehabilitation programs to meet the needs of each inmate.<sup>74</sup>

The initial goal of keeping Fort Pillow as a first-offender farm obviously ended in failure since about half of its residents were recidivists by the end of the third year,<sup>75</sup> but further attempts would be made during the next two decades to segregate first offenders at Fort Pillow. Unfortunately every attempt throughout the years ended in failure.<sup>76</sup> The state prisons had problems then as now with overcrowding. Throughout the early history of Fort Pillow State Farm, however, there

<sup>73</sup>Ibid.

<sup>74</sup>Ibid.; Annual Report, 1943.

<sup>75</sup>Annual Report, 1943.

<sup>76</sup>Annual Report, 1941, 1943, 1969, 1970, et al.

NOTE: The Annual Report changed in 1956 from the Annual Report of the Department of Institutions to the Annual Report of the Department of Correction.

remained at least an official desire to use the facility to house and rehabilitate first offenders.<sup>77</sup> Politics and the sheer economics of maintaining thousands of convicts in an overcrowded system defeated, however, the principles of separation and rehabilitation.

During the early 1950s the same difficult problems arose that had plagued the institutions during the World War II years: not enough manpower to fill the scheduled security positions and an ever-hardening face of the convict population.<sup>78</sup> The Korean War was the cause this time, and the conflict managed to pull a sizeable number of both its warriors and victims from the Volunteer State of Tennessee. As was the case during World War II, men who might have entered the guard force instead enlisted or were drafted into military service.<sup>79</sup> The same destination claimed many youthful offenders in the state: judges used the alternative of military enlistment to handle much of their youthful caseload.<sup>80</sup> But the 1950s also saw a steady growth in the convict population both at Fort Pillow and across the system. By 1950, prison officials reduced the prison's capacity by

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<sup>77</sup>Annual Report, 1941, 1943, et al.

<sup>78</sup>Ibid., 1954.

<sup>79</sup>Ibid., 1953.

<sup>80</sup>"Report of the Attorney General of Tennessee to the House of Representatives," House Journal (Nashville: Tennessee State Printing Shop, 1955).



converting Fort Pillow's open dormitories into cell blocks for 400 men. The same year saw 527 men housed in cells built for a maximum of 400. In 1952, the count at Fort Pillow increased to 570 men, and in 1957, the number decreased by only 32 to 538 convicts. The population of the state's prison system for those three years totaled 2205, 2057, and 2764, respectively.<sup>81</sup>

Costs were also rising at a steady pace. In 1940 it cost approximately \$328.04 to keep a convict for one year at Fort Pillow.<sup>82</sup> By 1941 the cost was approximately \$345.03 per man per year.<sup>83</sup> The Annual Reports continued to show per capita cost increases and by 1948, the number rose to approximately \$700.20 per man per year.<sup>84</sup> Fort Pillow's per capita outlay for 1957 was \$789.25,<sup>85</sup> and there was no end in sight. The annual budget of \$136,466 of 1940 had risen by 1957 to a staggering \$458,900.41.<sup>86</sup>

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<sup>81</sup>Annual Report, 1950, 1952, 1957.

<sup>82</sup>Annual Report, 1941; These numbers are direct costs only and do not reflect any Central Office costs, costs of construction, or interest costs.

<sup>83</sup>Annual Report, 1942.

<sup>84</sup>Ibid., 1948.

<sup>85</sup>Ibid., 1958.

<sup>86</sup>Ibid., 1941, 1958. Inflation across this period accounted for approximately \$200,000 of the budget increases, but the rise in real dollars was substantial.

There arose an outcry from the General Assembly with each request for additional funds to run the prison system.<sup>87</sup> Demands for reductions in the cost of rehabilitative programs and increases in work programs along with calls for tougher penalties were common among the lawmakers, and prison administrators could not ignore these messages.<sup>88</sup> Reformation and rehabilitation programs, limited at best, were reduced even further.<sup>89</sup> Convicts who had been working in the fields for ten hours a day, six days a week were pushed even harder to reduce the cost of keeping them in prison.

The General Assembly in 1955 reorganized the state's administrative departments and separated the operation of prisons from state hospitals and mental institutions. The Department of Correction was created, replacing the old Department of Institutions.<sup>90</sup> The legislature also enacted harsher criminal penalties with little or no regard for the additional strains these laws placed on an already overworked and overcrowded system.<sup>91</sup> Maximum sentences of life in prison were

<sup>87</sup>House Journal, 1956, et al.

<sup>88</sup>Commissioner of Corrections Keith Hampton to Tennessee State Penitentiary Warden Lynn Bomar, June 1957, Correspondence File, Tennessee Department of Correction, Nashville.

<sup>89</sup>Annual Report, 1958.

<sup>90</sup>Acts of Tennessee, Ch. 102, p. 327, 1955.

<sup>91</sup>Acts of Tennessee, Ch. 11, p. 54, 1958.

provided for in instances of murder without malice (murder second-degree), kidnapping and several crimes associated with kidnapping, and a life sentence became automatic for the status of habitual criminality; if the death penalty was not given in aggravated rape cases, a life sentence became automatic.<sup>92</sup> These laws increased the length of time required for a life-sentenced convict to serve before becoming eligible for consideration for parole and toughened the parole restrictions on such convicts as well.<sup>93</sup> Since there was no requirement that the legislature assess the economic impact of new criminal statutes upon the state's law enforcement and prison systems,<sup>94</sup> the legislators could please those constituents who demanded that the state "get tough on criminals" while at the same time complaining about the rising costs of corrections.

The 1940s and 1950s saw many positive changes in the philosophy of corrections in Tennessee. A classification bureau was developed, a first offender farm intended as a form of rehabilitation was built, convicts began to perform many tasks once filled by civilian workers, and the role of rehabilitation and reformation

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<sup>92</sup>West's Compilation of Tennessee Statutes (St. Paul, MN: West Publishing Company, 1974), Volume 7.

<sup>93</sup>Ibid.

<sup>94</sup>For later developments on this subject, see Acts of Tennessee, pp. 1-61, but especially ch. 3, pp. 12-13, Special Session, December, 1985.

was given more emphasis than in the past. On the other hand, the realities of continual prison overcrowding, a cost-conscious legislature, and a hostile public made it difficult for prison officials to experience much success in implementing far-reaching new goals. But the fact that such goals were even announced marked a major change at the end of the first 100 years in the state's philosophy of prison operation.

**THE KEEPERS AND THE KEPT: THE FIRST  
HUNDRED YEARS OF THE  
TENNESSEE STATE PRISON SYSTEM  
1830-1930**

**VOLUME II**

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## Chapter VIII

### **Race and Race Relations in Tennessee Prisons**

The history of blacks in the Tennessee prisons in the first 100 years is best discussed in four discrete periods. The first period involves the thirty-four year block of time between 1831 and the end of the Civil War in 1865. The second era comprises the thirty-one years of the convict leasing era between 1865-1896. The third stage is that of the early twentieth century, beginning in 1896 and reaching to the 1960s. The fourth period extends from the 1960s to the present and is not discussed herein.

Prior to 1865 few blacks entered the Tennessee State Penitentiary. Even though the first convict incarcerated in Nashville in 1831 was, indeed, a free black man convicted of voluntary manslaughter, the records indicate that less than eight percent (8%) of the convicts in the first thirty years were black. Statistics for five of the years in the period are shown in Table 8.1. These statistics indicate a black presence but one that was a true minority. There were essentially two reasons for this rarity of black convicts during this period.

Most blacks in Tennessee prior to 1865 were slaves. Almost any criminal act committed by a slave was summarily handled on the plantation and was of little or no

concern to the criminal justice system. Slave owners were fiercely protective of their "right to do justice" to their slaves since losing a slave to jail or prison directly affected the plantation economically. In those instances of public outrage when a slave was forced to face criminal charges -- a brutal murder or rape of a white woman -- the slave's owner was usually compensated by the court. If the crime was heinous enough, a lynching party would generally preempt the criminal justice system and kill the errant slave; compensation almost always followed such an act.<sup>1</sup>

Free blacks were often exempt from incarceration between 1830-1865 for reasons very similar to those of the slaves. Minor crimes such as larceny or fraud were seen as "part of the black nature" and generally resulted in heavy fines plus court costs. Few blacks could raise the necessary cash, and the law provided that these blacks could be "sold" to the first citizen willing to pay their fines and costs. If the fines were small and no one was willing to take on a temporary "slave" or if the fines were so large that no one would pay them, the sheriff could sell the person to the highest bidder for "five years of labor." Obviously the

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<sup>1</sup>Hilda Jane Zimmerman, "Penal Systems and Penal Reform in the South Since the Civil War," Ph.D. dissertation, University of North Carolina, 1947; Edwin B. Thompson, "Humanitarian Reforms in Tennessee, 1820-1850," M.A. thesis, Vanderbilt University, 1935.

law did not apply equally to whites as most whites could raise cash from family and friends whereas free blacks during the period in Tennessee were always found in very small pockets of isolation, generally without extended family or financial resources to escape legal enslavement. Heinous crimes by free blacks were just as likely to be addressed by lynching as were those of slaves.<sup>2</sup>

YEAR	TOTAL	W/M	B/M	W/F	B/F
1833	77	75	2	0	0
1839	154	148	6	0	0
1845	189	174	10	0	5
1853	240	224	14	2	0
1859	378	366	8	3	1

TABLE 8.1. Population and racial composition of the Tennessee State Penitentiary, 1831-1865.<sup>3</sup>

Those blacks who were incarcerated in the Tennessee State Penitentiary were almost always found guilty of

<sup>2</sup>Acts of Tennessee, Ch. 23, pp. 27-45, 1829; Randall G. Shelden, "From Slave to Caste Society: Penal Changes in Tennessee, 1830-1915," Tennessee Historical Quarterly 38 (Winter 1979), pp. 462-478; Wright, Racial Violence in Kentucky 1865-1940.

<sup>3</sup>Convict Register Books; Biennial Reports for the years involved.



manslaughter or second-degree murder. These were not crimes easily dismissed by fines but generally did not create such an outrage as to lead to a lynching. One should note, however, that most whites in the Tennessee prison during this period were convicted for very similar crimes; in the first three decades of the prison, actual terms in prison were reserved for serious crimes against society.<sup>4</sup>

The black convicts in Tennessee lived horribly circumscribed lives. Kept separately from white convicts although in the same buildings, blacks worked, lived, and were punished differently from the white convicts. There were obviously no black guards or work supervisors, and blacks were considered as "inferior types" even when compared to the often hardened white criminals. Placed in the most menial jobs such as floor sweepers and night waste haulers and forced to remain silent at all times, blacks caught the worst of the brutality of the guard force. The records indicate that, on a per capita basis, blacks were whipped and placed in solitary confinement on restricted diets about five times as often as white convicts.<sup>5</sup>

Black convicts were often the victims of brutality from other convicts as well. Fighting among inmates was

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<sup>4</sup>Convict Register Books; Annual Reports, various years.

<sup>5</sup>Ibid.

punished severely, but the records indicate that when a black and white fought, only the black received additional punishment from the guards. The few possessions of the convicts were jealously protected, but blacks were apparent victims of white thievery throughout the early years.<sup>6</sup>

Following the Civil War the racial composition of prison population in Tennessee and across the South changed drastically. In the first year after the war, Tennessee's prison population not only tripled but also shifted in its racial makeup. Fully one-third of the convicts in November 1866 were blacks; by 29 November 1867 the percentage rose to over fifty-eight percent. By 1869 blacks accounted for more than sixty-four percent of the convicts and that level remained fairly constant through the first three decades of the twentieth century. At no point in the state's history has the black population exceeded twenty percent and generally blacks represent about fourteen percent of the state's population between 1830-1930.<sup>7</sup> Table 8.2

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<sup>6</sup>Warden's Log Books, various years; Convict Register Books.

<sup>7</sup>Annual Reports, various years; Tennessee Blue Book (Nashville: Secretary of State, various years); U.S. Census Bureau, Census of the Population (Washington: U.S. Government Printing Office, various years); Alrutheous Ambush Taylor, The Negro in Tennessee, 1865-1880 (Washington: Associated Publishers, 1941).

indicates the changes in prison population and racial composition during the convict leasing era.

YEAR	TOTAL	W/M	B/M	W/F	B/F
1866	963	259	667	8	29
1880	1241	409	790	11	31
1886	1216	353	823	2	38
1890	1448	384	1023	4	37
1896	1499	387	1063	5	44

TABLE 8.2. Population and racial composition of the Tennessee State Penitentiary, 1865-1896.<sup>8</sup>

Numerous studies have been made of this period of penal history as it also marks in most of the South the beginning of the convict leasing era.<sup>9</sup> Most of these studies, however, concentrate on the reasons for leasing out the prisons and not the underlying philosophies

<sup>8</sup>Convict Register Books; Biennial Reports for the years involved.

<sup>9</sup>Crowe, "Agitation for Penal Reform in Tennessee, 1870-1900"; Zimmerman, "Penal Systems"; Taylor, The Negro in Tennessee; Antoinette Elizabeth Taylor, "The Origin and Development of the Convict Lease System in Georgia," Georgia Historical Quarterly 26 (June 1942), pp. 113-128; Robert David Ward and William Warren Rogers, Convicts, Coal, and the Banner Mine Tragedy (Tuscaloosa: University of Alabama Press, 1987); Walker, Penology for Profit.

behind the changes in prison population and racial characteristics. As Mancini has said, this is analogous to discussing Jim Crow practices merely in terms of legislative history. Carleton's study of Louisiana is a rare exception to this trend.<sup>10</sup>

Tennessee came under Union control in 1862, very early in the War, but sectional differences were neither solved nor quieted. Forced to endure the occupation by the Yankees, many Tennessee whites built huge reserves of hatred for both Unionists and blacks. At the war's close, everything in the Southern world was upside down: blacks were free and mobile, formerly upper-class whites were displaced, broke, and without a labor force to rebuild the region's plantations or industries, and the states' economies -- not brilliant even before the Civil War -- were in shambles. Retaliation against "uppity" blacks was one way for whites to strike back for their loss of dignity; prison officials asked the legislature in Louisiana to

... inquire into the reason why so many are sent to this institution for the term of three, four, and six months, upon the most trivial charges? Does there not lurk beneath, the low, mean motive of

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<sup>10</sup>Matthew J. Mancini, "Race, Economics, and the Abandonment of Convict Leasing," Journal of Negro History 63 (Fall 1978), pp. 339-352, 340; Mark T. Carleton, "The Movement to End the Convict Lease System in Louisiana," Louisiana Studies 8 (Fall 1969), pp 211-223.

depriving them of the right of citizenship?<sup>11</sup>

Numerous references are made to the trivial crimes for which blacks received prison terms in Tennessee as well. The racial situation in Memphis following the War is a good case to examine for the effects of the dramatic changes wrought by the defeat of the Confederacy.

Memphis, Tennessee, was the scene of perhaps the bloodiest reaction to emancipation and Reconstruction in history. The city erupted in violence on May 1-2, 1866, leaving scores dead, thousands wounded, and thousands more burned out of their residences. The Army's Fort Pickering near Memphis provided protection for thousands of fugitive slaves and free blacks during the war, and the Army's Freedmen Department located two contraband camps, Fiske and Shiloh, nearby. At the war's end, these blacks concentrated in South Memphis where land was leased or sold to blacks mainly by the government in lieu of federal taxes.<sup>12</sup>

Prior to 1865, the "normal" pattern for blacks, both town slaves and free blacks, was to live in small groups totally surrounded by whites. The blacks lived under the watchful eyes of whites at all times. The

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<sup>11</sup>Quoted in Carleton, Politics and Punishment, p. 15.

<sup>12</sup>U.S. Selected Records of the Tennessee Field Office of the Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1872, part of Record Group 105, National Archives, Washington, D.C.

concentration of blacks in South Memphis violated the usual pattern. Blacks had a freedom from whites not enjoyed previously by free or slave. The sudden and rapidly continuing increase in black population in 1865 took most Memphians by surprise.<sup>13</sup>

In 1862 blacks represented only 3,882 of a total of 18,659 residents. By 1865 and the end of the Civil War, the official census noted 16,509 blacks and a total population of 27,703. It must have seemed to the white minority that the blacks were going to take over the city. Indeed, rumors circulated in the early spring of 1866 of an impending black take-over. Confrontations between old Memphians and the blacks were a daily occurrence; likewise, records of the Memphis police show that approximately 49% of all those arrested in one ten-week period in 1866 were black.<sup>14</sup>

Tempers reached the explosion point in May 1866, and violence erupted in South Memphis. A seemingly minor incident between white police and an alleged black offender became a riotous, bloody melee. Police arrested a black wanted for a minor crime and began to

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<sup>13</sup>Taylor, The Negro in Tennessee.

<sup>14</sup>U.S. Census Bureau, Census of the Population, 1862 (Washington, DC: United States Government Printing Office, 1863); "Freedmen's Census of Memphis, 1865," Bureau of Refugees, Freedmen, and Abandoned Lands, *supra*.; Memphis Argus, April 24, 1866; Tennessee Prison Records, Military, Criminal, and Circuit Courts, 1831-1922, part of Record Group 25, Archive Manuscripts.

leave black South Memphis. Someone apparently shouted that the arrestee had been shot, and blacks immediately took up arms against the police. It took two days of killing, burning, and looting before the military commander of Fort Pickering, General George Stoneman requested additional federal troops from Nashville and installed martial law in the city of Memphis.<sup>15</sup>

Southern whites, frustrated and angry at both blacks and Yankees, reacted in many ways to regain the superior position they had long enjoyed. Reconstruction destroyed the institution of slavery, but it did not end racism and white supremacy attitudes. The criminal justice system, effectively closed to black participants, was one area that whites utilized to subordinate blacks.

Blacks thronged to cities across Tennessee and the South; Memphis was certainly not unusual in its rapid pattern of racial population change.<sup>16</sup> Black slaves had faced punishment at the hands of their masters for wrongdoings in the past, but few understood the complex

<sup>15</sup>For a complete coverage of the riots, see Jack (D. L.) Holmes, "The Effects of the Memphis Race Riot of 1866," West Tennessee Historical Society Papers 12 (1958), pp. 58-79; Jack (D. L.) Holmes, "The Underlying Causes of the Memphis Riot of 1866," Tennessee Historical Quarterly 17 (1958), pp. 195-221; Jack (James Gilbert) Ryan, "The Memphis Riots of 1866: Terror in a Black Community During Reconstruction," Journal of Negro History 62 (1977), pp. 243-257; Bobby L. Lovett, "Memphis Riots: White Reaction to Blacks in Memphis, May 1865-July 1866," Tennessee Historical Quarterly 38 (Spring 1979), pp. 9-33.

<sup>16</sup>U.S. Census Bureau, Census of the Population.

workings of organized society of the criminal justice system. Charges of larceny, assault, house breaking, rape, manslaughter, and even murder soon were lodged against blacks across the state. Crime as a whole rapidly increased as people stole, robbed, and killed in order to survive. Whites also were sent to the penitentiary in ever escalating numbers in the first year immediately following the war, but the whites received different treatment than the blacks. Having little or no understanding of the legal system, facing all white juries, and generally being guilty of the charges, blacks stood little chance of acquittal or reprieve in the white man's courts. Almost overnight the population of the penitentiary was over 1,000 with about one-third being black.<sup>17</sup>

There were serious problems dealing with both the sudden rise in prison population and its change in racial demography. The state penitentiary was in horrible condition as a result of a lack of maintenance both just before and during the war.<sup>18</sup> A second problem was that there were only 352 cells in the prison. Even allowing for two men per cell, a practice grudgingly begun prior to the war the maximum capacity was 704 men.

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<sup>17</sup>Annual Report, 1866.

<sup>18</sup>"Report of the Special Investigating Committee on the State Penitentiary at Nashville, 1865," House Journal, 1865-1866.



What to do the more than 300 additional convicts was no small matter for the state to consider.<sup>19</sup> The effect of the huge increase in black convicts placed even more strains on the system. Under existing Tennessee laws, blacks were required to be housed and worked separately from whites. Short of a massive capital outlay for repairs and additional buildings at the penitentiary, there was no apparent way to deal with the problem. Tennessee had no money to spend on repairs or construction for those considered the least worthy of its people. Many legislators proposed leasing out the convicts to business and industry as a way to handle the problem.<sup>20</sup>

Authorized by the General Assembly in 1866, convict leasing became a means to accomplish several important post-bellum Tennessee goals. One, it dealt very well with the problem of "free" blacks, returning the white establishment to its assumed superior position. Two, it provided a system of very inexpensive labor (43 cents per day in 1867) to industry and agriculture to replace the slavery system eliminated by the Civil War. Third, it provided relief from onerous expenditures to build and maintain prisons and to support convicts. Fourth, it provided a source of income to a badly-depleted state

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<sup>19</sup>"Report of the Warden," 1865.

<sup>20</sup>House Journal, 1865.

treasury. Fifth, and the means most often overlooked by studies to date, it provided a source of building great personal wealth to a select group of Tennessee businessmen and political leaders.<sup>21</sup>

Blacks and whites under the convict leasing system were little more than chattel slaves, but blacks were singled out for the worst the system could devise. Strong black males were leased to railroad companies and mining companies as a matter of course.<sup>22</sup> The hardest and most dangerous jobs were always assigned to black convicts. Work, under statute to be "by the hour", was by "the task"; failure to produce quotas of coal or whatever job was at hand resulted in whippings, reduced diet, or both. Prison records reveal numerous occasions when convicts under lease to Tennessee Coal, Iron, and Railroad Company were forced to lie on their stomachs in several inches of water to reach the coal face.<sup>23</sup> Failure to mine the required amount of coal resulted in a whipping from "the boss" - generally 10 to 30 lashes applied to the bare back with a leather strap three

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<sup>21</sup>Crowe, "Agitation for Penal Reform"; Justin Fuller, "History of the Tennessee Coal, Iron, and Railroad Company, 1852-1907," Ph.D. dissertation, University of North Carolina, 1966.

<sup>22</sup>Convict Register Books.

<sup>23</sup>Report of the Inspectors of the Tennessee State Penitentiary and Its Branches (Nashville: Time Printing Company, 1881, 1883, and others).

inches wide by thirty inches long. Worked from sun-up to dark, convicts passed by tables in the open yard and picked up what food they could carry in their hands and then went to log dormitories to sleep. Baths, if available at all, were infrequent. Medical attention generally came first in the form of a whipping, then a chance to see a doctor if the whipping did not cure the problem. Accidents and shootings by the guards were daily events.<sup>24</sup>

Death was essentially the only escape from the horrible conditions, and the mortality rate was high. Mancini and others have found the death rate under convict leasing in the South to exceed one-hundred-fifty per thousand (or fifteen percent) per year. A careful study of the records in Tennessee reveals a convict mortality rate in excess of one-hundred-thirty per thousand (or thirteen percent) per year with the overwhelming majority of those dying being black.<sup>25</sup> As one nostalgic old timer said in 1883, "Before the War we owned the Negroes. If a man had a good nigger, he could afford to take care of him ... . But these convicts, we

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<sup>24</sup>Hutson, "The Coal Miners' Insurrections of 1891."

<sup>25</sup>Mancini, "Race, Economics and the Abandonment of Convict Leasing"; Taylor, "Origin and Development of the Convict Lease System in Georgia"; Ward and Rogers, Convicts, Coal, and the Banner Mine Tragedy; Annual Reports, 1867-1896.

don't own 'em. One dies, get another."<sup>26</sup> The annual mortality rate in Northern prisons by comparison averaged about 1.4 percent in the period.<sup>27</sup>

The end of convict leasing came to Tennessee with laws enacted in 1893 ending the lease system on 1 January 1896. The end followed several years of violence by free miners in the coal regions of East Tennessee, but the system ended because of changing economics and not public outrage at the brutality of the system. The cost of keeping the Tennessee militia in the field to enforce the convict leasing system exceeded the revenue received from the leases.<sup>28</sup>

For the blacks in Tennessee prisons, however, it would have been very difficult if not impossible to tell that the system had changed at all. Chapter V covers the acquisition of coal mining lands by the state and the building of Brushy Mountain State Penitentiary in great detail. Suffice it to say here that more than ninety percent of the Brushy Mountain convicts were black -- performing exactly the same work, wearing exactly the same clothes, and eating the same quality

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<sup>26</sup>Quoted in Hart, Hastings H., "Prison Conditions in the South," Proceedings of the American Prison Association, 1919, p. 200.

<sup>27</sup>Blake McKelvey, American Prisons (Chicago: University of Chicago Press, 1936), p. 183.

<sup>28</sup>"Report of the Governor to the General Assembly on the Coal Miners' Insurrection," House Journal, 1892; "Special Report of the Commissioner of Labor to the Tennessee General Assembly", House Journal, 1891.

and quantity of food as they had for the last two decades of the convict lease period. Table 8.3 contains statistics of the prison population during the early twentieth century.

YEAR	TOTAL	W/M	B/M	W/F	B/F
1898	1525	400	1066	8	51
1904	1680	523	1100	3	54
1916	1989	747	1195	8	39
1924	1733	734	926	12	61
1930	2811	1416	1301	24	70
1936	3242	1301	1846	17	78

TABLE 8.3. Population and racial composition of the Tennessee State Penitentiary, 1898-1936.<sup>29</sup>

Strong black males received at the Main Prison in Nashville were immediately "transferred to Mines."<sup>30</sup> Accidents and whippings occurred on a regular basis, and there were only two ways to escape: death by whatever means with tuberculosis being extremely high on the list

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<sup>29</sup>Convict Register Books; Biennial Reports for the years involved.

<sup>30</sup>Convict Grade Books, 1888-1923.

of causes or fulfillment of the maximum sentence. The death rate was so high at Brushy Mountain in the early decades that the records do not reveal one convict that had been in prison for ten continuous years, even though approximately twenty percent of the prison's convicts had life sentences.<sup>31</sup>

At the Tennessee State Penitentiary in Nashville, the situation for blacks was not much better. Assigned to the dirtiest and least desirable jobs and whipped unmercifully for even minor infractions of the rules, black convicts stayed to themselves almost without fail. Any black that strayed from his "proper place", received almost instantaneous violent retaliation for his error. According to the records, blacks were punished for being "short of work" approximately three times as often as whites, and the punishment of blacks was almost always more severe.<sup>32</sup>

Passage of the Hawes-Cooper Act in 1934 (see Chapter VI) did little to improve the lot of Tennessee's black convicts. While coal could no longer be sold on the open market, Tennessee law required all state institutions to "buy" Brushy Mountain coal at the prevailing

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<sup>31</sup>Ibid.

<sup>32</sup>Ibid.; Annual Reports, 1893-1931.

market rate.<sup>33</sup> Attempts were made to force county governments to use the coal, but the efforts were less than totally successful.<sup>34</sup> Black convicts continued to be sent to the Brushy Mountain Mines while their white counterparts in Nashville were either working in relatively clean and safe industries, such as soap-making and the garment factory, or were idle. Mining accidents including several explosions killed approximately 400 convicts between 1896 and 1932. Tuberculosis continued to be a major killer of the miners and of blacks since most miners were of that race. When deaths from tuberculosis are included, the Brushy Mountain Penitentiary mortality rate was almost as high as the death rate in the leasing era.<sup>35</sup>

Violence among the convicts exacted a heavy price in lives as well. As overcrowding continued throughout the first thirty years of the twentieth century at both Nashville and Brushy Mountain, the convict homicide rate climbed as well. Even though segregated in both housing and work assignments, blacks and whites managed to

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<sup>33</sup>The word "buy" is set off in quotation marks since there was no real exchange of money, merely paper transfers of budgetary lines.

<sup>34</sup>See Correspondence File, Record Group 25, Archive Manuscripts, for a fiery exchange of letters between the Brushy Mountain superintendent and various county officials.

<sup>35</sup>Acts of Tennessee, ch. 142, p. 861, 1935; House Journal, 1935-1936; Annual Reports, 1896-1932.

engage the other race often enough for old and new hatreds to surface. Most killings in Tennessee prisons in the 1896-1930 period were white on black or black on white. Many of the murders were racially motivated, but there were numerous others motivated by "turf" disputes and homosexual activity. By the late 1930s, officials blamed about half of the convict/convict killings on homosexual disputes.<sup>36</sup>

Violence by the state was skewed against blacks as well. The reinstatement of the death penalty in 1870 appears, in retrospect, to have been designed primarily for the black race. On the 106 men hanged between 1870 and 1913, seventy-one were black.<sup>37</sup> These numbers do not include approximately 100 black men in the same period that were lynched prior to trial or conviction.<sup>38</sup> Fifty-eight men were executed in the electric chair by the State of Tennessee in the period between 1913-1938. Of that number, forty-nine or seventy-two percent (72%) were blacks. Of the eighteen men executed during the period for rape, only one was white, and he was from

<sup>36</sup>Annual Reports, 1896-1932; "Report on the Prison Escape from Nashville," House Journal, 1934; Banner, 12 September 1939. Many illicit activities were operated behind the walls of the penitentiaries, and "turf" fights were those that erupted when some convict tried to move into another's established enterprise.

<sup>37</sup>Convict Register Books.

<sup>38</sup>These statistics are derived from the files of the Nashville Banner newspaper for the forty-three years covered.



Nashville, the most cosmopolitan city in the state. Table 8.4 outlines the executions by race, crime, and region of the state where the crime was committed. The numbers for the Middle Region of Tennessee do not appear to balance, but one execution is not reported in the table. A black man was executed for the crime of "assault with intent to ravish" a white woman from the middle region of Tennessee, the only person in Tennessee's history to be so punished.<sup>39</sup>

	EAST		MIDDLE		WEST	
	Rape	Murder	Rape	Murder	Rape	Murder
Black	3	12	7	7	7	12
White	0	14	1	3	0	1
Black	15		15		19	
White	14		4		1	

TABLE 8.4. Executions in Tennessee, 1913-1938, by crime, race, and region of the state.<sup>40</sup>

The construction of Fort Pillow State Prison and Farm (see Chapter VII) was intended to relieve the

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<sup>39</sup>Biennial Report, 1937.

<sup>40</sup>Biennial Report, 1913-1938.

overcrowding at the Tennessee State Penitentiary in Nashville and at Brushy Mountain State Penitentiary. It also was designed to permit the separation of youthful first-offenders from more hardened convicts. Unfortunately, Fort Pillow accomplished neither goal: it was soon overcrowded just like the other prisons, and recidivists and hardened criminals comprised a majority of the convict population.<sup>41</sup>

Some young blacks fared better at Fort Pillow than those at Brushy Mountain. Field work such as chopping or picking cotton was not easy, and it was always hot in the West Tennessee fields. The work was not dangerous, however, and there was plenty of fresh air and sunshine. Jobs in the building such as clerks and janitors were filled almost exclusively by white convicts, but there was always a "line" of white field workers as well.<sup>42</sup> Racial segregation continued at Fort Pillow, and numerous racial conflicts resulted in deaths among both whites and blacks. Homosexual activity also claimed a number of murder victims at Fort Pillow in the early years.<sup>43</sup>

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<sup>41</sup>Larry D. Gossett, "History of Tennessee's Fort Pillow State Prison, 1937-1987," M.A. thesis, Louisiana State University, 1988.

<sup>42</sup>Official prison nomenclature in Tennessee and other Southern states refers to agricultural workers as "lines:" black hoe line, white brush line, etc.

<sup>43</sup>Annual Reports, 1937-1951.

The situation for blacks did not improve over time either. The first black guards were not hired by the Tennessee prisons until after 1970, and segregation, though legislatively outlawed in the 1960s, continued in full bloom until the mid-1980s. Racial violence continued throughout the years as did brutality from the all-white guard force, many of whom still viewed the black convicts as different and inferior from the whites. The Tennessee prison system during the first one-hundred years was a mirror of society. Until 1865 very few blacks were included in either free society or in prison. Following the war, free blacks were a major portion of almost every urban society and were likewise a major part of the prison population. Discriminated against in society by Jim Crow tactics and the "separate but equal" doctrine of Plessy v Ferguson, blacks in prison received very similar uneven treatment and opportunity.<sup>44</sup>

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<sup>44</sup>Interview with Warden Billy M. McWherter, Lake County Regional Prison, Tiptonville, Tennessee, 12 August 1988; Plessy v Ferguson, 163 United States Reports 537, United States Supreme Court, 1896.

## Chapter IX

### **Women and Children in Prison**

The warden of the Tennessee State Penitentiary in Nashville stated in 1857 that no woman should be sentenced to his prison until the state was willing to properly provide for her care. He further said that he would pardon every woman already incarcerated in the Nashville penitentiary if he only had the power. He had asked the two previous terms of the General Assembly to build a separate women's prison and for the power to hire women matrons for the female convicts, but his requests went unheeded.<sup>1</sup>

Few women have ever been incarcerated in Southern prisons although the current equal rights trends seem to be changing that pattern to some degree. The highly protective and paternalistic, but chauvinistic, Southern attitude toward women in the antebellum period kept most female criminals at home and out of prison.<sup>2</sup> The Tennessee penitentiary received its first female convict in 1840, nine years after the prison first opened. In the first thirty-five years, a total of thirty-three women were incarcerated and all but three of these women were white. For the most part, these women were

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<sup>1</sup>"Report of the Warden," 1853, 1855, 1857.

<sup>2</sup>See Estelle B. Freedman, Their Sisters' Keepers: Women's Prison Reform in America, 1830-1930 (Ann Arbor: University of Michigan Press, 1981).

convicted of serious violent crimes -- manslaughter, attempted murder, and murder -- and were sentenced to terms of confinement normally ranging from two years to life.<sup>3</sup> One of the women, a black slave named Clarissa, was the subject of a private act of the General Assembly of 1852 thus confirming that on occasion slaves did face punishment from the criminal justice system. The primary reason for this slave woman's incarceration may well have been the fact that she was convicted of murder in the first degree. "Clarissa, negro slave," as indicated in the convict record books, served only six years of her life sentence prior to the intervention of the legislature demanding her release.<sup>4</sup>

The warden's concern about women convicts in 1857 was certainly justified. Female convicts were kept in cells located above the administration offices in the Tennessee State Penitentiary in Nashville. These cells had initially been designed as temporary holding cells for new convicts coming into the penitentiary and were smaller than the regular housing cells used for men. There were no female guards or matrons, and the females

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<sup>3</sup>Convict Register Books.

<sup>4</sup>The private act ordered the penitentiary warden to release the prisoner to her owner, Captain William Darwin of Franklin County. "An Act of February 2, 1852," Acts of Tennessee, General Assembly Joint Resolution 12, p. 727, 1852; Convict Register Books.

were at the mercy of the male guards for everything they needed.<sup>5</sup>

The females were subjected to the same basic rules as the males: congregate work six days a week, total silence at all times, no visits even from family members or children, and extremely limited correspondence. Punishment for infractions of the various rules was no different for the women than the men: restricted diet, isolation in a "dark" cell -- a tiny solid iron cell with no light at all -- and lashes from the guards. Silence was not necessarily maintained among the women prisoners as strictly as among the men. Women convicts were left alone for long periods of time, bordering on neglect according to Rafter, and there would have been no way to enforce the rule.<sup>6</sup> There is some evidence that male guards forced the female convicts into sexual relations in return for reduced punishment or other favors.<sup>7</sup>

Female convicts were issued coarse cotton undergarments and plain blue denim dresses with vertical

<sup>5</sup>"Report of the Warden," 1855. Nicole Rafter reports a different opinion about the early housing situation for women in Tennessee in her book, Partial Justice: Women, Prisons, and Social Control (New Brunswick, NJ: Transaction Publishers, 1990), but the differences are minor and appear to be based on different source materials.

<sup>6</sup>Ibid.

<sup>7</sup>Annual Report, 1846, 1855; "Report of the Warden," 1855.

stripes. They were allowed no items of make-up or personal clothing whatsoever. Personal hygiene was difficult to maintain as there were no plumbing facilities on the upper level of the administration building. Women had to depend on the willingness of the guards to haul water upstairs for baths; the records indicate that the guards were not willing on most occasions.<sup>8</sup> When baths were made available, the women knew that the male guards were standing by, observing everything that happened. It must have been both frustrating and extremely humiliating for the women convicts of the period to perform all their personal hygiene requirements under the eyes of the all-male guard force.

As noted previously, women were housed and worked separately from the men, but that did not prevent frequent interchanges between the sexes. The male convicts were marched right alongside the administration building on the way to and from the workshops each day. The female convicts often stood at the windows and yelled down to the men. The convict records indicate that many men were given severe beatings for the guards for the offense of "flirting with convict women." Female convicts were also given lashes on occasion for flirting or "writing to convict men."<sup>9</sup>

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<sup>8</sup>"Report of the Warden," 1855.

<sup>9</sup>Convict Register Books.

Work for the female convicts was in the form of sewing brought to the second-floor living quarters of the women. In this regard, the women were treated differently from their male counterparts: they did not get to leave the tiny cells even during work hours. Because it was not convenient for the physician and the chaplain to visit the women's section, the females were necessarily deprived of reasonable access to the services of these professionals.<sup>10</sup>

By order of the General Assembly, Pricilla [sic] Childress, convicted in Giles County in 1843, was allowed to bring her infant with her into the penitentiary.<sup>11</sup> Bridget Tienoay, convicted in 1861 for larceny from Davidson County, was released some ten months after her incarceration "on act of being pregnant." This pregnancy obviously began after Bridget's incarceration, but there is no record of an investigation into the paternity of the impending child.<sup>12</sup>

Following the Civil War, females of both the white and black races began appearing on the records of the Tennessee State Penitentiary with much greater

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<sup>10</sup>"Report of the Warden," 1852, 1855. A comparison of the recorded visits by each officer to the men's housing and women's housing units leads to the conclusion drawn.

<sup>11</sup>Private Acts of Tennessee, House Resolution 16, p. 294, 1843-1844.

<sup>12</sup>Convict Register Books.



frequency. The increase paralleled the increase in black males in the prison population and was not unique to Tennessee but rather occurred in every Southern prison.<sup>13</sup>

Records of individual convicts during the convict leasing period are both scarce and extremely fragmented. Official reports detail the numbers of males and females of each race, but even the cursory biographical information of the convict register books is unavailable for most of this period. Records do show, however, that Betty Scott and Florence Washington both worked under convict lease in the Sewanee Coal Mines in 1874. The same year saw Mary Sanders and Mary Duckett serving sentences for larceny in the Vulcan Coal Mines. The Battle Creek Iron Mines were "prison" in 1875 for Kate Harris and Mary Waethall, and Sarah Ellis and Maggie Marshall were leased the same year to the Cumberland and Ohio Railroad. Minnie Simmons and Isabella Walker worked alongside male convicts on the Paducah Railroad during 1880.<sup>14</sup>

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<sup>13</sup>See Carleton, Politics and Punishment: The History of the Louisiana Penal System; Keve, The History of Corrections in Virginia; Walker, Penology for Profit.

<sup>14</sup>Scott's sentence was for murder and Washington's was for larceny, Ellis was convicted of assault with intent to rob, Marshall and Simmons were serving sentences for larceny, and Walker was sentenced for attempted murder, Convict Register Books.

These examples along with the few other concrete records of women convicts leased out along with male convicts to private concerns clearly shows little concern by the state for the welfare of the female convicts. In each of the five instances cited, two females were alone with a minimum of ninety-eight males (Vulcan Coal Mines) to a maximum of two hundred males (Cumberland and Ohio Railroad) plus an all-male guard force.<sup>15</sup> Only the most naive among the populace would assume that these females were treated with respect and propriety.

An uproar over conditions in the convict lease camps in the late 1870s caused the General Assembly to forbid the working of female convicts outside the penitentiary.<sup>16</sup> At about the same time there was a rapid growth in the female convict population. The exclusion of the women from leasing and the surge in the number of women in the Nashville prison led to the first efforts to truly separate women from the men in the prison. The old penitentiary was used during the convict lease period to house only those convicts too old, too physically broken-down, or too sick to work in the mines or on the railroads,<sup>17</sup> so there was ample room to

<sup>15</sup>"Report of the Inspectors," 1875, 1876, 1881.

<sup>16</sup>Acts of Tennessee, Joint Resolution, p. 281, 1881.

<sup>17</sup>"Report of the Warden," various years, 1865-1890.

house the women in a separate wing of the prison. In 1892 one wing of cells was officially declared to be the "female department."<sup>18</sup>

The exercise in sex segregation failed totally, however, within the first six months. The coal miners' uprisings in East Tennessee sent hundreds of male convict coal miners back to the Nashville penitentiary crowding the women prisoners into a total of fifteen cells directly adjacent to the men with all the old problems of male guards and lack privacy complicated by the proximity of the male convicts. There were forty-five females to occupy the fifteen cells in 1893,<sup>19</sup> and there were no work programs, education programs, or other activities to occupy the time of the women. There was not even a yard or grounds where they might exercise or get fresh air.<sup>20</sup> Idleness bred trouble, and at least seventeen female convicts successfully escaped from the prison between 1894-1896.<sup>21</sup> To relieve some of the problems, a few women were sent outside the prison to work in apparent violation of the legislative act of 1881. This practice was obviously abused as the General Assembly enacted a law making it a misdemeanor for any

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<sup>18</sup>Annual Report, 1892.

<sup>19</sup>Ibid., 1894.

<sup>20</sup>"Report of the Chaplain," 1894.

<sup>21</sup>Annual Reports, 1894-1896.

prison official to hire out female convicts for any reason. The committee report on the bill suggests that some of the female convicts had been forced into prostitution, but there is no "official" record of such.<sup>22</sup>

The most glaring problem for the Female Department, however, was the lack of a matron to work with the women convicts. In 1893 the General Assembly created the position of "matron for the female department"<sup>23</sup> but steadfastly refused to appropriate funds to employ anyone. The situation was not remedied until 1897.<sup>24</sup>

Following the convict coal mining wars of the early 1890s and a general change of the economics behind convict leasing, the General Assembly approved construction of a new penitentiary in Nashville as well as a branch prison in the East Tennessee coal fields. For the first time ever in Tennessee, women convicts had their own separate facility. The Women's Building was located behind the walls of the new penitentiary in Nashville and, while separate, was totally dependent on the male institution for its survival.<sup>25</sup>

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<sup>22</sup>House Journal, 1897.

<sup>23</sup>Acts of Tennessee, Ch. 78, p. 97, 1893.

<sup>24</sup>Ibid., Ch. 125, Sec. 3, p. 290, 1897.

<sup>25</sup>Original Plan of Construction for the Tennessee State Penitentiary, 1896, Record Group 25, Archive Manuscripts.

Built in the northwest corner of the prison grounds as far from the men's cellblocks as possible and surrounded by "a strong wood fence," the building contained no bathing or medical facilities and it had no kitchen of its own.<sup>26</sup> Food for the female prisoners had to be carried over 400 yards of open ground in all kinds of weather and was generally neither hot nor in good condition when it was served.<sup>27</sup> The building did contain the laundry facilities for the entire penitentiary and provided a source of employment for some of the women.<sup>28</sup>

At long last the General Assembly declared,

... there shall be a matron for the main prison, whose duty it shall be to look after the morals, good conduct, moral and religious training of the female convicts ...<sup>29</sup>

The matron's salary was set by the same law at \$300 per year, exactly one-fourth of the warden's salary and even less than the \$400 per paid to the male guards. The first matron, Mrs. Jennie Campbell, was appointed in 1898 and she moved into her personal quarters within the Women's Building.<sup>30</sup>

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<sup>26</sup>See requests of the warden for funds to correct the problems, "Report of the Warden," 1900.

<sup>27</sup>"Report of the Physician," 1900.

<sup>28</sup>Annual Report, 1898.

<sup>29</sup>Acts of Tennessee, Chapter 125, Section 3, p. 290, 1897.

Mrs. Campbell was described by the warden -- the matron was subordinate to the warden and was not even considered a prison official by the prison commissioners -- as an "elderly lady and well suited to the very important position she occupies." Mrs. Betty Rozell became the matron in 1912, and Mrs. Lit [sic] Malone, "an experienced teacher," was named to the position in 1922. The matron was not required to file a written report with the warden as were the chief clerk, the chaplain and the physician. The only information available on the various matrons must be gleaned from the warden's reports to the Board of Prison Commissioners or other supervisory body. No mention is made by the various wardens as to the reasons for the changes in the matrons.<sup>31</sup>

Although work was available for some of the women in the prison laundry, idleness was a characteristic of the Women's Building through the 1930s. The new female department was built without individual cells and housed "several convicts" -- generally three or four -- in a number of large cells.<sup>32</sup> Obviously, this type of cell was cheaper to build, but the design created many problems for the prison administration. Fights among the women confined together were harder to control as there

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<sup>30</sup>Ibid.; Annual Report, 1908.

<sup>31</sup>Annual Report, 1908, 1912, 1922.

<sup>32</sup>Biennial Report, 1897-1898.

were no female guards, and the male guards were forbidden to enter the Women's Building. Escapes were so frequent from the new building that the women were moved back into the men's penitentiary on a number of occasions between 1898-1901.<sup>33</sup>

Some very limited rehabilitation programs became available to the female convicts after 1898. Church services were held by the chaplain each Sunday morning in the chapel, followed by Sunday School taught in the Women's Building by either the matron or church women from Nashville. One or two nights a week, the matron would hold classes for the illiterate among the female convicts.<sup>34</sup> The prison library contained about 200 volumes and, though they were described as old and ragged, they provided some measure of release from the idleness.<sup>35</sup> One interesting fact is revealed in a report by the chaplain on the order of the Sunday service.

... The female prisoners ... enter the chapel first and are seated in the gallery. The white males next enter and occupy seats on the left

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<sup>33</sup>Ibid.; Convict Grade Books.

<sup>34</sup>"Report of the Warden," 1900.

<sup>35</sup>"Report of the Chaplain," 1901-1902.

from the pulpit. These are followed by the colored males, who are seated on the right.<sup>36</sup>

There was strict, official segregation of the races at all times in Tennessee prisons except apparently during Sunday church services when black and white females were seated together. To the best of the author's ability to so determine, this was the first recorded instance of racial integration ever in the State of Tennessee.

The state prison in Nashville returned to a contract labor system following the end of convict leasing in 1896. Some females along with "lame, young and weaker" males worked in the prison hosiery mills from 1898-1930.<sup>37</sup>

Tennessee's female convicts continued to live in the Women's Building until the construction of a new Women's Prison in 1930.<sup>38</sup> Overcrowded, unsanitary, and certainly unsafe as convict records reveal numerous assaults and even a few homicides among the women convicts,<sup>39</sup> there was little effort expended by Tennessee officials on the reform movement that swept the

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<sup>36</sup>"Reports of the Prison Officials of the Penitentiary of Tennessee to the Board of Prison Commissioners, 1903-1904."

<sup>37</sup>Annual Reports, various years, 1898-1930. The first labor contractor for the hosiery mills was Lakeshore Hosiery Company from Laconia, New Hampshire. Other companies replaced Lakeshore after 1920.

<sup>38</sup>Annual Reports, 1898-1930.

<sup>39</sup>Convict Grade Books.



nation in the latter nineteenth and early twentieth centuries.<sup>40</sup> The reasons for Tennessee's apparent unconcern was multi-faceted. One solid reason was simple economics. Building large cells in a separate building behind the walls of the maximum security Main Prison was an economy move, and Tennessee has never been willing to spend very much on its convicts, male or female.<sup>41</sup> A second reason for the lack of interest was that the majority of female convicts were black and highly unlikely to arouse much sympathy from the citizens of this Southern state.<sup>42</sup> A third, and quite likely the most important reason for the apathy, was that Tennessee never developed a strong group of middle-to-upper class women determined to reform social services in the state.<sup>43</sup> This reform-minded core group appears to have been an essential party in every state where major social reforms occurred. There were a few women from Nashville who regularly visited the prison,

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<sup>40</sup>See Freedman, Their Sisters' Keepers; Rafter, Partial Justice; and Eugenia Cornelia Lekkerkerker, Reformatories for Women in the United States (Batavia, Holland: Bij J. B. Wolters' Uitgevers-Maatschappij, 1931) for a full discussion of the women's reformatory movement in the United States.

<sup>41</sup>Table 7.1 in Chapter VII herein compares the state's spending on convicts with similar spending in several other states.

<sup>42</sup>Convict Grade Books.

<sup>43</sup>Rafter, Partial Justice.

but their interest was almost solely of a religious nature and not reform.<sup>44</sup>

The new Women's Prison built in 1930 contained none of the reformatory features common throughout the Northern and Eastern United States: no rooms or cottages, no yards or gardens, no home-like or feminine atmosphere.<sup>45</sup> The Tennessee Women's Prison of 1930 was a four-story, maximum security, cell-block type prison. There were bars on the windows and wide corridors separating the windows and the cells. There was no exercise yard or grounds to break the monotony of steel and concrete walls. It was still located on the property of the Main Prison but was about a mile and one-half from the men's penitentiary proper. It was fully self-contained, but the services available to women were considerably fewer than those to men.<sup>46</sup>

There were no teachers, no resident medical staff - females had to be transported to the Main Prison to see a doctor - even the matron was treated like a female guard under the direction and supervision of the Main Prison warden. Jobs in the hosiery mill and prison laundry were lost in the relocation, and idleness

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<sup>44</sup>"Report of the Chaplain," various years, 1900-1936.

<sup>45</sup>See Lekkerkerker, Reformatories for Women, for a discussion of architectural features under reform legislation.

<sup>46</sup>Annual Report, 1930.

returned to a large degree for the female convicts. Segregation was one of the worst ills of the new prison. Divided into two wings of equal capacity, the "Negro wing" was overcrowded almost continuously while the white wing was almost never even filled to its capacity.<sup>47</sup>

Throughout the first one hundred years of Tennessee prison history, women convicts suffered much worse for their crimes than did the men convicts. Physically separated only after a century of abuse, women continued to receive fewer opportunities to work, to get an education, to receive medical attention or counseling, and to receive care significantly different from the male majority. The almost total indifference to the needs of its women convicts was also reflected in Tennessee's treatment of its youngest criminals.

As early as 1840 the warden of the state penitentiary in Nashville called for the separation of children from the older, hardened elements of the prison population.<sup>48</sup> But like the pleas of his successors for a women's prison, the General Assembly responded with an alarming lack of concern until well into the twentieth century.

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<sup>47</sup>Ibid., various years, 1930-1950.

<sup>48</sup>"Report of the Warden," 1841.

Only a few white boys were incarcerated in Tennessee prior to the Civil War, but those who came to prison received long sentences and no special treatment due to their ages. The records reveal an eight year old white boy sentenced in 1846 to life in prison for the murder of his four-year old sister. Both children were orphaned in a fire and were shunted from one unconcerned relative to another. The little girl was injured in a fall precipitated by her older brother, and she died two days later. One finds it hard to equate the act with first-degree murder of which he was convicted. He was given five lashes on the bare back for being "short of work" on 12 July 1847. He worked in the harness shop and obviously failed to meet a daily quota. The youngster received a pardon from Governor William Trousdale when he was eleven years of age.<sup>49</sup> A careful review of available records indicate that he was the youngest convict to ever be sentenced to an adult penitentiary in Tennessee, but he was not singularly unique.<sup>50</sup>

Numerous convicts aged twelve to sixteen spent hard years alongside much older, more experienced criminals. Wardens of the period expressed concerns that these errants might learn even more criminal skills by close association with the general prison population. The

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<sup>49</sup>Convict Register Books.

<sup>50</sup>Ibid., 1865-1896; Convict Grade Books, 1888-1936.

warden in 1857 stated that, as much as possible, he kept young prisoners to themselves on the second level of cells and away from the prison toughs. He reported that overcrowding, however, defeated even his cursory attempts at age segregation.<sup>51</sup>

Following the Civil War young blacks - just the same as their adult counterparts - started appearing on the prison rolls with increasing frequency. Whereas the young white convicts of the antebellum period were almost always convicted of violent crimes such as murder, rape, or manslaughter, the post-bellum period saw young black criminals in prison for a broad litany of crimes. One thirteen year old black boy received two years in the coal mines for "stealing chickens" in 1881. Another thirteen year old black boy served a three year sentence during 1884-1887 for "picking pockets." A fourteen year old black male was "shot [and killed] while escaping" in 1889; his crime and sentence are unknown.<sup>52</sup>

Prior to the convict leasing era, young convicts were classified as "half hands" or "dead hands" depending on age and physical condition. These designations allowed labor contractors to pay less than a full day's pay to the state for their labor. Under the leasing

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<sup>51</sup>"Report of the Warden," 1857.

<sup>52</sup>Convict Register Books.

system, however, while these terms continued to be used, young black males were classified as "full hands" and required payment of full wages to the state.<sup>53</sup> The financial inducements of providing a cheap, readily available source of labor to Tennessee industry obviously did little to encourage the courts to deal differently with its youngest criminals. As one commentator looked back on the period from the 1930s, he declared,

... Just as great railway, oil and telegraph companies in the North have been capable of controlling legislation, so the corporations of the South which take the prisoners of the State off the hands of the government, and then speculate upon the labor of the prisoners, are able to control both court and jury. It has been the practice, and is now, in some of the Southern states, to pronounce long sentences upon able-bodied young colored men, whose offenses, in a Northern court, could not be visited with more than a few months' confinement and a trifling fine. The object in giving Negro men a long term of years is to make sure the tenure of the soulless corporations upon the convicts whose unhappy lot it is to fall into their own grasp. In some of the Southern states a strong and healthy Negro convict brings thirty-seven cents a day to the State, while he earns a dollar for the corporations ...<sup>54</sup>

The exact numbers of young convicts under the lease system in Tennessee is unknown because of fragmentary

<sup>53</sup>Annual Reports, 1866-1893.

<sup>54</sup>Quoted in Taylor, The Negro in Tennessee, p. 43.

records, but there is evidence that they frequently comprised large portions of the convict lease population. Records indicate that approximately forty percent of the population at the Nashville penitentiary in 1881 was under twenty-one years of age. A report from the chaplain in 1886 stated that "more than one-fourth of the prison population" was under twenty-one with the youngest convict aged twelve years.<sup>55</sup>

A return to state control of its convicts in the 1890s signalled a return to much better convict records and official reports from penitentiary officers. According to these records, the prison population under twenty-one years old between 1896-1930 averaged about one-third of the total. Racial statistics indicated between seventy-nine percent (1902-1904) and eighty-three percent (1910) were black.<sup>56</sup> Concentration of young blacks in prison continued even after laws were passed in 1910 that supposedly prohibited the sentencing of young offenders to adult prisons.<sup>57</sup>

Convict records for 1899 revealed a thirteen year old black male sentenced to two years for "stealing

<sup>55</sup>George Cable, The Silent South (Montclair, NJ: Patterson Smith, 1969), p. 133; Corlew, Tennessee: A Short History, p. 404; "Report of the Chaplain," 1886.

<sup>56</sup>Annual Reports, 1902-1904, 1910, et al.

<sup>57</sup>Randall G. Sheldon, "Rescued from Evil: Origins of the Juvenile Justice System in Memphis, Tennessee, 1900-1917," Ph.D. dissertation, Southern Illinois University at Carbondale, 1976.

chickens" from Tipton County in West Tennessee near Memphis. In the twenty months that he served, he received a total of at least 239 lashes from "Black Mollie," the convict name for the three-inch wide leather strap used for whippings. The boy's most serious offense during the period was being "short of work," but he received lashes on eight other occasions for "flirting with convict women" and "writing to convict women." He received ten lashes for "being out of place," ten more for "disrespect to an officer," and fifteen lashes for being in another convict's cell.<sup>58</sup> Many other young convicts received whippings for seemingly minor infractions of the rules, but no other young convict was whipped either so often or so severely.

In 1911 the Tennessee General Assembly enacted a law prohibiting the incarceration of juveniles, by statute anyone under the age of eighteen, in adult penal institutions. Further it authorized the construction of reformatory-type institutions to house and educate the juveniles.<sup>59</sup>

As a result of this legislative action, Tennessee Industrial School (now called Spencer Youth Center) was built to house white boys. The Tennessee State Training

<sup>58</sup>Convict Grade Book 1, no. 399.

<sup>59</sup>Acts of Tennessee, Juvenile Court Act, Ch. 58, pp. 111-123, 1911.



and Agricultural School for Colored Boys (now called Taft Youth Center) was also completed. The latter institution, opened originally in 1917 in Pikeville, Bledsoe County, has a somewhat clouded history of its own that deserves further study.<sup>60</sup>

The Pikeville area of upper East Tennessee became a center for timber and mining concerns early in the twentieth century. Acknowledgement of a need for labor in area was made in the language of the bill that created the training school for colored boys.<sup>61</sup> Throughout the 1920s and 1930s there were no education programs, no counseling, and no access to any rehabilitative or "reformatory" programs.<sup>62</sup> The boys worked ten hours a day, six days a week, at jobs on the farm, the dairy, in mines, or in the lumber camps. For the unfortunate black youths sentenced to Pikeville, according to one study, the convict leasing period had not ended. Success was measured by production as "students" were assigned to "monotonous, uninteresting and noneducative [*sic*] jobs in order to reach the expected production goal."<sup>63</sup>

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<sup>60</sup>Annual Reports, 1910-1920.

<sup>61</sup>Acts of Tennessee, Ch. 126, pp. 387-388, 1917.

<sup>62</sup>Annual Reports, 1917-1936.

<sup>63</sup>John C. Hardy, "A Comparative Study of Institutions for Negro Juvenile Delinquents in Southern States," Ph.D. dissertation, University of Wisconsin, 1947, pp. 321-324.

Neighbors around the Pikeville institution, an area that was and is today almost exclusively inhabited by whites, enjoyed a profitable sideline business of returning young escapees to the prison. With area farmers being paid \$10 cash and a sack of groceries for each escapee returned dead or alive, the chance of escape for the young blacks was nil.<sup>64</sup> Conditions such as this continued until the institution was integrated during the Civil Rights Era of the 1960s.<sup>65</sup> Some progress has been made, but a complete study of the juvenile institutions of Tennessee is sorely needed.

Two institutions for delinquent girls were opened near the town of Tullahoma. The Highland Rim School for Girls opened in 1918 for whites only, and its counterpart, the Tullahoma State Training School for Colored Girls, opened in 1921. These schools remained essentially as constructed until the early 1980s when the residents were transferred to institutions in Nashville, and the schools were closed. Highland Rim School reopened in 1983 as the Tennessee Correctional Institute, a training school for prison guards.<sup>66</sup>

With the enactment of juvenile reform legislation in the state in 1910, it might be expected that young

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<sup>64</sup>Memphis Press Scimitar, 17 May 1935.

<sup>65</sup>Annual Report, 1967.

<sup>66</sup>Ibid., 1920-1986.

criminals would no longer be found in the state's penitentiaries. The facts, however, are quite different. Prosecutors found a simple way to avoid the intent of the new laws - first having young offenders adjudged as adults and then taking them to trial where any conviction meant a sentence to the penitentiary.<sup>67</sup> Convict records reveal that about thirteen percent of the total penitentiary population in 1925 was under eighteen.<sup>68</sup>

Black youths continued to be convicted prison terms while more frequently young white criminals would receive sentences to reform school.<sup>69</sup> Two major differences existed in the adjudication process. Juvenile offenses were greatly expanded to cover behavior not addressed by criminal laws: truancy, incorrigibility, home runaways, and juvenile delinquency.<sup>70</sup> These "status" offenses<sup>71</sup> were applied most frequently to youth from working class backgrounds and to those who were very poor. About eighty percent of all juvenile

<sup>67</sup>Douglas Rendleman, "Parens Patriae: From Chancery to Juvenile Court," in Frederick Faust and Paul Brantingham, eds., Juvenile Justice Philosophy (St Paul, Minnesota: West Publishing Company, 1974).

<sup>68</sup>Convict Grade Books, 1910-1930.

<sup>69</sup>Ibid.

<sup>70</sup>Public Acts of Tennessee, Ch. 41, pp. 90-91, 1917.

<sup>71</sup>Status offenses are those arising out of age, sex, or mental incapacity that represent a condition or legal position because of age or attitude and are not the result of criminal charges.

commitments were for status offenses. Secondly, reform school sentences were indeterminate - the officials could legally detain the offender until the age of twenty-one was reached whereas sentences to prison carried a specific term of years or life imprisonment.<sup>72</sup> Many young blacks were likely in prison, out, and back in again while their white counterparts remained in reform school.<sup>73</sup>

Separation of youthful convicts from the older, more hardened population continued to concern prison officials throughout the 1930s. Fort Pillow State Prison was built in 1937 as an honor farm for youthful, first offenders.<sup>74</sup> Even so, the legislation of 1910 notwithstanding, many Tennessee children continued to be incarcerated in adult penal institutions. Many young people in Tennessee were orphaned or otherwise thrust into a labor force that had no way to accommodate them. Forced to earn a way to survive, many turned to illegal enterprises. Society's demand for order instituted a means of social control to handle these troublesome youths. Unfortunately, the demand for order had

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<sup>72</sup>See Virginia Ashcraft, Public Care: A History of Public Welfare Legislation in Tennessee (Knoxville: University of Tennessee Press, 1947), for a more complete overview of the juvenile reform legislation.

<sup>73</sup>Convict Grade Books. One can only make a supposition in this regard as the juvenile records on specific offenders are extremely difficult to obtain.

<sup>74</sup>See Chapter VII herein for more on Fort Pillow.

horrible consequences in many instances as the institutionalization of problem children merely led to a need to later incarcerate problem adults. The prison sentences of many juveniles served as training schools for lives of more advanced crime. In these instances, society was very often the biggest loser as youthful convicts of the day became the hardened career convicts of later times.

## Chapter X

### **The Bat, The Box, and The Dark**

In much the same manner as discussions of race relations and convict labor, prison discipline must be examined in light of the times. Penitentiary officials in the early years had almost total control of discipline behind the prison's walls. The legislature condemned public corporeal punishment and replaced it with confinement in the penitentiary, but it made no recommendations concerning the use of corporeal punishment within the prison. During the convict lease period, discipline of the prisoners was left almost entirely to the discretion of the lessees. The legislature made a feeble attempt to regulate corporeal punishment but made no provision for enforcing the law. The return of the convicts to the state penitentiary in Nashville and the new Brushy Mountain Penitentiary introduced the third distinct phase of prison discipline.

During the first one hundred thirty years of Tennessee prisons, it took only the word of a single guard to bring additional punishment upon a convict. The disciplinary process was generally "arbitrary and capricious;"<sup>1</sup> on numerous occasions the records seem to

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<sup>1</sup>See Wolff v McDonnell, 418 United States Reports 539, United States Supreme Court, 1974, for a history of disciplinary proceedings in United States' prisons.

indicate that convicts were singled out for additional punishment by certain guards for reasons unassociated with the convict's behavior.<sup>2</sup> Similar findings are reported by Murton in Arkansas, Crouch and Marquart in Texas, and McWhorter in Mississippi.<sup>3</sup> The discriminatory procedure was not fully remedied until the 1970s when the United States Supreme Court ordered a modified form of due process in prison disciplinary proceedings.<sup>4</sup>

In the first thirty-five years of the prison system, most of the additional punishment came from whippings. The convicts were expected to follow orders without hesitation, to conform to the frequently changed rules without argument, and to produce work to set quotas. Failure to comply with any aspect of the demands quickly resulted in additional punishment from the guards. The use of a sweat box and solitary confinement were also available to officials if whipping did not produce the desired results from the convict. Officials, however, were reluctant to admit in the official reports the need for additional punishment.

Almost every biennial report of the penitentiary officials recorded "moderate use" of corporeal

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<sup>2</sup>Convict Register Books; Warden's Log Book, 1856; Convict Grade Books.

<sup>3</sup>Murton, Accomplices to the Crime; Crouch and Marquart, An Appeal to Justice; McWhorter, Inmate Society.

<sup>4</sup>Wolff v McDonnell.

punishment and most stated that the convicts were "much improved, requiring punishment less than previously."<sup>5</sup> John M'Intosh [sic], the first principal keeper of the penitentiary, reported in 1833 that the "bat has been used sparingly."<sup>6</sup> In spite of such official reports to the legislature, however, convict records indicate that sixty-seven of the total population of ninety-eight convicts received some form of additional punishment during the first two years of operation. The sweat box was used less frequently than the bat, and solitary confinement was used even less often than the box. The Convict Register Books reveal that approximately seventy-five percent (75%) of the convicts received additional punishment each year prior to 1865.<sup>7</sup>

Of the three principal forms of additional punishment available for use by the state's prison officials and, despite official denials, the "bat" or whip was the most frequently used type of punishment to maintain prison discipline. This method of additional punishment would remain the most popular with prison officials until the mid-1960s when corporeal punishment was abolished, first by regulation and then by law, within the

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<sup>5</sup>"Report of the Keeper," 1839.

<sup>6</sup>"Report of the Inspectors and Agent," 1833.

<sup>7</sup>Convict Register Books.



penitentiary system.<sup>8</sup> The bat changed in form over time, but it originally was three inch wide strap of harness leather attached to a wooden handle. Lashes were applied to a convict's bare back after his shirt was stripped down and used to pin his arms at his sides. The victim was held by other convicts across the "whipping post," a short, stout post set in the yard near the keeper's office. The guard reporting the convict's misbehavior generally delivered the lashes.<sup>9</sup>

Infractions of rules that could lead to the use of the bat were numerous, but there was little consistency either in the determination or amount of punishment. A convict accused of "disrespect to a guard" on 5 July 1841 received five lashes from "Smith;" a different convict accused by "Smith" of "talking in shop" on 6 July 1841 received ten lashes. The second convict was again accused by Smith of being "out of line" on 12 July 1841 and was given eight lashes. Officer Hodge accused a convict of "disrespect" on 15 July 1841 and gave him six lashes with the bat.<sup>10</sup> In spite of its brutality, women were not spared the bat. Women were less frequently punished for minor infractions of the rules than

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<sup>8</sup>"Post Orders," Warden's Office, Tennessee State Penitentiary, 1964; Acts of Tennessee, Ch. 254, p. 678, 1969.

<sup>9</sup>"Report of the Keeper," 1841, 1847.

<sup>10</sup>Convict Register Books.

were the men, but serious rule violations by the women convicts brought down the wrath of the guards. Lizzie, a black female serving twenty-five years for murder, was whipped on eight different occasions between 1849-1856. She received six lashes for being "disrespectful to guard," four lashes for "stealing food," and four lashes for "sassing a guard."<sup>11</sup>

As noted above, the "Box" was used less often than the bat and was used without discrimination among sexes, age, or race. The box, called the "sweat box" in some writings,<sup>12</sup> was constructed of solid iron sheets and was approximately three feet square by five feet high.<sup>13</sup> It was extremely difficult for an average adult to fit into the box; there was no room to sit, turn, or relieve constricted muscles. The only opening for air circulation was a small grill set in the door. Built in the open yard without benefit of shade, the interior of the box was stifling hot, hence the name "sweat box." Unlike Arkansas and Mississippi, Tennessee prison records do not reveal any deaths directly attributable

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<sup>11</sup>Ibid.

<sup>12</sup>Murton, Accomplices to the Crime; Walker, Penology for Profit; McWhorter, Inmate Society.

<sup>13</sup>Biennial Report, 1849.

to time spent in the box, but most convicts required medical attention following such punishments.<sup>14</sup>

A sixteen year old black male was given two hours in the box for disrespect in 1845, a thirty-one year old black female spent an hour in the box in 1849 for "sassing an officer," and a twenty-five year old white male was given six hours in the box for "attempted escape" in 1851. All three required medical attention upon release from the box.<sup>15</sup>

The least used form of additional punishment between 1831-1865 was solitary confinement. It is interesting to note that the first penitentiary in America, the Walnut Street Jail in Philadelphia, advocated solitary confinement in large, airy cells at all times for its prisoners. In Tennessee as in many other states, however, solitary confinement or the "Dark," a totally dark isolation cell without bars or windows, was used as a form of additional punishment. A one-foot square grill in the solid iron door provided the only source of air circulation and light for the cell, and this particular type of punishment was

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<sup>14</sup>Murton, Accomplices to the Crime; McWhorter, Inmate Society; "Report of the Prison Physician," 1849, 1851, 1899.

<sup>15</sup>Convict Register Books; "Report of the Physician," 1851.

restricted to those recalcitrant convicts who would not respond to either the bat or the box.<sup>16</sup>

Confinement in the dark was accompanied by a reduced diet generally consisting of bread and water. According to the logs of various wardens, prisoners in solitary confinement would be given "greens" occasionally but not more than once a week.<sup>17</sup> The dark was often used as a last resort by the guards, and many convicts spent months in the dark cells without seeing sunlight or receiving a complete meal. For those convicts unfortunate enough to spend long terms in the dark, insanity may have been the only escape available. The records indicate that few survived more than a few weeks in the dark without serious health and mental problems.<sup>18</sup>

English author Charles Dickens visited the United States and observed the practice of solitary confinement in American prisons. He wrote about solitary confinement in his book American Notes,

... I believe it, in its effects, to be cruel and wrong. In its intention, I am well convinced that it is ... meant for reformation; but I am persuaded that those who devised this system of prison discipline ... do not know what it is that they are doing. I believe

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<sup>16</sup>Convict Register Books; Warden's Log Books.

<sup>17</sup>Warden's Log Books.

<sup>18</sup>Convict Register Books.

that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment ... inflicts upon the sufferers ... I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body.<sup>19</sup>

According to the records, one convict spent four years in the dark between 1841-1845; when he was finally released, his weight had dropped more than 100 pounds, he had lost all of his teeth, and he was virtually blind. There was no comment about his mental stability.<sup>20</sup> Another convict, sentenced to the dark by the principal keeper in 1843, was released to his family in 1846 as there was no way for the "penitentiary to properly care for a lunatic" although there was no mention of mental problems prior to his solitary confinement.<sup>21</sup>

The records indicate that only one female convict was confined in the dark during the first thirty-five years of the penitentiary. She was pregnant when she entered prison and gave birth soon after her arrival. When her child was taken away, she withdrew and slowly "lost her mind."<sup>22</sup> She was adjudged by the prison physician as a "lunatic" and confined in the dark for

<sup>19</sup>Charles Dickens, American Notes (London: Collin's Clear-Type Press, 1906).

<sup>20</sup>Convict Register Books; "Report of the Physician," 1845.

<sup>21</sup>Convict Register Books; Biennial Report, 1847.

<sup>22</sup>Convict Register Books, 1851.

her "protection."<sup>23</sup> When her release date arrived, her family refused to accept responsibility for her continued care. The warden refused to release her from prison, stating that she could not care for herself, and petitioned the legislature to make provision for her.<sup>24</sup> The woman died in prison the following year without ever receiving any specialized care for her problems.<sup>25</sup>

The studies of the convict leasing era in the South following the Civil War are filled with stories of horrible brutality and inhumanity toward the convicts. Steiner found convicts in North Carolina were kept in "cages on wheels,"<sup>26</sup> much like wild animals in the circus. Ward and Rogers found that convicts reporting sick in Alabama were beaten first and if not then "cured," a visit to the doctor might be scheduled.<sup>27</sup> Taylor found convicts in Georgia living for an entire year without a clean change of clothing or the

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<sup>23</sup>Ibid., 1852.

<sup>24</sup>"Report of the Warden of the Tennessee State Penitentiary," 1855.

<sup>25</sup>Convict Register Books, 1856.

<sup>26</sup>Jesse F. Steiner and Roy M. Brown, The North Carolina Chain Gang: A Study of Convict Road Work (Chapel Hill: University of North Carolina Press, 1927).

<sup>27</sup>Robert David Ward and William Warren Rogers, Convicts, Coal, and the Banner Mine Tragedy (Tuscaloosa: University of Alabama Press, 1987).

opportunity to bathe.<sup>28</sup> It is not surprising, then, that similar stories exist for Tennessee.

Total disciplinary control of the convicts during the convict leasing era was surrendered by the State of Tennessee to the lessees. The legislature required a penitentiary inspector to visit each lease camp "at least once every six months," but his reports were merely included in the House Journal with little or no comment.<sup>29</sup>

Most of the guards employed by the lessees were former field bosses on Southern plantations. Out of work following the end of slavery, these bosses became penitentiary guards.<sup>30</sup> Most of the convicts during this period were black former slaves, and the bosses continued exactly the same practices on the convicts as they had on the slaves. Physical brutality was seen as the only thing understood by the blacks, and the whip was used without hesitation to enforce production quotas and arbitrary rules.<sup>31</sup>

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<sup>28</sup>Antoinette Elizabeth Taylor, "The Origin and Development of the Convict Lease System in Georgia," Georgia Historical Quarterly 26 (June 1942), pp. 113-128.

<sup>29</sup>"Report of the Penitentiary Inspectors," 1869, 1873, 1883, et al.

<sup>30</sup>*Ibid.*, 1869.

<sup>31</sup>*Ibid.*; See also McKelvey, "A Half-Century of Southern Prison Exploitation."

Following numerous reports of abuse of the convicts, the legislature required a minor change in the use of the whip during the convict leasing era. The new law required each lease camp to name a "whipping boss" who would then be the only person authorized to whip the state's convicts;<sup>32</sup> in practice this law caused much more abuse than it eliminated in that the guard named to the job was generally the most brutal of them all.<sup>33</sup>

The punishments of the box and solitary confinement disappeared during the convict leasing period. At least one reason for their demise was that a man placed in the box or solitary during working hours was a man lost to labor. Whippings and other deprivations could be administered without the loss of time from assigned tasks. There was a punishment devised during the leasing era that was very similar to the box. Recalcitrant convicts, those short of work, and those that had shown disrespect for the bosses were often locked overnight in the "hole."<sup>34</sup>

The "hole" is common penitentiary slang today for

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<sup>32</sup>Acts of Tennessee, 1877.

<sup>33</sup>"Report of the Penitentiary Inspectors," 1883, 1887. For a report on very similar laws in Texas, see Walker, Penology for Profit.

<sup>34</sup>"Report of the Penitentiary Inspectors," 1877, 1891.



any form of solitary confinement<sup>35</sup> but, during the late nineteenth century in Tennessee prisons, it meant something entirely different. Guards literally dug a hole in the ground approximately three feet by three feet by six feet deep and covered it with a heavy steel grate.<sup>36</sup> It apparently was thought that a convict thrown into the hole without supper, water, a toilet, or a place to sit or lie down would be a better worker the next day.

Tennessee prison legend recounts the tale of a black convict sentenced to the coal mines in 1879. Given his quota of coal to be mined, the convict supposedly answered, "If the Lord is willing, Boss, I'll get your coal." Short by more than 300 pounds at day's end, the convict spent the night in the hole. The next morning he was given his quota plus the 300 pound shortage from the previous day. The convict allegedly said, "Boss, I'm gonna get it for you if the Lord is willing." Short again that night and after a second night with no supper in the hole, the prisoner was given his new quota for the day in the mines. He reportedly told the guard, "Boss, if the damn coal's in the ground, I'll get it!"

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<sup>35</sup>See Crouch, Litigated Justice; Murton, Accomplices to the Crime; McWhorter, Inmate Society; Henderson, Angola.

<sup>36</sup>"Report of the Penitentiary Inspectors," 1881. See Murton, Accomplices to the Crime, p. 131, for a description of the "Brushy Mountain hole."

The convict, like many before and after him, apparently realized that even the Lord could not help those in the Tennessee prison system. Murton relates a similar story about picking cotton in Arkansas, and a very similar story exists about picking sweet potatoes in the Texas prison.<sup>37</sup>

The hole was a vicious circle for many convicts. Short of work on a given day meant that the next day's quota was increased by the shortage amount.<sup>38</sup> After spending a night exposed to the vagaries of East Tennessee weather, standing bent over with no facility to relieve muscles or internal systems, and without supper, few men could make the daily quota and catch up the additional work. Short of work again meant another night in the hole without supper.

There are no available records to indicate that an unfortunate convict was ever aided by others in attempts to escape the circle. The author searched the available records for instances where a convict spent several nights in the hole and then miraculously made his quota, but he was able to find no such instances recorded. There are, however, numerous recorded instances of the brutal effects of the punishment. In 1879 a railroad

<sup>37</sup>Manuscript of prison legends in possession of the author for Tennessee and Texas; Murton, Accomplices to the Crime, for Arkansas.

<sup>38</sup>"Report of the Penitentiary Inspectors," 1881, 1883.

worker spent six nights in the hole and was "shot while trying to escape" the following day. In 1888, a convict coal miner spent four consecutive nights in the hole for being "short of work" and was killed the next day by "falling shale." In 1891 two convicts spent two nights each in the hole and overpowered their guards on the third morning and escaped.<sup>39</sup>

Another punishment favored by the guards during this period was the chaining together of two convicts at the end of the day.<sup>40</sup> In most instances one convict was white and the other was black. Forced by the chains to eat together, sleep together, and even to perform biological functions together, this was perhaps the most degrading punishment available during an age when racial animosity was at its highest point.

The return of the convicts to the penitentiary introduced the third period of prison discipline in Tennessee. The sweat box did not return to the Tennessee penitentiary following the end of convict leasing in 1896, but the punishment of the hole survived at Brushy Mountain Penitentiary until at least 1925 when it was

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<sup>39</sup>Convict Register Books; "Report of the Penitentiary Inspectors," 1888, 1891.

<sup>40</sup>"Report of the Penitentiary Inspectors," 1889; See Steiner, North Carolina Chain Gang, for similar reports.

replaced by dark cells.<sup>41</sup> It is believed that the first instance of referring to solitary confinement as the "hole" was the result of that peculiar punishment in Tennessee between 1866-1896.<sup>42</sup>

The whip, or "Black Molly" as it was called by the convicts after 1898, remained the most popular form of punishment for the prison officials after 1898. Black Molly was made of a strap of three-inch wide harness leather attached to a three-foot long wooden handle.<sup>43</sup> Since the guards were selected as often for physical prowess as for ability to handle men, the strap was a vicious weapon indeed. On numerous occasions, the medical records indicated that a convict's back was "laid open" by the whip, and on one occasion the convict's back was referred to as looking like to be "raw liver."<sup>44</sup>

According to the rule book instituted with the convict grade system, infractions were to be dealt with uniformly and fairly. There was, however, much discretion not only in the form but also in the amount of

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<sup>41</sup>Biennial Report of Department of Institutions, 1924-1926.

<sup>42</sup>The Oxford English Dictionary, 2nd. ed., J. A. Simpson and E. S. C. Weiner, compilers, contains a reference to solitary confinement being called the "hole" without comment as to the origin of the term.

<sup>43</sup>Warden's Log Book, 1905.

<sup>44</sup>"Report of the Physician," 1899, 1902.

punishment delivered for violations. "Flirting with convict women" (or convict men as the case was for female convicts) was usually punished by ten lashes, "short of work" brought five to thirty lashes with ten to thirty being the norm for the coal mines after 1896, "disrespect to a guard" was generally punished by eight to ten lashes, and convicts accused of "sodomy" most often received ten to twenty lashes.<sup>45</sup>

A thirteen year old black male received ten lashes for "flirting with convict women" on at least eight occasions between 1899-1901. He received fifteen lashes for "being in another convict's cell;" sodomy was not charged or the punishment would likely have been greater. In the twenty months that he was confined, the young convict, sentenced to two years for stealing chickens, received more than 200 lashes from the bat.<sup>46</sup>

Women convicts, more numerous than before the Civil War, received whippings more frequently as well. On numerous occasions and almost always for "flirting with convict men" or "writing to convict men,"<sup>47</sup> women received lashes from the male guards. The records indicate that the severity of the whippings was not reduced for the female convicts, either, with the women

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<sup>45</sup>Convict Grade Books.

<sup>46</sup>Convict Grade Book 1, no. 399.

<sup>47</sup>Convict Grade Books.

often receiving ten to twenty lashes for seemingly minor violations of the rules. There were some feeble attempts to restrict the whipping of women; in 1899 the warden reported that he "limited my approval for whipping women."<sup>48</sup> It appears, however, that the warden's concern for whipping women had more to do with the "spectacle"<sup>49</sup> of a bare-backed woman in the yard than with humanity. The whipping of women would continue, as it would for the men, until corporeal punishment was outlawed in the prison system in 1964.<sup>50</sup>

As noted above solitary confinement in dark cells was used in Tennessee as early as 1835, but it was after 1898 that such confinement became a major form of punishment. Small, solid iron cells with no openings for light and only a small grate opening for ventilation were used to hold those convicts that would not follow the rules or respond to the bat. On most occasions the convict was stripped of all clothes and provided with neither a bed nor blanket even during the winter months. As before the Civil War, there were few procedural rules governing the use of additional punishment, and convicts

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<sup>48</sup>"Report of the Warden," 1899.

<sup>49</sup>Ibid.

<sup>50</sup>Convict Grade Books; Rafter, Partial Justice.

were often sent to solitary confinement in generally futile attempts to "break the criminal spirit."<sup>51</sup>

Mental health experts and social reformers such as Dorothea Dix spoke out against the use of solitary confinement during the latter half of the nineteenth century,<sup>52</sup> but the cries for the most part went unheard in Tennessee. In fact, with the elimination of the box, the popularity of solitary confinement in dark cells became much more popular after the demise of convict leasing.<sup>53</sup>

An even more onerous use of solitary confinement during the early twentieth century was the concept of administrative segregation. A convict no longer had to break a rule or commit a violation of any sort to be placed in solitary confinement. If a guard or the prison warden suspected a convict of instigating problems, organizing other convicts for any reason, or being "disruptive," the convict could be placed indefinitely in solitary confinement without recourse of any sort. While the penitentiary officials denied that administrative segregation was punishment, all normal privileges such as access to the prison store, visits,

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<sup>51</sup>Warden's Log Book, 1903.

<sup>52</sup>Harry E. Allen and Clifford E. Simonsen, Corrections in America: An Introduction, 5th ed. (New York: Macmillan Publishing Company, 1989).

<sup>53</sup>Convict Grade Books.

and correspondence were denied.<sup>54</sup> While administrative segregation remains in use today, Supreme Court rulings require that the procedure conform to at least a limited form of due process.<sup>55</sup>

Solitary confinement was also used for protective custody, housing those convicts who could not protect themselves in the open prison population. Young, weak convicts -- referred to as "fish" or "fresh meat" by the older cons -- were many times forced to submit to homosexual activity.<sup>56</sup> Given the limited circumstances for protecting themselves, these convicts had little choice but to have themselves removed from the predatory society. Protective custody may also house former politicians, former police officers, and those who have testified against other convicts.<sup>57</sup>

There was also a separate system of prison discipline that began early in the twentieth century. This disciplinary system was extremely informal with sanctions delivered on the spot. These informal sanctions were always for some minor infraction such as talking in

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<sup>54</sup>"Orders to the Guards," Tennessee State Penitentiary, 1930; Convict Grade Books.

<sup>55</sup>Wolff v McDonnell.

<sup>56</sup>D. G. Anderson, "The Price of Safety: I Can't Go Back There," Corrections Magazine 6 (August 1980), pp. 1-14.

<sup>57</sup>Inez Cardozo-Freeman, The Joint (Springfield, IL: Charles C. Thomas, 1984).



the hall or dining room, wearing one's hair too long to suit a guard, or not shaving closely enough. These violations resulted in punishments more designed to humiliate and degrade and to reinforce the control authority of the guards than to actually punish. There were elements, however, that carried danger of pain and severe injury. Interviews with long-term prison guards and officials are most enlightening in this area as there are no official records of this disciplinary action.

One officer, a building sergeant at the Main Prison in Nashville, related numerous incidents concerning talking by the convicts. Talking in the hallway resulted in ten to twenty minutes "on the wall." The convict was required to stand facing the wall across from the sergeant's desk; the sergeant drew a circle on the wall around the convict's nose. If the convict's nose left the circle for any reason, the time on the wall started over.<sup>58</sup>

A similar sanction involved standing on an empty, wooden soft drink case turned on its side; the carton was placed against the wall and the convict had to stand with his toes on the three-inch wide slat for ten to twenty minutes. This sanction often resulted in

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<sup>58</sup>Interview with William Sanderson, Nashville, Tennessee, 11 July 1988, long-term employee of Department of Correction.

sprained ankles and stretched tendons according to the officer, and many convicts would collapse unconscious to the floor before the time was complete. Falling off the box caused the time to start over from the beginning.<sup>59</sup>

Another informal sanction was "cell restriction." This punishment was intended to deny access to any activity other than work for a specified period of time, generally seven to fourteen days. Convicts on cell restriction were not allowed to attend church, movies, or the recreation yard.<sup>60</sup>

A frequent sanction in lieu of corporeal punishment was assignment of a "work detail." This punishment involved the convict doing some specific and generally undesirable job, such as pulling weeds or picking up cigarette butts, instead of being whipped. The convict was required to perform the assignment at the end of the regular work day while other prisoners were enjoying the recreation yard.<sup>61</sup>

Numerous writers have commented that incarceration alone is sufficient punishment and that additional

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<sup>59</sup>Ibid.

<sup>60</sup>Henry Interview.

<sup>61</sup>McWherter Interview.

corporeal punishment serves no purpose in the regimen.<sup>62</sup> Others, especially those behind the fences as guards and prison officials, condoned the use of corporeal punishment as both necessary and helpful in maintaining prison discipline.<sup>63</sup> Since the mid-1960s corporeal punishment has been forbidden in Tennessee prisons, but there are many people, both inside and outside the prison administration, who would welcome its return.<sup>64</sup>

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<sup>62</sup>See, for example, Todd R. Clear and George F. Cole, American Corrections (Pacific Grove, CA: Brooks/Cole Publishing Company, 1986); George G. Killinger and Paul F. Cromwell, Jr., eds., Introduction to Corrections: Selected Readings (St. Paul, MN: West Publishing Company, 1978); Allen and Simonsen, Corrections in America.

<sup>63</sup>Sanderson and Henry Interviews, *supra.*, but compare McWherter Interview.

<sup>64</sup>Letters to the Editor, Memphis Commerical-Appeal, 8 August 1990.

## Chapter XI

### The Keepers of the Convicts

One Tennessee prison warden told the author early in this study, "The only way to tell them apart is by the color of their uniforms." Was he talking about the different classes or grades of convicts, the different ranks among his own personnel? No, he was talking about the differences in prison guards and the convicts themselves. To further explain, he suggested that both guards and convicts come from the same backgrounds -- limited education, few if any technical skills, access only to relatively low-paying jobs. He said that both walked precariously close to the edge of the law all of their lives and only luck determined which one wore the convict's stripes. Once in prison together, they speak the same argot, eat the same food, and even develop the same (generally bad) habits.<sup>1</sup> Who are these people, and why would anyone want to spend their lives locked up in prison with convicts?

Wardens and guards in penitentiary systems around the world remained essentially unknown quantities outside their own neighborhoods until recent years. Since about 1960 many sociologists and criminologists have looked at the lives and roles of prison employees in an attempt to better understand the workings of the prison

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<sup>1</sup>McWherter Interview.

system. Unfortunately for students of prison history, no such work exists for the nineteenth or early twentieth century. One can only look to newspaper accounts and correspondence of prison officials in attempts to discover anything about the guards and other keepers of the convicts.

Cloward (1960), Murton (1969), Crouch (1980), Hepburn (1984, 1987), and Crouch and Marquart (1989)<sup>2</sup> along with others have done remarkable work outlining the lives of modern prison guards and officials. Even today, however, there is a large gap in the psychological and sociological lives of prison guards that remains to be filled.<sup>3</sup> The keepers of the convicts have been categorized in the popular press as brutal, psychotic, overbearing hulks totally opposed to rehabili

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<sup>2</sup>Richard A. Cloward, ed., Theoretical Studies in Social Organization of the Prison (n.p.: Social Science Research Council, 1960); Murton, Accomplices to the Crime; Ben M. Crouch, ed., The Keepers: Prison Guards and Contemporary Corrections (Springfield, IL: Charles C. Thomas, Publisher, 1980); John R. Hepburn, "The Erosion of Authority and the Perceived Legitimacy of Inmate Social Protest: A Study of Prison Guards," Journal of Criminal Justice 12 (1984), pp. 579-590, and "The Prison Control Structure and Its Effects on Work Attitudes: The Perceptions and Attitudes of Prison Guards," Journal of Criminal Justice 15 (1987), pp. 49-64; Ben M. Crouch and James Marquart, An Appeal to Justice: Litigated Reform of Texas Prisons (Austin: University of Texas Press, 1989).

<sup>3</sup>Crouch, The Keepers.

tation and educational programs.<sup>4</sup> Organizations of prison guards and many sociologists contend that the guards are grossly misunderstood, underpaid, front-line combatants in the efforts to reduce crime, prison escapes, and violence.<sup>5</sup> The real keepers of the convicts probably exist somewhere in between these two extremes.

When the first Tennessee prison opened in 1831, there were few men available for the job of prison guard. The state was almost totally oriented toward agriculture with only a few manufacturing concerns in Nashville, Memphis, and Knoxville. Farmers were either landed aristocrats employing slaves to do their farming or were small landowners working their own fields.<sup>6</sup> Neither of these groups was readily available to work for the state. The state was able to recruit enough men, however, to open the prison on schedule. Obviously, only white men were considered for the jobs, and Principal Keeper John M'Intosh reported at the end of

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<sup>4</sup>Jessica Mitford, Kind and Usual Punishment: The Prison Business (New York: Vintage Books, 1974); Steve Bello, Doing Life (New York: St. Martin's Press, 1982); Malcolm Bell, The Turkey Shoot: Tracking the Attica Cover-Up (New York: Grove Press, 1985).

<sup>5</sup>Leo Carroll, Hacks, Blacks, and Cons: Race Relations in a Maximum Security Prison (Lexington, MA: Lexington Books, 1974); Crouch, The Keepers.

<sup>6</sup>Corlew, Tennessee.

the first year that his guards worked twelve hours a day, seven days a week, for an annual salary of \$400.<sup>7</sup>

Guards armed with the "best weapons available" were placed in towers on the twenty-foot high wall surrounding the penitentiary.<sup>8</sup> These guards had orders to stop any insurrection or escape by whatever means were necessary, including killing the rebellious convicts.<sup>9</sup> The guards inside the prison performed a variety of jobs, but the supervisors for the various manufacturing departments were responsible for the actual training and work of the convicts.<sup>10</sup> The guards counted the work crews out of the housing unit and marched them in lockstep and total silence to their jobs in the workshops (both lockstep and total silence would remain the rule until at least 1872). The convicts were turned over to the labor supervisor, and the guard remained in the shop to enforce the prison rules and to deal with any disciplinary problems that occurred. At noon, the convicts were counted, lined up, and marched lockstep back to the housing unit for dinner. Tennessee, like most other states at the time, required all meals to be served and

<sup>7</sup>Report of the Inspectors and Agent of the Tennessee Penitentiary, October 14, 1833 (Nashville: S. Nye and Company Printers, 1833).

<sup>8</sup>"Report of the Inspectors and Agent of the Tennessee Penitentiary," House Journal, 1835.

<sup>9</sup>Warden's Log, Tennessee State Penitentiary, 1835.

<sup>10</sup>Report of the Inspectors and Agent, 1833, *supra*.

eaten in the cells.<sup>11</sup> Following the meal, the same routine was repeated. At the end of the day, if the labor foreman reported a man "short of work," it was the guard who reported the infraction to the keeper. After marching the convicts to the housing unit, the guards were responsible for counting the convicts, making sure each was in the proper cell, and locking up the prison units for the night.<sup>12</sup> If any prisoners were to be punished, the lashes were delivered by the guard reporting the violation.<sup>13</sup> At the end of about twelve hours, the guards were relieved by the night shift guards. The unmarried guards were provided housing on the prison property but outside the prison walls. The guards with families were entitled to pick up "provisions" at the prison once a month.<sup>14</sup> Free housing provided at least two benefits to the state: it allowed the penitentiary to attract men to the job of prison

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<sup>11</sup>Tennessee would establish a new standard for prisons by serving meals outside the cells with the building of a separate dining room in the new penitentiary in 1898.

<sup>12</sup>Report of the Inspectors and Agent, 1833, *supra*.

<sup>13</sup>Warden's Log Book, Tennessee State Penitentiary, 1835.

<sup>14</sup>Warden's Log Book, 1837.



guard and it kept a full contingent of guards nearby in case of trouble.<sup>15</sup>

Most of the guards in the first thirty-five years of the Tennessee prison system had rural, working backgrounds and were generally known for their physical prowess; all were white males. They were selected more on the basis of friendship and loyalty to the prison officials than for any special knowledge or ability in dealing with people.<sup>16</sup> The agent, keeper, and warden all depended upon the governor's patronage for their jobs, and they likewise paid many political debts to friends and supporters by providing good paying jobs at the penitentiary.

During the convict leasing period, many of the prison guards were former drivers of slaves on Southern plantations.<sup>17</sup> As before, all of the guards were white males even though the number of female convicts greatly increased. One report of the lessee refers to the particular aptitude of these men in getting the "niggers to

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<sup>15</sup>"Report of the Agent and Principal Keeper," House Journal, 1835; Also see Crouch and Marquart, An Appeal to Justice, for a similar finding in Texas.

<sup>16</sup>Warden's Log Book, Tennessee State Penitentiary, 1837.

<sup>17</sup>"Report of the Penitentiary Inspectors," House Journal, 1878.

work."<sup>18</sup> As has been discussed previously in other chapters herein, physical violence and brutality from the guards was an everyday occurrence in the convict lease camps. Some of the worst conditions imaginable for one man to impose upon another occurred in the convict lease camps in Tennessee -- housing in steel-barred cages similar to those used to house circus animals, and only one pair of rough clothes with no way to wash them and no replacement until they fell off. Food that was consistent only in its lack of variety, nutrition, and quantity was a condition that was reported officially but no action was taken against the lessees to effect a change.<sup>19</sup> Discipline in the lease camps involved additional punishments such as a physical "hole" in the ground and whippings from brutal bosses that could take the skin off a man's back with the strap.<sup>20</sup>

The end of the convict lease on 1 January 1896 returned the convicts to the old penitentiary in Nashville and to the new branch penitentiary at Brushy Mountain in East Tennessee. Many of the guards employed by the Tennessee Coal, Iron, and Railroad Company became

<sup>18</sup>Warren Brown to William Davis, Tennessee Coal, Iron, and Railroad Company Records, Archive Manuscripts.

<sup>19</sup>"Report of the Inspectors of the Penitentiary," House Journal, 1883, 1889.

<sup>20</sup>Ibid.; See Chapter IV and Chapter X herein for more details on the convict lease period.

prison guards for the state, but the state also apparently recruited more white males as guards in the larger cities. Newspaper stories in both Nashville and Knoxville noted that the state was hiring prison guards.<sup>21</sup> The first female matron was finally hired in 1898 to work with the women convicts.<sup>22</sup>

The coal mining operations hired qualified mining experts to direct the work in the mines, but prison guards had the task of guarding the convicts against violence and escape.<sup>23</sup> At the main prison in Nashville, labor supervisors were furnished by the contractors as they had been in the 1850s and late 1860s. Prison guards had total custodial responsibility over the convicts -- they released them in the morning and escorted them to work, they marched them off to dinner and then back to work, and they locked them up at night. If a convict got sick, the guard determined whether or not he could see the doctor.<sup>24</sup> If a convict violated any of the prison rules, the word of a single guard was sufficient to bring additional punishment to the

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<sup>21</sup>Tennessean, November 21, 1895; Knoxville Journal, November 26, 1895.

<sup>22</sup>Acts of Tennessee, Chapter 125, Section 3, p. 290, 1897.

<sup>23</sup>Reports of the Board of Prison Commissioners and Prison Officials of the Penitentiary System of Tennessee, 1897 and 1898 (Chattanooga: Times Printing Company, 1897).

<sup>24</sup>Ibid.; Warden's Log Book, 1899; Convict Grade Books.

prisoner. If lashes were part of the additional punishment, the guard delivered them as other convicts held the prisoner immobile.<sup>25</sup>

As they had been in the early days of the penitentiary system, the prison guards came primarily from the ranks of the warden's friends and supporters. The warden still depended upon political patronage for his own job, and he repaid many minor political debts for himself and his patrons through jobs at the penitentiary. Most of the guards continued to come from rural working backgrounds, and physical prowess was a strong asset for any potential guard. Except for one or two matrons in the "women's department," the guards continued to be exclusively white males. Newspaper articles and official log books record the strength of various guards during emergencies on various occasions at the penitentiary.<sup>26</sup>

The early twentieth century saw numerous calls for reformatory programs and institutions in Tennessee. Most Northern and Eastern states moved to separate youthful criminals from more hardened professional criminals in the mid-nineteenth century, but Tennessee was slow to follow suit. The first juvenile court

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<sup>25</sup>See Chapter X herein for more on Tennessee prison discipline.

<sup>26</sup>Banner, September 11 and November 21, 1899; Knoxville Journal, October 12, 1904; Warden's Log Book, Tennessee State Penitentiary, 1901, 1907.

legislation was not enacted until 1907,<sup>27</sup> and even then many young convicts were tried as adults and sent to the penitentiary.<sup>28</sup> Guards at the Main Prison in Nashville showed little compassion to young convicts when punishments were dispensed. At least one thirteen year old black convict received more than 200 lashes from his guards during the twenty months he was confined for stealing chickens.<sup>29</sup> While wardens, chaplains, and other officials were calling for separation by age, the guards continued to treat all the convicts as though each was hardened and settled into a life of crime.

Although the first state-run juvenile legislation in Tennessee was authorized in 1907,<sup>30</sup> the first juvenile institution did not open until 1912.<sup>31</sup> A state-wide juvenile court act was enacted by the legislature in 1911 requiring the building of juvenile institutions around the state.<sup>32</sup> By 1915 the state's three major counties -- Knox (Knoxville), Davidson (Nashville), and Shelby (Memphis) -- had pushed special

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<sup>27</sup>Tennessee Public Acts, 1907, chapter 599, sections 1,4,11.

<sup>28</sup>Biennial Report of the Board of State Charities (Nashville: Board of Charities, 1915).

<sup>29</sup>Convict Grade Book 1, no. 399.

<sup>30</sup>*Supra.*, note 25.

<sup>31</sup>Biennial Report, 1915.

<sup>32</sup>Acts of Tennessee, Ch. 58, pp. 111-123, 1911.

exemptions to the juvenile reformatory act through the General Assembly.<sup>33</sup> As noted above, however, even prior to these exemptions, there were still many young convicts in the penitentiary. As late as 1935 penitentiary officials in Nashville still requested a separate institution to house youthful criminals.<sup>34</sup>

The decision to build Fort Pillow State Prison and Farm in West Tennessee provides the first real opportunity to look in some detail at the selection and hiring of prison guards in Tennessee. Fort Pillow is located about 100 miles north of Memphis, Tennessee, in Lauderdale County among the rolling hills along the Mississippi River. The nearest town to the prison site is Henning with a population of approximately 500 people and the birthplace of Alex Haley of Roots fame. Lauderdale County had about 12,000 residents in the 1930s, almost exclusively involved in some manner with agriculture.<sup>35</sup> According to both existing records and

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<sup>33</sup>Ibid., Ch. 22, pp. 463-464, 1913; Ch. 20, p. 44, 1915.

<sup>34</sup>Annual Report of Tennessee Department of Institutions and Public Welfare, Nashville, Tennessee, Period Ending June 30, 1938 (Nashville: In-house typescript).

<sup>35</sup>Tennessee Blue Book, 1940, 1987.

current political experts, the area has always been, and is today, staunchly Democratic.<sup>36</sup>

As noted above, prison jobs were seen as a part of the patronage process of Tennessee politics. Wardens and prison administrators changed with every new governor, and new wardens almost always meant new prison guards as well. Tennessee remained steadfast for the Democrats throughout the first half of the twentieth century, and Gordon Browning was the Democratic governor in Nashville when Fort Pillow State Prison was completed.<sup>37</sup>

The Democratic patronage system in West Tennessee in the late-1930s was run by Boss Crump of Memphis.<sup>38</sup> Beginning his political career as a middle-class Democratic reformer, Edward Hull Crump forged the first political machine in Tennessee through a coalition of the foreign born, blacks, and businessmen. Through less-than-circumspect political deals, Crump also included the underworld proprietors of saloons and promoters of prostitution and gambling in his

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<sup>36</sup>Records of the West Tennessee Democratic Caucus, Memphis, Tennessee.

<sup>37</sup>Tennessee Blue Book, 1936; With the election of Democrat Austin Peay as governor in 1923, the Democrats would control the Governor's Mansion continuously until the election of Republican Winfield Dunn in 1971.

<sup>38</sup>David M. Tucker, Memphis Since Crump: Bossism, Blacks, and Civic Reformers, 1948-1968 (Knoxville: University of Tennessee Press, 1980).

organization.<sup>39</sup> Boss Crump ran the Memphis and Shelby County Democratic machine from 1909 until his death in 1954, without once suffering a defeat at the polls.<sup>40</sup>

The records do not indicate that Fort Pillow's first warden, Aubry Bradshaw, was a Crump man, but it is known that he was a loyal Democrat. His only prior business experience was as a "successful West Tennessee farmer."<sup>41</sup> Based on what is known about the Crump Machine, it is reasonable to conclude that Crump had men in high places at Fort Pillow in the 1940s.

Although the records are unclear concerning the warden, the records clearly show that an unusually high number of employees at the new prison came from Shelby County.<sup>42</sup> The captain of the Fort Pillow guards was a former Memphis police officer; there were unconfirmed rumors that he would have been indicted for gambling had he remained in Shelby County.<sup>43</sup> The manager of the dairy farm was from Memphis as was the officer in charge of the prison canning plant. According to an internal report concerning financial mismanagement of both

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<sup>39</sup>Ibid., p. 17.

<sup>40</sup>Ibid.

<sup>41</sup>Memphis Commercial-Appeal, December 12, 1937.

<sup>42</sup>Time Book Number One, 1937-1942, Records of the Associate Warden for Administration, Fort Pillow State Prison.

<sup>43</sup>Commercial-Appeal, April 4, 1938.



operations, the three men were "good Crump Democrats." The involvement of the political boss of Memphis, Edward Hull Crump, and his cronies in the mismanagement was stated forthrightly by the investigator.<sup>44</sup>

Many of the guards hired at Fort Pillow could neither read nor write. The story of one illiterate guard, given a bag of marbles representing every convict under his care at the start of his work shift, has been detailed previously. It is interesting to note that, once literacy programs became available to the prison convicts, this particular guard attended classes and received his General Equivalency Degree. The author heard numerous other stories about the problems of illiterate guards at the prison, but most cannot be independently confirmed.<sup>45</sup>

Prison guards were one of the lowest paid groups in Tennessee between 1900-1980, and it was not uncommon for guards to supplement their meager incomes by providing contraband for the convicts. Thirty-five convicts successfully escaped from the Tennessee State Penitentiary in 1902 including sixteen that dynamited a hole in the outer wall of the housing unit and escaped. Ed Carney, one of the alleged gang leaders serving a

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<sup>44</sup>Hospital Superintendent Marvin K. Wilson to Warden T. B. Wright, 26 May 1949, Records of the Associate Warden of Administration, Fort Pillow State Prison.

<sup>45</sup>Interview with Claude Henry; Warden's Log Book, Fort Pillow State Prison, 1943.

seventeen-year sentence for robbery, was shot and killed by guards during the escape. Several of the escapees carried revolvers and returned the fire of prison guards during the escape.<sup>46</sup>

The Nashville Tennessean and The Nashville American carried an editorial condemning the prison officials for allowing such an incident to occur almost "within site [sic] of the Capitol" and called for a complete investigation and prosecution of any officials involved in the escape.<sup>47</sup> An internal investigation by prison officials into the method used by the convicts to get the dynamite and revolvers took several months. Prison investigators called numerous witnesses but, as was normal for the day, failed to call any convicts to testify. Although many allegations and rumors were aired, the investigation was ultimately inconclusive as to how the convicts got the weapons into the prison. No guards were charged or punished for assisting the convicts within the prison.<sup>48</sup>

As the prison system turned more and more to agricultural work in the late-1930s, the open fields of the prison farms at Fort Pillow, Brushy Mountain, and the Main Prison offered convicts more opportunity to escape.

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<sup>46</sup>Fourth Biennial Report.

<sup>47</sup>Tennessean, October 11, 1902.

<sup>48</sup>Fourth Biennial Report.

There were numerous escapes from the Tennessee prison system in the 1930s and 1940s where the convicts had firearms.<sup>49</sup> Guards were implicated in several escapes, but few were indicted or punished in any manner. Free-world alcoholic beverages were also found in increasing quantities inside the fences of the various prisons.<sup>50</sup> Since convicts had access to neither money nor stores, one can only conclude that guards were bringing in the alcohol.

Many stories are still told about especially brutal guards at all three of Tennessee prisons in the 1930s and 1940s. On the prison farms, guards mounted on horseback often ran over convicts thought to be lagging behind in the fields. One confirmed story involved a guard at Fort Pillow who often confronted convicts one-on-one in the field. Even though the officer was quite small by guard standards, he had no fear of handing his weapon to another guard and engaging men in physical combat on the ground. Legend reports that the officer never lost a single fight with a convict although the official record is skimpy in that particular regard.<sup>51</sup>

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<sup>49</sup>Biennial Report, 1938, 1943, 1949.

<sup>50</sup>Warden's Log Book, Tennessee State Penitentiary, 1936, 1941, 1943; Warden's Log Book, Fort Pillow State Prison, 1943, 1949.

<sup>51</sup>Henry Interview; Williams' Interview; Warden's Log Book, Fort Pillow State Prison, 1945, 1947.

Most of the guards at Fort Pillow lived on or very close to the prison grounds. Former guards tell of Saturday night fish-frys, outdoor cooking, and "hell-raising" among the guard corps. Some of the incidents apparently bordered on illegality as one guard mentioned that they were "lucky not to be in cells ourselves." All-night drinking parties occurred on a somewhat regular basis among the guard force. Many guards reported to work in less than excellent condition although absenteeism, a tremendous problem for prison officials in the 1980s and 1990s, was not a reported problem in the 1930s and 1940s.<sup>52</sup>

Many guards drove state vehicles home at night and over week-ends. Wardens apparently felt that the use of a state vehicle would ensure a quick response from the guards in case of an incident at the prison, but such use was clearly a violation of state law at the time. Guards were allowed to pick up a monthly "provisions" package at the institution as well. These provisions included beef, pork, chicken, eggs, butter, and milk that were all produced on the farm. They also received staples such as salt, flour, sugar, molasses, and many other grocery items. Although there were specified

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<sup>52</sup>Confidential Guard Interviews. Guards are rightfully hesitant about discussing such things "on the record." Fourteen interviews were given with the promise of confidentiality of names in order to confirm the stories discovered in the Warden's Log Books.

amounts to be given each guard based on family status, the rules were apparently disregarded. Single guards told of receiving forty pounds a month of the best steaks and roasts; they saw no conflict with the fact that the convicts ate fat-back and boiled pork almost every meal and only got beef about once a year.<sup>53</sup>

The Tennessee General Assembly expressed hope as early as 1825 that a penitentiary system would turn men away from a life of crime. These hopes were repeated throughout the years, leading finally to the construction of Fort Pillow State Prison as an honor farm for youthful convicts. Zebulon Brockway established a reformatory institution at Elmira, New York, in 1876. Based on principles of education, indeterminate sentences, and prison release determined to great extent by the convict's progress, the institution claimed a success rate of over eighty percent.<sup>54</sup> Sixty years later as reform programs were introduced into the Tennessee prison system in the late 1930s, chaplains, counselors, and teachers were hired to work with the convicts on special needs. The guards often saw these

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<sup>53</sup>Ibid.; Convict menus from Warden's Log Book, Fort Pillow State Prison, 1942, 1945, 1949.

<sup>54</sup>Todd R. Clear and George F. Cole, American Corrections (Belmont, CA: Brooks/Cole Publishing Company, 1986), pp. 81-83.

employees as "outsiders" and criticized their willingness to work with convicts.<sup>55</sup>

Many guards saw the convicts as worthless, unable to be helped, and deserving of the absolute minimum to maintain life. There were major administrative debates between concerns for rehabilitation from the one side and concerns for custody from the guards. In every instance that can be documented, custody won the debates.<sup>56</sup> While no sane person would advocate a complete relaxation of custodial rules -- multiple locked doors, barbed-wire topped fences and walls, gun towers, and some amount of enforced discipline -- many of the custodial arguments far exceed necessary control to prevent escapes.<sup>57</sup> The obsession with counting the convicts is one area that serves to illuminate the problem.

Every convict in the Tennessee prison system is counted an absolute minimum of seven times a day: sun-up, mid-morning, noon, mid-afternoon, sun-down,

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<sup>55</sup>State of Tennessee Report of Department of Institutions, Fiscal Year Ending June 30, 1941 (Nashville: Printing Division, Tennessee State Industries, 1941); Confidential Guard Interviews.

<sup>56</sup>Warden's Log Book, Tennessee state Penitentiary, 1935, 1939, 1945; Warden's Log Book, Fort Pillow State Prison, 1939, 1941. 1949; Correspondence File, Prisons, Part of Record Group 25, Archive Manuscripts.

<sup>57</sup>Gresham M. Sykes, The Society of Captives: A Study of A Maximum Security Prison (Princeton: Princeton University Press, 1958), pp. 18025.

lights-out, and middle of the night.<sup>58</sup> No one would deny the need to count the prisoners on some schedule to ensure that everyone is present, but is a count every three hours really necessary? Begun at a time when electronic detection and surveillance systems were non-existent, prison guards refuse even today to change the system. Teachers in the prison system are especially critical of the program as it often disrupts the most meaningful parts of the day, situations that are lost forever in the educational process.<sup>59</sup> Nonetheless, education loses the fight every time it occurs -- security forces make the final decisions in all situations in the prisons of Tennessee.

This narrative provides a cursory look at the keepers of the convicts during the first one hundred years of the Tennessee prison system. It does not try to give any psychological or sociological data or insights as none exists. It suggests that the guards were indeed much like the convicts: they argued, they fought, they partied, they sometimes broke the law, and sometimes they even got caught. But it also suggests that they are something more -- a part of the control system of the total institution as it existed in

<sup>58</sup>"Post Orders," Tennessee Department of Correction, Nashville.

<sup>59</sup>Interview with Jim Shull, former prison teacher and institutional librarian, 20 January 1990, Memphis, Tennessee.

Tennessee between 1831-1950. Recent inroads made by the federal courts into that total institution threaten the solidarity of the guards and their control. The time is ripe for a complete, in-depth study of the guards in the Tennessee prison system in an attempt to determine who and what they really are today.



## Chapter XII

### **The Kept and Their Subcultures**

The Tennessee State Penitentiary in the nineteenth century was a total institution as defined by Goffman as one "whose encompassing or total character is symbolized by the barrier to social intercourse with the outside and to departure that is often built right into the physical plant, such as locked doors, high walls, barbed wire, ... "<sup>1</sup> and is more dedicated to protecting the community against supposed dangers than to the immediate welfare of those confined within it. The reality of this is seen in the harsh regimen of daily routine and physical punishments for violations of minor rules as outlined in previous chapters. The convicts, not unlike members of any other society, saw a need for unity and brotherhood in order to survive.<sup>2</sup>

Patricia O'Brien discovered a unique society behind the walls of nineteenth century French prisons. Using confiscated letters, photographs, paintings, and numerous secondary sources from the period, she found a subculture among the convicts involved with tattoos, homosexuality, graffiti, and argot.<sup>3</sup> Although several

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<sup>1</sup>Erving Goffman, Asylums (New York: Anchor Books, 1961), pp. 4-5.

<sup>2</sup>Benjamin Lee Whorf, Language, Thought, and Reality (New York: John Wiley & Sons, Inc., 1959).

<sup>3</sup>O'Brien, The Promise of Punishment, pp. 75-108.

recent studies exist of the modern convict culture,<sup>4</sup> no such work has yet been done on American prisoners and their culture in the nineteenth century.

It is difficult to reconstruct any valid argument for a solid convict subculture in Tennessee during the period before the Civil War. Few individual records survived a disastrous fire of 1848; those records that exist are very sketchy concerning such things as scars, tattoos, or other marks that might serve to identify prison subcultures. The old prison on Church Street was demolished in 1898 and the materials were integrated into factory buildings at the new Main Prison in Nashville; evidence of graffiti, convict paintings, or other handiwork are lost forever to historians and sociologists of the era.<sup>5</sup> Evidence may be accumulated from various sources, however, to show that a convict subculture did exist in Tennessee in the nineteenth century; more than ample evidence exists to confirm the convict subculture in the twentieth century. Relying on

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<sup>4</sup>Inez Cardozo-Freeman, The Joint: Language and Culture in a Maximum Security Prison (Springfield, IL: Charles C. Thomas, Publisher, 1984); Charles Stastny and Gabrielle Tyrnauer, Who Rules the Joint? The Changing Political Culture of Maximum-Security Prisons in America (Lexington, MA: Lexington Books, 1982); William L. McWhorter, Inmate Society: Legs, Half-Pants, and Gunmen -- A Study of Inmate Guards (Saratoga, CA: Century 21 Publishing, 1981); Lee H. Bowker, Prisoner Subcultures (Lexington, MA: Lexington Books, 1977); John Irwin, The Felon (Englewood Cliffs, NJ: Prentice-Hall, 1971).

<sup>5</sup>Chapter III and Chapter VI herein detail both these situations in some detail.

the groundwork and principles of O'Brien and other researchers, the author found a subculture including tattoos, prison art, argot and nicknames, homosexuality, and an underground economy. While there are other elements of the convict subculture including drugs and alcohol in the modern Tennessee prison, concentration here will be on the ones named.

For thirty years after the Civil War, the Tennessee State Penitentiary and its convicts were leased to private operators; these lessees were responsible for all aspects of the penitentiary from feeding and clothing the convicts to keeping accurate records of those in their care and employ. Chapter IV herein provides a good description of the efforts of the lessees in record keeping and convict care, but in summary the records are sporadic and incomplete. One can, however, find enough references in newspapers and correspondence of the day to create some idea of the convict's life inside the penitentiary.

A story on the second page of the Nashville Banner provides a look at one convict of the period.

James Fergy, a white man about thirty-four years old, escaped from the railroad works of the penitentiary yesterday. Known to be a confidence man, burglar, and hold-up artist, the Tennessee Coal, Iron, and Railroad Company has posted a \$25 reward for Fergy's return to the penitentiary dead or alive. Fergy has three times been in the state penitentiary for felonies and is

covered across the back and arms with tattoos of various scenes. According to authorities, the most visible tattoo is on his left forearm and says Born To Lose. ...<sup>6</sup>

Tattooing is an ancient art dating back to at least Biblical times and is thought to be evident in Egyptian figurines dating to about 6,000 B.C.<sup>7</sup> A needle or needles are used to prick the skin into the subcutaneous region, and permanent black or colored pigments are introduced into the needle pricks. Professional tattoo artists use electric, multiple-needle devices that inject the inks through the needle's hollow core.<sup>8</sup> In less professional settings such as prison, a safety pin or other pointed instrument is used to prick the skin and ink is rubbed by hand into the needle holes. The permanent design is almost impossible to remove even by the most modern means without leaving defacing scars.<sup>9</sup>

In some parts of the world, slaves were tattooed by their owners in lieu of branding as was common in the

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<sup>6</sup>Banner, September 17, 1883.

<sup>7</sup>Jocelyn Paine, "Skin Deep: A Brief History of Tattooing," Mankind 6 (May 1979), pp. 18-31.

<sup>8</sup>C. J. Eldridge, The History of the Tattoo Machine (Berkeley: Tattoo Archive, 1982).

<sup>9</sup>C. J. Eldridge, Early Tattoo Attractions (Berkeley: Tattoo Archive, 1981).

Southern United States.<sup>10</sup> Tattoos often are used to mark purebred animals for easy identification.<sup>11</sup> In almost every instance of their use, tattoos are a form of identification; even in the prison environment, tattoos represent a form of personal identification into a distinct subculture of convicts. The origin of prison tattoos is unclear, but it is clear that the practice was forbidden by prison authorities for a number of reasons.<sup>12</sup> Not the least of these reasons were security -- possession of a pointed instrument was a major offense in most prisons -- and infection control. Even today many convicts get serious infections from unclean tattoo needles and inks that are not designed for use on the human body.<sup>13</sup>

O'Brien discovered a subculture in nineteenth century French prisons involving tattoos;<sup>14</sup> Tennessee prisoners, at least in some instances during the

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<sup>10</sup>Orlando Patterson, Slavery and Social Death (Cambridge, MA: Harvard University Press, 1982).

<sup>11</sup>Clinton R. Sanders, Customizing the Body: The Art and Culture of Tattooing (Philadelphia: Temple University Press, 1989).

<sup>12</sup>"Rules for Convicts," Tennessee State Penitentiary, Nashville, 1901.

<sup>13</sup>McWherter Interview.

<sup>14</sup>O'Brien, Promise of Punishment.

nineteenth century, also had tattoos.<sup>15</sup> Tennessee convicts in the twentieth century have certainly continued the practice of prison tattoos. Every recent study of convict cultures contains a discussion of the presence of tattoos on prisoners.<sup>16</sup> No one, however, has found a concrete reason why convicts would so willingly and openly mark themselves when such identification is to their own detriment especially if they commit another crime.

A major attraction of prison tattoos has to be that the convict is "beating the system," getting something that is forbidden by the authorities.<sup>17</sup> Secondly, tattoos are a form of bonding among those convicts that have them. Certain designs flourish within a prison setting and spread quickly to other institutions when a convict is transferred or gets into trouble in another locale. Today, prison gangs use tattoos for instant identification of their members and as a symbol of prestige and belonging.<sup>18</sup> Tertiarily, tattoos have a fatalistic side for the convicts: "born to lose," "death before dishonor," "love" and "hate" across the knuckles,

<sup>15</sup>Banner, September 17, 1883.

<sup>16</sup>O'Brien, The Promise of Punishment, pp. 75-108.

<sup>17</sup>Cardozo-Freeman, The Joint.

<sup>18</sup>Interview with Charles Brooks, Lake County Regional Prison, Tiptonville, Tennessee, March 11, 1990, a multiple-term prison inmate serving a fifty year sentence for armed robbery and kidnapping.

and "fuck the world"<sup>19</sup> all have a much deeper psychological import than mere identification within a subculture. Steward and sex-researcher Alfred Kinsey document at least twenty-five separate motivations for obtaining a tattoo, not the least of which are numerous sexual motivations.<sup>20</sup> Irwin found that most convicts saw prison as a "pit-stop" in the course of business, a time to rest, get healthy, and plan the next caper.<sup>21</sup> For those that return to prison time and again, the words of the tattoos are often self-fulfilling.

A branch of the art of tattooing is a subculture of prison artists. Most prison art that remains from the early twentieth century is primitive at best; self-taught artists using scrounged materials on paper or hardboard do not generally produce world-class art. Almost all prison art is based on memories of outside experiences, especially heterosexual activities, and very little can be considered abstract in any terms. Most of the work is erotic in nature, but some may be classed as mild pornography. Cardozo-Freeman and Bowker found similar art in Washington and California

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<sup>19</sup>These four tattoos occur more frequently than any other on Tennessee convicts according to records of "identifying marks and scars."

<sup>20</sup>Samuel M. Steward, Ph.D., Bad Boys and Tough Tattoos: A Social History of the Tattoo with Gangs, Sailors, and Street-Corner Punks, 1950-1965 (New York: The Haworth Press, 1990).

<sup>21</sup>Irwin, The Felon.

respectively.<sup>22</sup> This particular trend follows the example of the tattoos; except for the written messages noted above, most tattoos are erotic in nature.

Evidence may be found in the logs of various prison wardens concerning artwork on the walls of the various housing units in the penitentiaries.<sup>23</sup> All of the early prison art and graffiti has been painted over with numerous coats of paint throughout the years. One unintentional side benefit of the repainting is the provision of a new, clean surface for more recent artists; Tennessee discourages such cell-wall artwork, however, by punishing it as a disciplinary offense. There are a few examples of convicts who learned to draw or paint behind the walls of Tennessee's prisons that have made financial successes as a result of their art. One recent prison artist learned to paint on death row awaiting execution in the electric chair. His sentence was commuted to life in prison following the decision of the United States Supreme Court in Furman v Georgia,<sup>24</sup>

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<sup>22</sup>Cardozo-Freeman, The Joint; Bowker, Prisoner Subcultures.

<sup>23</sup>Warden's Log, Tennessee State Penitentiary, 1901, 1907, 1930.

<sup>24</sup>Furman v Georgia, 408 United States Reports 238, United States Supreme Court, 1972.



and he now exhibits work in galleries around Tennessee and commands first-class prices for his wildlife art.<sup>25</sup>

Numerous studies have been made of the argot of criminals and convicts. O'Brien references several studies by French linguists and ethnographers in the nineteenth century.<sup>26</sup> Hargan completed an American sociological study in 1935,<sup>27</sup> and the most modern and complete study of prison jargon to date is Cardozo-Freeman's The Joint: Language and Culture in a Maximum Security Prison.<sup>28</sup> From material collected over more than two years both by the author and an inmate assistant, Cardozo-Freeman concluded that the prison argot is different from that of the criminal on the streets, that there is a stream of continuity because of transfers, recidivism, and long-term convicts, and that the argot is meant to bind the group together as does the particular language of any subgroup such as attorneys, accountants, or even historians.<sup>29</sup>

Tennessee's prisons were certainly no different in the past and are no different today from the other

<sup>25</sup>Interview with Associate Warden James Vandever, Tennessee State Penitentiary, 3 July 1988.

<sup>26</sup>O'Brien, Promise of Punishment, p. 79, n. 5.

<sup>27</sup>James Hargan, "The Psychology of Prison Language," Journal of Abnormal and Social Psychology 30 (Winter 1935), pp. 359-365.

<sup>28</sup>O'Brien, The Promise of Punishment, pp. 75-108.

<sup>29</sup>Ibid., pp. xi-xvii.

prisons studied. There existed in the nineteenth century and today a distinct prison jargon that has continued from the early periods. A "yegg" of 1845<sup>30</sup> is today's "thief" -- not a description of an occupation but an identification of a class of convict, one who looks on prison as a pit-stop as observed by Irwin.<sup>31</sup> The "right man" of 1851 became the "stand-up con" of the 1940s and 1950s and is today's "good people."<sup>32</sup>

Terminology for the prison itself has changed over time in Tennessee. Going to the Tennessee State Penitentiary in Nashville was referred to as a "trip to the Big House"<sup>33</sup> or "to the Walls." It soon became merely the "Walls," an appellation that continues to this day and that denotes the twenty-five foot high rock wall around the Main Prison built in 1898. Other names for the penitentiary include the pen, the joint, and stir. Serving a sentence in the penitentiary has been called numerous things including laying up, stretched out, burning, and more recently, doing time. Sentences

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<sup>30</sup>Banner, April 19, 1845.

<sup>31</sup>Interview with Homer Williams, Lake County Regional Prison, Tiptonville, Tennessee, March 16, 1990, long-term prison inmate currently serving seventy-five years for murder. Williams has spent 38 of his 53 years behind bars for a multitude of crimes and is a valuable resource on Tennessee prison subculture.; Irwin, The Felon, supra., note 8.

<sup>32</sup>Williams' Interview.

<sup>33</sup>Whig, January 24, 1831.

almost always have been referred to in monetary terms -- five years is a "nickel," ten years is a "dime," twenty years is "twenty cents."<sup>34</sup>

Guards do not escape the slang of the prisons, either. They have variously been called screws, hacks, turn-keys, boss, captain, the man, and cops. Guards use the argot of the penitentiary as well; many times one can not tell from the language used whether it is a con or a guard speaking.<sup>35</sup> Perhaps the most pervasive portion of the argot is the practice of nicknames. Absolutely no one in the prison environment exists without a nickname. If a convict does not have a nickname when he arrives, he is sure to pick one up in the first few days. Most guards and officials have nicknames used by the convicts that are pejorative in nature and that are never used in the open.<sup>36</sup> There is some evidence that the habit of prison nicknames existed in the nineteenth century Tennessee prisons as well.<sup>37</sup>

The subculture of homosexuality is at once both easy and difficult to understand. It is easy to understand why some men, isolated for years in a single-sex environment, turn to homosexual acts to relieve sexual

<sup>34</sup>Williams' Interview; Brooks' Interview; Cardozo-Freeman, The Joint.

<sup>35</sup>Vandever Interview.

<sup>36</sup>Ibid.; Williams' Interview; Brooks' Interview.

<sup>37</sup>Convict Register Books; Convict Grade Books.

tension. While it is easy to understand the physical release, it is harder for most heterosexuals to come to grips with the idea that homosexuality can produce the same emotional and psychological ties that exist between males and females. In O'Brien's work and almost every other study on the subject, there exists a strong sense of partnership, of life-long bonding, and of actual "marriages" between the homosexual actors.<sup>38</sup>

In the prototype study, Sex in Prison, Fishman determined that between thirty and forty percent (30-40%) of all male convicts participate in homosexual acts at some time or another.<sup>39</sup> Although published in 1934, the book remains remarkably accurate and realistic in its assessments according to more recent studies.<sup>40</sup> Fishman outlined two separate groups of prison homosexuals: the participants who actually prefer homosexual activity and those who are forced into the activity.

There was certainly no "opening of the closet" in nineteenth century America to allow those that preferred the homosexual life to blossom and pursue that lifestyle

<sup>38</sup>O'Brien, Promise of Punishment, pp. 98-100; Bowker, Prisoner Subcultures, pp. 115-117; Azmy Ishak Ibrahim, "Deviant Sexual Behavior in Men's Prisons," Crime and Delinquency 20 (January 1974), p. 41.

<sup>39</sup>Joseph Fishman, Sex in Prison (New York: National Liberty Press, 1934).

<sup>40</sup>Bowker, Prisoner Subcultures, Ibrahim, "Deviant Sexual Behavior"; Daniel Lockwood, Prison Sexual Violence (New York: Elsevier North Holland, 1980).

as there has been in recent years. Practicing homosexuals had to sneak around and enjoy their forbidden acts in furtive assignations; homosexuality was illegal in all areas of America in the 1800s. Prison would likely have appeared as a panacea to homosexuals of the day: unlimited males with access to no other form of sexual release -- even masturbation was forbidden and punished severely if discovered.<sup>41</sup> Masturbation was listed as the cause of death for two convicts during the convict lease period.<sup>42</sup> Any "queen" or "female" participant in homosexual activity would likely have found a ready demand for "her" services in the Tennessee penitentiary. Records do reveal a strong inclination for sodomy among the male prisoners; punishments, however, were not much more severe than for being short of work or for being disrespectful to the guards.<sup>43</sup> There is also some evidence that guards could be "persuaded" to look the other way long enough to allow an act to occur.<sup>44</sup>

During the first 100 years of Tennessee prisons, there were efforts to separate known homosexuals from

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<sup>41</sup>Convict Register Books; Warden's Log Book, Tennessee State Penitentiary, 1849.

<sup>42</sup>Biennial Report of the Superintendent of Prisons, January 1, 1877 (Nashville: Tavel, Eastman & Howell, Printers to the State, 1877); Ibid., January 1, 1881.

<sup>43</sup>Convict Grade Books.

<sup>44</sup>Banner, May 14, 1921.

the regular prison population.<sup>45</sup> Homosexuals in the early twentieth century were forbidden to wear feminine garments or make-up, and they were isolated in a separate wing of the prison.<sup>46</sup> Still forbidden in Tennessee prisons, homosexual activity remains today one of the principal problems for the administration. Official estimates of the activity range from "very small" to "about ten percent."<sup>47</sup> Unofficial estimates of homosexual activity, however, are very similar to those discussed by Fishman in 1934: thirty to forty percent of the total convict population.<sup>48</sup> Since it is obvious that thirty to forty percent of prison populations are not practicing homosexuals upon entry into the penitentiary, where do the additional participants come from? Most come from Fishman's other group -- those forced to participate in homosexual activity.

Prisoners are forced to engage in homosexual activity through two separate avenues: "turn-outs" and forced rape.<sup>49</sup> A turn-out is prison terminology for any convict that can be persuaded to accept protection or material favors in return for sex. The sexual favor may

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<sup>45</sup>"Report of the Keeper of the Tennessee Penitentiary," 1837, 1856, 1897, 1911.

<sup>46</sup>"Rules for Convicts."

<sup>47</sup>Vandever Interview; McWherter Interview.

<sup>48</sup>Williams' Interview; Brooks' Interview.

<sup>49</sup>Ibid.; Fishman, Sex in Prison.

come in form of either oral or anal sex or both depending on the desires of the "top man" or the male partner. Prisons are violent places where convicts outnumber guards many times by a factor of thirty or forty to one;<sup>50</sup> protection for a weak convict is almost never available from prison personnel short of placing the man under the protection of administrative segregation.<sup>51</sup> Strong, tough, long-term convicts offer their protection from other sharks to young, weak prisoners; the "fish" or weak young offender often knows that he will be raped if he does not submit and is in a very real "catch 22" situation. These turn-out situations often develop into long-term relationships with the partners sharing housing assignments and becoming almost totally dependent upon the other. The irony of these sexual unions occurs at release time. The "top man" or male partner almost never continues a homosexual preference outside the prison while the "punk" or female participant is generally so emotionally confused that he continues his homosexual activity outside the prison environment.<sup>52</sup>

While the very real danger of force almost always lies behind the turn-out situation, the level of forced

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<sup>50</sup>Crouch, The Keepers.

<sup>51</sup>Fishman, Sex in Prison; McWherter Interview.

<sup>52</sup>Williams' Interview; Cardozo-Freeman, The Joint.

homosexual rape that occurs in prison is both frightening and increasing. Records from the nineteenth century indicate that homosexual rape occurred in Tennessee prisons and, as discussed above, sodomy was not an uncommon practice among the male convicts.<sup>53</sup> The overcrowding of all Tennessee prisons at the end of the convict lease resulted in many more forcible rapes -- or at least resulted in the reporting of many more forcible rapes.<sup>54</sup>

The horrors of homosexual rape cannot be conveyed by the written word; even the sounds of its occurrence on audio tape are so unreal as to be almost unbelievable.<sup>55</sup> Interviews with long-term convicts in the Tennessee prison system indicate that forced homosexual rapes still occur throughout the prison system.<sup>56</sup> Three or four toughs grab a weak, young convict, drag him into an area out of view of the guards, and then gang rape him both anally and orally. Often the victim is forced

<sup>53</sup>Convict Register Books; Convict Grade Books.

<sup>54</sup>Third Biennial Report of the Board of Prison Commissioners of the State of Tennessee to the Governor from December 1, 1898 to December 1, 1900 (Chattanooga: Press of the Times Printing Company, 1900).

<sup>55</sup>Audio tape recording of brutal homosexual rape, John Doe v Herman Davis, Warden, United States Federal District Court, Western District - Tennessee, 1984.

<sup>56</sup>Williams' Interview; Brooks' Interview; Interview with Asad Mujihadeen, Fort Pillow State Prison, Henning, Tennessee, July 15, 1986, and at Lake County Regional Prison, Tiptonville, Tennessee, February - April, 1990, long-term prison inmate serving a life sentence for murder.



into a housing situation with one or more of the toughs from which he is not able to escape because of the internal workings of the prison.<sup>57</sup>

If the victim asks prison officials for protection following an assault, he will be "checked-in," prison terminology for administrative segregation. Any convict checking-in must be prepared to stay there for the duration of his sentence; the toughs have no compunction about assaulting anyone who comes off voluntary segregation into the general prison population.<sup>58</sup> According to departmental guidelines and handbooks, check-in is not punitive; privileges, however, are greatly circumscribed.<sup>59</sup> The convict is allowed one hour a day out of his cell to perform exercise, take a shower, and attend to personal matters. He must exercise in a small, enclosed area away from all other convicts. Guards take his commissary list and return with his purchases; he is escorted to and from sick call by two guards at times when other convicts are locked up; he has no open access

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<sup>57</sup>Ibid.

<sup>58</sup>Cardozo-Freeman, The Joint; James B. Jacobs, Stateville: The Penitentiary in Mass Society (Chicago: University of Chicago Press, 1977).

<sup>59</sup>Tennessee Department of Correction Policy Handbook, Nashville, 1989.

to education or vocational training programs.<sup>60</sup> It is not difficult to understand why many weak prisoners submit to homosexual advances rather than face the alternatives.

Prison officials rank homosexual activity as one of the most degrading parts of prison confinement, but they are helpless in most instances to do anything to reduce it by meaningful amounts. Conjugal visits, legal in only three states for convicts who must earn the privilege, are forbidden by state law in Tennessee.<sup>61</sup> Added to the moral and ethical problems of homosexuality as seen by most state prison officials is the very real possibility of Acquired Immuno-Deficiency Syndrome or AIDS as a result of the practice since condoms have never been available in most state prison systems.<sup>62</sup>

The strongest evidence of a convict subculture in the early Tennessee prison system is found in the development of a "convict code." The code is an unwritten set of rules for convicts to follow in order to survive. These rules were formulated by the convicts themselves over a long period of time and were imposed on new con-

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<sup>60</sup>Ibid.

<sup>61</sup>Columbus B. Hooper, Sex in Prison: The Mississippi Experiment with Conjugal Visiting (Baton Rouge: Louisiana State University Press, 1969).

<sup>62</sup>"AIDS in Prison," Bureau of Justice Statistics Bulletin, Rockville, Maryland, 1990.

victs as a matter of course. References to the convict code occur in the wardens' log books as early as the 1840s.<sup>63</sup> Most references concern futile attempts by officials to get information from convicts, information that would violate the first rule of the convict code.

The convict code is the epitome of the "keeper and the kept" philosophy. For those cons that formulated the code, the prison officials were suckers, taken in by the state in the belief that what they did was for the good of the people. The only "good people" to the cons were those convicts that took care of themselves, did their own time, and never gave information to the guards. According to a variety of researchers, the code evolved over a period of 100 years into five major principles with sub-principles under each one.<sup>64</sup>

1. Never interfere with the interests of your fellow convicts. This concept included such things as never rat on another convict, never put a con on the spot, and be loyal to your class -- the convicts.
2. Do your own time. Do not interfere with another convict's "business." Do not be nosey. Stay out of arguments with other convicts and keep your head at all times.
3. Never con another convict. Keep your word, pay your debts including all bets, and above all never steal from a convict.

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<sup>63</sup>Warden's Log Book, 1843.

<sup>64</sup>Irwin, *The Felon*; Bowker, *Prisoner Subcultures*; Cloward, *Theoretical Studies in Social Organization of the Prison*; Gresham M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton: Princeton University Press, 1958).

4. Be strong within yourself. Never start a fight but, if one is necessary, never run from it.
5. Do not become a sucker. The hacks and screws are all hypocrites. Be sharp and remain true to yourself and to other convicts.

Many convicts were seen as weak and not committed to other cons or to the convict code. These men were ostracized from even the limited society of the convicts and spent hard-time trying to get by totally on their own. If they were observed being "friendly" to a guard, they were likely to be labelled as "snitches" or "rats," the absolute lowest level of humanity to a convict. The life expectancy for a snitch in the nineteenth century prison was very short.<sup>65</sup> Most convicts had a weapon of some sort, a home-made knife called a "shank" or a piece of pipe, and these weapons were used on anyone thought to be a rat. One needs only to read about the bloody riots at the Santa Fe, New Mexico, State Penitentiary to understand that snitches are still considered as the lowest form of prison life.<sup>66</sup>

Other convicts, violent on the outside and with absolutely no help for apparent psychological problems, remained violent in the prison. Fighting, arguing, and stealing from other convicts was the pattern for many

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<sup>65</sup>Warden's Log Book, 1851, 1898.

<sup>66</sup>Jerry Mandel, "The Santa Fe Prison Riots," Agenda: A Journal of Hispanic Issues 10 (1980), pp. 4-10.

convicts. The good cons had names for these men that did not fit in -- sharks, gorillas, or toughs. A good con did not do these things. He did his time, making a few friends that closely followed his own ideals, and staying out of the prison limelight. He certainly never stole from another convict; there seems to be an anomaly here as stealing from blacks and the weak certainly occurred, but these men just were not considered "convicts" by the good cons.<sup>67</sup>

Almost as low as a snitch on the convict scale was the "straight," someone that had come to prison for a single, non-recurring crime and had neither sophistication nor ideals about his criminal career. The straight was often friendly to the guards, seen as "boot-kissing" if not outright snitching, and would do almost anything including snitch on other convicts to ensure his release at the earliest possible time. The good cons kept away from the straights in an attempt to deny them access to information about the good cons.<sup>68</sup>

The code developed a continuity over time much like the prison argot from both long-term convicts and recidivists. It was the existence of the convict code, formulated over time by a group of hardened career

<sup>67</sup>Even today those that do not conform to the "code" are pejoratively referred to as "inmates" or "residents" by the older convicts who still follow the code.

<sup>68</sup>Williams' Interview; Brooks' Interview.

criminals, that led many prison officials to call for separation of young convicts from the older, more experienced criminals.<sup>69</sup> The officials felt that, if the younger convicts were exposed to a different environment designed to punish but rehabilitate as well, the rate of return to prison could be reduced. Unfortunately in Tennessee, there was no attempt at age or criminal history segregation until the late 1930s, and the experiment for the most part failed due to overcrowding as discussed more fully in Chapter VII herein.

There is a very well-defined economic subculture among the convicts as well. As early as 1839 one can find references to punishments for selling food, selling "julep" -- prison argot for any homemade alcoholic brew, and selling other goods.<sup>70</sup> It is more difficult to determine what the mode of exchange was, however; free-world currency was not allowed in the prison, and there was no commissary for use by the convicts. Food and sex remained the two highest level commodities in Tennessee's prisons throughout the nineteenth century, but alcohol maintained a high priority as well.

The making of low-level alcohol brews has been practiced for at least 5,000 years. Accumulate a source of sugar or easily convertible starch -- fruit, flour,

<sup>69</sup>Biennial Report of Department of Institutions, 1932-1934.

<sup>70</sup>Convict Register Books.

corn meal, bread, granulated sugar -- add water and yeast to a closed container with a vent for fermentation gasses to escape and wait: in seven to ten days, the bubbling from fermentation will slow or stop depending on temperature and sugar concentration.<sup>71</sup> Green beer (fermentation product with still-active yeast cells) or "julep" will quickly produce an alcohol high; unfortunately for the drinkers, however, the active yeast may also produce an extremely painful and serious case of diarrhea.<sup>72</sup>

Prison officials have always worried about possession of alcoholic beverages in the penitentiary. The first report of the keeper of the Tennessee penitentiary stated that all "living quarters are searched weekly" to prevent "spiritous liquors" from being made.<sup>73</sup> Syrup was a staple of the early penitentiary diet, and empty syrup buckets were apparently in good supply. Convicts used them to safely store their meager possessions, but they also used them to brew julep. The wardens' logs for the various years

<sup>71</sup>Larry D. Gossett, "Fermentation of Sugars in Waste Food Products," in National Technical Information Service, Small-Scale Alcohol Production: A Primer (Washington: National Technical Information Service, 1981).

<sup>72</sup>"Report of the Physician of the Tennessee State Penitentiary," 1900.

<sup>73</sup>"Report of the Inspectors and Agent of the Tennessee Penitentiary," 1833.

before the Civil War indicate that few inspections failed to produce several gallons of working brew.<sup>74</sup>

The convict economy apparently went into hibernation during the convict lease period. A few privileged convicts were allowed to eat dinner in the guards' quarters and possibly the convict cooks might have been able to steal food, but there was never enough food for any of the convicts and no medium of exchange existed. Any food stolen by cooks or privileged convicts was probably consumed by them on the spot. The return to the penitentiary in Nashville after 1896, however, brought the convict economic system back into operation.

The first punishment recorded in the Convict Grade Books for 1898 was for selling food.<sup>75</sup> Once again the medium of exchange is unknown. Establishment of a prison commissary selling a few treats and foodstuffs early in the twentieth century certainly contributed to the ongoing convict economy. Commissary goods provided a medium of exchange that was unchanging, and by the 1930s packs of cigarettes were the "official" medium of exchange throughout the nation's prisons.<sup>76</sup> Almost every commodity available to convicts -- food, gambling

<sup>74</sup>Warden's Log Book, 1835, 1851.

<sup>75</sup>Convict Grade Book 1.

<sup>76</sup>Cardozo-Freeman, The Joint; Bowker, Prisoner Subcultures; Warden's Log, Tennessee State Penitentiary, 1941.



bets, sex, even assaults on other convicts -- was and is today priced in packs or cartons of cigarettes.<sup>77</sup>

There are varying efforts made to eliminate the convict economy and various subcultures, but they are too ingrained and too well-established in Tennessee to be affected by changing prison rules. Rules against tattooing have existed for more than 100 years, and it continues today at about the same rate as in the nineteenth century. There are strict punishments for homosexual activity including prosecution in state courts for homosexual rapes, yet homosexual activity continues in between thirty to forty percent of the prison population. Rules exist against lending, borrowing, selling of goods, and gambling in every prison system studied;<sup>78</sup> these activities are even more pervasive than homosexual activity. The subculture performs several services for both the prison officials and the convicts. Prison officials see lessened demands for services that can be easily provided through the convict economy, less violence toward guards and the institution in those prisons with high rates of

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<sup>77</sup>Williams' Interview; Brooks' Interview.

<sup>78</sup>Ibid.; Cardozo-Freeman, The Joint; Bowker, Prisoner Subcultures; R. Theodore Davidson, Chicano Prisoners: The Key to San Quentin (Prospect Heights, IL: Waveland Publishing, 1983); Ben H. Bagdikian, Caged: Eight Prisoners and Their Keepers (New York: Harper & Row, 1976).

homosexuality, and gain easy annual budget increases to combat the violence that does occur.<sup>79</sup> The subculture provides the convicts with access to more luxuries -- better food and more of it, a form of release from the frustrations of the single-sex society, and a way to "beat the system." Until both sides decide that the convict subculture is no longer beneficial and determine to replace it with some system supplying at least a semblance of the same benefits of the inmate subculture, the convicts will continue "beating the system" in every way that is possible. The replacement of the established subculture does not appear to be forthcoming in the near future, and it likely will continue to prosper and grow.

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<sup>79</sup>McWherter Interview.

## Chapter XIII

### **The Tennessee State Prison System:**

#### **The First 100 Years**

The notions of rehabilitation and social reintegration have always appeared to some extent in the philosophy of American penology and were a primary influence in the emergence of the penitentiary itself.<sup>1</sup> The replacement of sanguinary punishments with secure confinement in such institutions was accompanied by the hope that such banishment from free society would work to effect a change in the lives of the prisoners.<sup>2</sup> As a direct result of that hope, well-motivated and deserving convicts have regularly been assisted by penal authorities in their desire to return to the outside, free community.<sup>3</sup>

The development of the philosophy surrounding this assistance has roots in the earliest penitentiary in Philadelphia. The Philadelphia Society for Alleviating the Miseries of Public Prisons was founded on May 8, 1787, by a group of influential Philadelphia

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<sup>1</sup>Ignatieff, A Just Measure of Pain; Wallace M. Rudolph, "Punishment or Cure: The Function of Criminal Law: Observations by Consultant to the Special Committee on Corrections and Sentencing for the Commissioners on Uniform State Laws," Tennessee Law Review 48 (Spring 1981), pp. 535-562.

<sup>2</sup>Acts of Tennessee, Ch. 23, pp. 27-45, 1829.

<sup>3</sup>McWherter Interview; Vandever Interview.

businessmen, many of whom were members of the religious group known as Quakers.<sup>4</sup> This group and its successor, the Pennsylvania Prison Society, propagated the doctrine of rehabilitation. The constitution of the Pennsylvania Prison Society stated, in part,

... When we consider that the obligations of benevolence, which are founded on the precepts and example of the Author of Christianity, are not cancelled by the follies or crimes of our fellow creatures, and when we reflect upon the miseries ... [of incarceration] it becomes us to extend our compassion to that part of mankind, who are the subjects of these miseries. By the aids of humanity, their undue and illegal sufferings may be prevented ... and such degrees and modes of punishment be discovered and suggested, as may, instead of continuing habits of vice, become the means of restoring our fellow creatures to virtue and happiness.<sup>5</sup>

The principle was extended by the Declaration of Principles issued by the American Prison Association at its inaugural meeting in Cincinnati in 1870. This first national association of prison administrators was formed by Enoch C. Wines of New York, Franklin Sanborn of Massachusetts, and Zebulon Brockway of Michigan.<sup>6</sup> These professional state prison officials, like the Quakers

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<sup>4</sup>Barnes, "Historical Origins of the Prison System in America."

<sup>5</sup>Negley K. Teeters, They Were in Prison (Philadelphia: John C. Winston Company, 1937).

<sup>6</sup>Clear and Cole, American Corrections.

before them, firmly embodied the ideal of progressive treatment. According to the Declaration,

... The treatment of criminals by society is for the protection of society. But since such treatment is directed to the criminal rather than to the crime, its great object should be his moral regeneration. Hence the supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering.<sup>7</sup>

In order for rehabilitation to have a chance at all, the convict must be involved in the process of change at every step of the procedure. Central to this idea of character change is the idea that the prisoner cannot be forced to accept a new identity or to undergo moral regeneration and that negative sanctions only further embitter the convict. To encourage participation, the prisoner must see some hope for success, some hope for release in the foreseeable future, and hope for a new way of life.

Why then was the prison system in Tennessee so filled with recidivists and hardened criminals throughout its first one hundred years? Was Tennessee that much different from the Elmira, New York, Reformatory that experienced "eighty-one percent success" with its convicts in the late-nineteenth century? Did the high-principled concepts of rehabilitation not work in the

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<sup>7</sup>Declaration of Principles, Article II, American Prison Association (now the American Correction Association).

real world of prison, or was Tennessee not really committed to the principles that it put forth in its penal legislation?

The first one hundred years of the Tennessee state prison system ended as it began -- the state's convicts were totally the responsibility of the state, there were efforts to employ every convict in some form of work that would reduce the costs of his incarceration, and the public had again quickly lost interest in its "forgotten men." The premise that began this study was that nothing right had been done in prisons in Tennessee for 150 years and, although this work looks at only approximately the first 100 years, there are at least three valid conclusions that may be drawn. These conclusions are that four major problems existed in Tennessee prisons across the entire 100 year period of history, that Tennessee did not adopt a unique philosophy of prison construction or administration but rather fit into a regional philosophy apparent throughout the Southern United States, and that reform in criminal codes and prison operations occurred only when the public was willing to take action and demand that the legislature act in a positive manner. Each of these conclusions will be supported by a brief reexamination of the facts.

## I.

Four major, recurring problems existed across the first 100 years of history of Tennessee prisons. The four problems were that

- a. prisons always cost too much to build and operate,
- b. prisons in Tennessee were always too small,
- c. the state's prisons did not accomplish the goals set out by the General Assembly, and
- d. there was no viable alternative to a prison system for the state to control its wayward citizens either technologically or economically.

These problems are certainly not the only ones that can be isolated, but they are the major problems that are discussed politically and editorially over and over again. A summary of each of the problems drawn from the preceding chapters will illuminate the trends.

Tennessee's prisons always cost too much.

The Journal of the Proceedings of the General Assembly of the State of Tennessee as early as 1832, at the beginning of only the second year of the state's prison operation, contained a lengthy discussion of possible ways to reduce the cost of prison operation.<sup>8</sup> The labor of the convicted felons was hired out to Nashville businesses who set up shops inside the prison

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<sup>8</sup>Journal of the Proceedings of the General Assembly of the State of Tennessee, 1832-1833 (Nashville: Times Printing Company, 1833).

for the manufacture of various goods. The prison housed some 180 convicts at the time who were employed in the manufacture of saddles, harnesses, prison uniforms, soap, and other products needed both inside the prison and for sale outside. Those unable to work at a trade were kept busy in the prison gardens or tending the chickens and other livestock. The cost to the state was minimal by today's standards even allowing for inflation over the period. The cost to keep a convict for 12 months totaled just under \$35.<sup>9</sup> One must remember that the labor contractors paid the state a daily rate, that many of the foodstuffs consumed were grown by the prisoners themselves in prison gardens, and that very few amenities were provided by the state.

References to the need to reduce prison operating budgets appear again and again over the first 100 years in the official records.<sup>10</sup> Financially destitute after the Civil War, Tennessee followed the pattern of many other Southern states and leased its convicts to private businesses such as the Tennessee Coal, Iron, and Railroad Company.<sup>11</sup> The difference between this system and the original hiring out of labor was that, under the lease plan, the lessee was responsible for health,

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<sup>9</sup>Ibid.

<sup>10</sup>House Journal, 1835-1836, 1839-1840, 1851-1852, et al.

<sup>11</sup>House Journal, 1867-1868.



safety, housing, security, clothing, and all the other necessities of life whereas the state was responsible for everything under the labor account plan. This ended the need for budgetary restraint on the prison system until the early 1890s when coal miners in East Tennessee openly revolted against the state and its convict labor force.<sup>12</sup> The state was forced to end the leasing system and return its convicts to state prisons under direct state control. A new prison was built in Nashville in 1896 to replace the original overcrowded and dilapidated facility built in 1831 and allowed to fall into disrepair during the Civil War and the following period of convict leasing.<sup>13</sup> A second prison, Brushy Mountain State Penitentiary, was opened the same year in Morgan County in East Tennessee on coal fields bought by the state for the convicts to work.<sup>14</sup> In spite of a desire by the General Assembly to "make the prison pay for itself by the work of the convicts", the costs of incarceration continued to rise. By the early 1920s the cost per convict was well over \$500 per year after the application of more than \$300,000 in annual net profits

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<sup>12</sup>"Report of the Governor to the General Assembly on the Coal Miners' Insurrection," House Journal, 1891-1892.

<sup>13</sup>Acts of Tennessee, Ch. 78, pp. 96-105, 1893.

<sup>14</sup>Ibid.; "Report of the Penitentiary Purchasing and Building Committee to the General Assembly of Tennessee, 1895," House Journal, 1895.

during this period from the sale of coal and coke.<sup>15</sup> The Main Penitentiary in Nashville bulged at the seams with convicts as at least two men were housed in every one-man cell, and there was little work for any of them to perform.<sup>16</sup>

Tennessee's prisons were always too small.

When Tennessee opened its first prison on what is now Church Street in downtown Nashville in 1831, it was thought that its 200 cells would accommodate the state's convicts for at least thirty years.<sup>17</sup> By the end of 1833, however, the prison was housing more than 355 convicts and a cholera outbreak, absolutely impossible to control because of the overcrowded conditions, had killed 85 convicts during the year.<sup>18</sup> An additional 100 cells were built in 1835 but, by the end of the next year, state prison administrators were forced to put two men in a single cell, defeating the hope that isolation and silence would cause the miscreant to repent and reform his ways.<sup>19</sup> The prison remained overcrowded until the Union Army took control of the facility during

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<sup>15</sup>House Journal, 1920-1921, 1924-1925, et al.

<sup>16</sup>Ibid., 1900-1901.

<sup>17</sup>Ibid., 1831.

<sup>18</sup>Ibid., 1833.

<sup>19</sup>Ibid., 1837.

the Civil War and used it as a federal prison for Confederate prisoners of war. When the federal military returned control of the prison to the state, it was in horrible condition and the factory equipment was totally decrepit and outmoded. Rather than spend the unavailable large sums of money required to refurbish the prison and reequip its factories, the General Assembly opted for the convict lease system.<sup>20</sup> The Nashville prison was used only for those convicts physically unable to work in the coal mines or on the railroads, and the number at first was always very small. By the 1880s, however, the lessees were not able to employ all of the available convicts and the prison population inside the walls grew exponentially. In 1890, the Main Penitentiary housed more than 800 men in its 232 cells or some 345% of its designed maximum capacity.<sup>21</sup>

When the convict lease system was abolished by the General Assembly in 1893 with a termination date of 1 January 1896, the legislature appropriated money for a new 1,000-man prison in Nashville as well as a second prison for 600 convicts in the coal mining area of East Tennessee.<sup>22</sup> By 1900, the Nashville prison, actually designed and built for only 800 men, held 1400 convicts

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<sup>20</sup>Ibid., 1866.

<sup>21</sup>Ibid.; House Journal, 1882, 1892.

<sup>22</sup>Acts of Tennessee, Ch. 78, pp. 96-105, 1893.

while Brushy Mountain held more than 800.<sup>23</sup> By 1930, the Nashville prison housed over 1900 and there were another 900 men at Brushy Mountain; the Main Prison housed almost 200% of design and Brushy Mountain housed 150% of its capacity.<sup>24</sup>

The ever-increasing prison population far outstripped the rate of population growth in the state. In almost every year since 1831, the growth of convict populations has been at a higher rate than the general population increases. In just the last ten years of this study, Tennessee's prison population more than doubled while the state's population increased by a meager eight percent.<sup>25</sup>

Tennessee's prisons did not accomplish legislative goals.

The early legislative goals for the Tennessee prison system were clearly stated in the discussion and debates of the General Assembly on the penitentiary bills. The primary purpose of the new penitentiary system was to replace the sanguinary punishments under

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<sup>23</sup>House Journal, 1901.

<sup>24</sup>Ibid., 1933.

<sup>25</sup>Tennessee Blue Book (Nashville: Secretary of State's Office, various years); House Journal, 1829.

the pre-1830 criminal code.<sup>26</sup> The net effect of the harsh punishments, according to a governor of the era, was that juries refused to convict defendants even when the evidence of guilt was clear.<sup>27</sup> The legislature and the public agreed that a system of less harsh punishments would, in fact, be much surer punishments for the guilty.

A second stated purpose of the new penitentiary was to discourage others from committing crimes.<sup>28</sup> The idea of general deterrence had its origins with the Society of Friends and the Philadelphia Society for Alleviating the Miseries of Public Prisons in Pennsylvania.<sup>29</sup> These two groups felt strongly that incarceration for a set term of time together with the deprivation of all privileges would cause others to turn from a life of crime. The Tennessee General Assembly stated that the "foreboding presence of the penitentiary" would keep potential wrongdoers from straying into crime.<sup>30</sup>

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<sup>26</sup>House Journal, 1829.

<sup>27</sup>"Messages of the Governor of Tennessee to the General Assembly," House Journal, 1819, 1821.

<sup>28</sup>House Journal, 1829.

<sup>29</sup>Negley K. Teeters, The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773-1835 (Philadelphia: Temple University Press, 1955).

<sup>30</sup>House Journal, 1831.

A third enumerated purpose for the new prison system was to punish the offender for his misdeeds.<sup>31</sup> The idea of retribution, well-founded in the fundamental Christian ethic of the young state, was almost totally responsible for the harshness of the punishments being replaced by the new penal code. The philosophy of retribution, however, was not replaced in the minds of either the General Assembly or the public. The penitentiary was intended to be an undesirable place to visit for any period of time -- no matter how short the sentence. Prior to about 1900, all reading materials were strictly forbidden except for the Bible, visits from outside the prison were not permitted, and a code of silence was rigidly enforced at all times. Convicts were expected to follow orders of guards without question, respond politely when addressed by prison officials, never speak to any official without first being addressed by the official, and to maintain total silence among the other convicts. Infractions of any of the prison rules were met with quick corporal punishment from the strap - generally five to fifteen lashes laid on the bare back with a leather strap approximately

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<sup>31</sup>Ibid., 1829.

three inches wide and thirty-six inches long with a wooden handle for swinging.<sup>32</sup>

The fourth and final stated goal of the penitentiary system was that it cost as little as possible and that it return a profit to the state if at all possible.<sup>33</sup> The state selected the Auburn-style prison system specifically because it offered the opportunity for congregate work of the convicts in a factory system; the competing Pennsylvania-style prison system utilized convict labor in individual hand work only, and it was considered extremely unlikely that such a prison could be self-sustaining in Tennessee.<sup>34</sup>

It is interesting to note that, unlike the first penitentiary in Pennsylvania, there was no stated goal of rehabilitation for the convicts in the discussions of the late 1820s. The first penitentiary in this country was the Walnut Street Jail built in 1794 in Philadelphia. Using the idea of total isolation from other convicts in individual cells where the convict would work, eat, and sleep, the administration of the Walnut Street Jail announced its goal to be "to restore these

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<sup>32</sup>Ibid., 1835, 1855, 1890, et al; Convict Grade Books 1-44, Tennessee State Penitentiary.

<sup>33</sup>House Journal, 1829.

<sup>34</sup>Ibid.

wrong doers to a good and useful life through the use of isolation, meditation, and the Scriptures."<sup>35</sup>

Unfortunately for both the public good and the good of the individual convicts, the somewhat idealistic goals of the General Assembly were not successfully accomplished. The penitentiary did provide a sure means of convicting those accused of crimes -- county judges were quite willing to send a convicted felon off to Nashville to serve his sentence without much regard for the costs involved or the potential long-term damage being done to the people involved.<sup>36</sup> The warden of the Tennessee State Penitentiary in 1835 complained that many counties were sending convicts to the prison for crimes consisting of a few dollars or less, often for unreasonably long terms of incarceration.<sup>37</sup> On more than one occasion following that initial report, wardens complained of convicts in the penitentiary for "nothing more than the price of a fence-post, about eight cents."<sup>38</sup>

The ideal of general deterrence was an abject failure based on statistics of the early prison system. The growth of the prison population outpaced the general

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<sup>35</sup>Teeters, Cradle.

<sup>36</sup>Banner, June 11, 1834.

<sup>37</sup>House Journal, 1835.

<sup>38</sup>Ibid., 1835, 1841, 1877, 1896, et al.



population in every year prior to the Civil War and in nearly every year following the War. For the concept of deterrence to have any feasibility at all, criminals must make rational choices concerning possible consequences of their actions or non-actions. There is nothing in the record to indicate that any criminal of the period ever considered the possibility that he might be caught or the potential punishment that might attach if he were.<sup>39</sup> In fact, the early prison system served somewhat as a breeding ground for better criminals. Rapid overcrowding of the system forced two men to occupy cells designed for a single convict, and this obviously defeated the isolation and silence concept of the prison designers. Young, petty offenders were often thrown together with more hardened experienced criminals who further corrupted the youthful or incidental offenders.<sup>40</sup> The records indicate numerous young convicts returning to the system again and again, each time for more serious charges than before, indicating at least some support for the idea that the prison system was a training school for criminality.<sup>41</sup>

The third goal of the General Assembly for the prison was punishment of the miscreant. In this area,

<sup>39</sup>Banner, June 11, 1835; Nashville Sun, November 16, 1856, September 12, 1880, et al.

<sup>40</sup>House Journal, 1836, 1842, 1880, et al.

<sup>41</sup>Convict Grade Books 1-44.

the system appears to have been extremely successful, possibly even more successful than the legislature had originally intended. Severe codes of silence, hard work, isolation from all forms of social interaction, corporal punishment for infractions of the many rules, extremely limited diets and amounts of food, extreme heat in the summer and extreme cold in the winter due to poor ventilation and design, and the ravages of serious diseases all constituted punishment for the wretched convicts of Tennessee in the first 100 years.<sup>42</sup>

Minimum cost to the state for the prison was the final goal of the legislature. This goal was achieved with varying levels of success across the years. From 1831 through 1847, the state penitentiary returned small profits to the state treasury each year. The General Assembly complained, however, about the high costs of maintaining the convicts and encouraged new economies each year.<sup>43</sup> A major fire destroyed the prison factories in 1848 and, even though they were rebuilt over a ten year period, profits were negligible or non-existent between 1848 and the outbreak of the Civil War.<sup>44</sup> Following the War, Tennessee turned to a system of convict leasing that transferred total responsibility

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<sup>42</sup>House Journal, 1836, 1842, 1866, 1898, et al.

<sup>43</sup>House Journal, various years, 1831-1847.

<sup>44</sup>House Journal, various years, 1848-1860.

for all able-bodied convicts to private companies in return for annual lease payments to the state. Between 1865 and 1896 when the leasing system ended, the prison returned vast profits to the state treasury almost every year. In fact, the monetary returns from the leasing period lack only about \$70,000 equalling the total expenditure of public money on the entire prison system from its inception through 1896.<sup>45</sup> Profits were erratic in the years following the end of convict leasing, but most years showed a profit of some amount until 1929. The passage of the federal Hawes-Cooper Act removing interstate commerce protection from prison-made goods destroyed perhaps for all time the profitability of Tennessee prisons.<sup>46</sup>

Tennessee had no viable alternative to its prison system during the period.

From the outset of the penitentiary system in Tennessee in 1831, there were those who decried the change in the penal code. Claiming great success with the punishments that had been used for hundreds of years, many critics were skeptical that an untried

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<sup>45</sup>House Journal, various years, 1866-1896.

<sup>46</sup>Statutes-at-Large of the United States, Seventieth Congress, Session II, Chapter 79, Section 1 and 2, 1929.

system of incarceration could ever work successfully.<sup>47</sup> Quick profits from convict labor quieted most critics, but these early complainers were quickly replaced by the skilled mechanics and tradesmen of Tennessee who were terribly upset about the use of convict labor to produce goods sold in competition with their own products on the open markets of Tennessee.<sup>48</sup> Not willing to absorb the additional costs of incarceration without selling the labor of the convicts and quite spoiled by the easy income without raising taxes, the state tried unsuccessfully for more than thirty years to find products and trades that did not injure free labor.<sup>49</sup> The convict leasing system, probably the least objectionable labor system ever tried by the state from the view of the mechanics and tradesmen, ended when free coal miners went on a three-year campaign of violence to end the competition with their own wage-earning capacities.<sup>50</sup> Not willing and probably not really able under the prevailing political climate to return to the old

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<sup>47</sup>Nashville Gazette, December 15, 1831.

<sup>48</sup>"Memorial from Mechanics of Tennessee Regarding Convict Labor," Memorials and Petitions to the General Assembly, undated but in great similarity to a memorial published in the Nashville Gazette in July 1837, Archive Manuscripts.

<sup>49</sup>House Journal, various years, 1831-1860.

<sup>50</sup>"Report of the Governor to the General Assembly on the Coal Miners' Insurrection," House Journal, 1891-1892.

punishments, Tennessee was encumbered as was the rest of the nation with a prison system that did little to change the lives of its convicts, did little to slow the growth of crime in the state, and cost more and more of the public's money over the first 100 year period.

## II.

Tennessee was not unique in its operation of penitentiaries during the period of 1830-1930 but rather fit into the regional philosophy of the Southern United States.

Tennessee was one of the early states in the Deep South to move away from a sanguinary penal code and to establish a penitentiary system and a criminal code providing for terms of incarceration at hard labor as punishment for most crimes.<sup>51</sup> Other Southern states, however, followed Tennessee's lead and soon established prison systems very similar in concept and scope to those in Tennessee. Every Southern state eventually followed the same path as Tennessee after the Civil War in turning to a system of convict leasing to private companies and individuals. Much like Tennessee, several Southern states bought mining lands and operated coal and iron mines with convict labor. Comparisons among the various Southern states indicate that Tennessee, while spending much less per capita than any Northern or

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<sup>51</sup>Acts of Tennessee, Ch. 23, pp. 27-45, 1829.

Eastern state on prisons, was right in line with prison expenditures on a per capita basis across the South.<sup>52</sup>

Comparative examinations with other Southern states indicate a similar regional philosophy concerning the entire criminal justice system. All crimes by blacks after the Civil War were perceived as being especially heinous and were met with the most severe penalties allowed by the law. The rapes of white women by black men were met across the South with either lynching or state-sanctioned death penalties while whites convicted of rape were generally given only a term of years in prison.<sup>53</sup> Murder of a white by a black defendant also usually resulted in the death penalty across the South. Similar disparities existed across the full litany of crimes depending on the race of both the perpetrator and victim.<sup>54</sup>

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<sup>52</sup>See Table 7.1, page 216, herein for cost comparisons among various prison systems.

<sup>53</sup>Jane Zimmerman, "The Penal Reform Movement in the South during the Progressive Era, 1890-1917," Journal of Southern History, November, 1951, p. 462-492.

<sup>54</sup>Jessica Mitford, Kind and Usual Punishment: The Prison Business (New York: Vintage Books Division of Random House, 1974); George C. Wright, Racial Violence in Kentucky, 1865-1940: Lynchings, Mob Rule, and "Legal Lynchings" (Baton Rouge: Louisiana State University Press, 1990).

## III.

Criminal code and penal reform legislation will occur only when the public is willing to demand that the legislature take positive steps to ensure that reform.

The Tennessee General Assembly debated bills to erect a state penitentiary for more than fifteen years before the public finally demanded that action be taken.<sup>55</sup> It was a sense of final disgust that guilty defendants were being set free by juries unwilling to inflict harsh punishments for generally minor crimes that eventually sealed the doom of the bitter early criminal code in Tennessee. Once the penitentiary was completed, however, the public quickly lost interest in any criminal code revisions.<sup>56</sup>

Competition for the sale of goods on the open market between the prison factories and the free tradesmen of the state produced outcries in the General Assembly that led to much rhetoric and debate but very little action.<sup>57</sup> Even the public never fully supported the end of convict labor in the prisons: faced with the alternative of paying higher taxes to support the

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<sup>55</sup>House Journal, 1815, 1821, 1825, 1829.

<sup>56</sup>The Nashville Banner, Nashville Gazette, and Nashville Sun all contain very few stories on the penitentiary during this period.

<sup>57</sup>"Memorial from Mechanics of Tennessee Regarding Convict Labor," Memorials and Petitions to the General Assembly, Archive Manuscripts.

prisons, the citizenry of the state was apparently willing to endure some injustices with its free workers. Not until the end of the Civil War and the inability to finance the rebuilding of the Nashville prison did the state take positive steps to eliminate competition between its own convicts and its free tradesmen.<sup>58</sup>

The leasing of the convicts to private businesses engaged in iron and coal mining, road and railroad construction, and land clearing and farming seemed the least invasive on the assumed rights of free tradesmen to pursue competition-free careers. The iron and coal miners of East Tennessee were very poorly organized prior to about 1885 and offered little concentrated protest to the influx of convict miners.<sup>59</sup> Following labor organizing efforts during the late 1880s, however, the coal miners became extremely vocal about the destruction of their own rather dangerous and precarious livelihoods in the mines. When verbal protests accomplished nothing constructive, the miners turned to violence and spilled blood across the East Tennessee mining region.<sup>60</sup> Public outcries against the violence forced the legislature to end the convict leasing era in

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<sup>58</sup>House Journal, 1866.

<sup>59</sup>House Journal, various years, 1867-1885.

<sup>60</sup>"Report of the Governor to the General Assembly on the Coal Miners' Insurrection," House Journal, 1891-1892.



Tennessee. Still concerned about competition with free labor, the General Assembly bought coal lands to employ the convicts in state mining operations.<sup>61</sup>

Numerous states introduced reformatories to their prison systems after the turn of the twentieth century, and officials in Tennessee made repeated calls for such a system within the state.<sup>62</sup> Not until the public experienced a general feeling of progressivism, however, did the legislature take any steps to implement a system of reformation in Tennessee. By the turn of the twentieth century only Tennessee and Louisiana of all the Southern states had not incorporated moves toward reformation of their convicts. Women, children, and the sick and frail were still housed together with able-bodied male convicts in these two states while every other state in the region had made at least a partial effort to separate convicts on the basis of age and sex.<sup>63</sup>

Tennessee held out until 1913 before building its first juvenile facility and even then failed miserably to provide the necessary atmosphere for education or reform. Women convicts continued to be housed behind

<sup>61</sup>"Report of the Penitentiary Purchasing and Building Committee to the General Assembly of Tennessee, 1895," House Journal, 1895.

<sup>62</sup>House Journal, 1893, 1898, 1911, 1927, et al.

<sup>63</sup>Blake McKelvey, "A Half Century of Southern Penal Exploitation," Social Forces 13 (1934-1935), p. 113.

the Walls of the Tennessee State Penitentiary in Nashville until 1965 when the first women's prison was constructed nearby. Although housed in separate buildings, the women were guarded and assisted by males until after 1898 when the first female matrons were employed to care for the female convicts.<sup>64</sup> Even with the building of Fort Pillow State Prison and Farm as an honor institution for first-offenders, the state failed to maintain a commitment to the reform ideal and soon was using the facility for housing all types and grades of offenders.

Driven by an apparent sincere desire to reform the institutions of the state, Tennessee politicians at various times enacted legislation designed to move the state out of the past and into the future. It was one of the first Southern states to end corporal punishment, one of the first to build a thoroughly modern central prison both in 1831 and again in 1896, and the first to establish a system of parole whereby offenders could earn their release from prison. In each of these instances, however, the overriding concerns of prison expenses, overcrowding, and the inability of the system to reduce the growth rate of crime caused serious reform

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<sup>64</sup>Gary Shockley, "A History of the Incarceration of Juveniles in Tennessee, 1796-1970," Tennessee Historical Quarterly 43 (Fall 1984), pp. 229-249, p. 230; Acts of Tennessee, Ch. 178, Sec. 1, 3, 1965; Acts of Tennessee, Ch. 125, Sec. 3, p. 290, 1897.

efforts to be curtailed. The first one hundred years of Tennessee's state prison system history is marked by abject failure on the part of the legislature, the prison administrators, and the convicts. The legislature failed to take a position consistent with that being developed in the Northern states and then maintain that position in the face of rising costs and public outcries. The penal administrators never gave up the idea that convict labor should turn a profit for the state and that treatment and education should have secondary roles in the prisons. This overriding desire for profits led to corruption and abuse throughout the early years of the system. The failure of the convicts to respond to inadequate training, abuse, poor living and health conditions and the apparent willingness to work at almost anything to keep from sitting idly in tiny cells for days on end resulted in a lack of response from the more humane-minded reformers of the state.

As the system moved into the mid-twentieth century, it was poised for disaster from both without and within and that disaster was not long in coming. Had the state been willing or able to afford the changes in penal philosophy developed across the Northern and Northeastern states during the first half of the 20th century, perhaps the violence and destruction that was awaiting the state prison system in Tennessee could have

been avoided. For reasons more fully developed in the companion work to this study, however, Tennessee failed to respond to the looming disaster, and chaos returned to its state prisons. The first one hundred years of Tennessee prison history, indeed, ended as they had begun.

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## VITA

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## DOCTORAL EXAMINATION AND DISSERTATION REPORT

Candidate: Larry D. Gossett

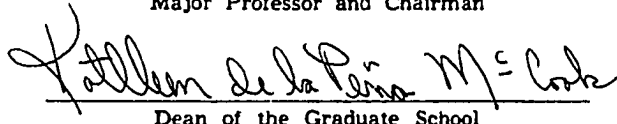
Major Field: History

Title of Dissertation: The Keepers and The Kept: The First Hundred  
Years of the Tennessee State Prison System, 1830-1930

Approved:



Major Professor and Chairman

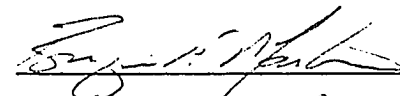


Dean of the Graduate School

### EXAMINING COMMITTEE:











Date of Examination:

November 4, 1991