

# NEOSLAVERY: THE PERPETUATION OF SLAVERY AFTER THE AMERICAN CIVIL WAR

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## Abstract

Many Americans are under the impression that slavery ended following the Civil War. However, this is a vast oversimplification of the reality that Black men and women faced in the South after the war's end. Freedmen's bureau reports, "Black Codes," and the research of historians demonstrate the ways in which Black men and women were treated following the end of the Civil War. Comparing the conditions revealed in the aforementioned sources to the conditions Black men and women faced during legal slavery reveals startling similarities. Violence against Blacks continued to be widespread in the post-war period, and many Black men and women were even bought and sold through convict leasing. In short, slavery continued in all but name. [Keywords: slavery, American Civil War, Reconstruction, emancipation, race relations]

## INTRODUCTION

After the end of the Second World War, colonial empires broke apart and their former imperial domains asserted themselves as independent nations. However, many of these countries discovered that imperialism had not really ended. Independent nations still found themselves under the control of their former imperial masters. However, the former imperial nations no longer directly controlled these nations politically. Instead the colonizers dominated these new nations economically, culturally, and occasionally militarily. This system is called Neocolonialism and is a powerful force in the world today. Former colonial dominions discovering that they were not truly free from their imperial masters serves as an excellent analogy to a system that this paper terms "Neoslavery." Just as the Second World War brought an end to the colonial empires of nations such as the United Kingdom and France, so too did the American Civil War bring an end to slavery, at least officially. However, former masters still controlled the men and women that had once been their property. The new Freedmen may not have been called slaves anymore, but they were far from free. In short, though the American Civil War technically brought an end to slavery, Whites kept former slaves in bondage.

By no means is this paper the first piece of writing to suggest that slavery did not actually end with the American Civil War, nor is this paper the first to use the term neoslavery. Both David Oshinsky and Douglas Blackmon argue that convict leasing, in which the state leased out prisoners to individuals and corporations as a labor force, was a continuation of slavery. Blackmon uses the

term neoslavery to describe the convict leasing system. Although Blackmon and others have used the term before, this paper uses the term more broadly to describe Blacks' experience more generally after the Civil War, but. John Daly's *The Southern Civil War* argues that Reconstruction was actually a war, where one of the sides was fighting for a return of the old system, of which slavery was the key component. These authors' research explores individual aspects of Blacks' experience following the Civil War in a great deal more depth than this paper will. However, this paper combines elements from these authors' research in order to paint a broader picture of freedmen's experience. Even without these authors' research, primary evidence demonstrates the conditions freedmen faced. Black Codes written into every southern state constitution blatantly took away the rights of former slaves. Violence against freedmen ran rampant as former masters tried to push them back into slavery; Freedmen's Bureau reports attest to this fact. This paper, then, compares the conditions faced by Blacks under Antebellum slavery to Whites' legal and extralegal oppression of Blacks following the American Civil War, attested to in primary documents and other historians' research. By making this direct comparison, this paper will demonstrate that slavery continued after the Civil War in practicality.

In order to make the claim that slavery continued after the conclusion of the American Civil War, this paper will first demonstrate the conditions that men faced under slavery. Doing so will enable a comparison to the conditions Freedmen faced following the end of the Civil War under neoslavery. For this reason, this paper is divided into two broad sections, each looking at a broad time period. The first section will explore the conditions faced by slaves in the Antebellum (literally, before war) Period. The second section will explore the perpetuation of slavery in the Postbellum (after war) Period. Geographically, the focus is on the southern states. That is not to say that racial oppression did not exist in northern states, but neoslavery as a direct extension of Antebellum slavery was primarily a southern phenomenon. By examining and comparing the conditions Black men and women faced in the South during these two periods, this paper will conclusively prove that slavery continued through legal practices and through violence.

## SLAVERY IN THE ANTEBELLUM PERIOD

Slavery was a great evil. As John Boles stated, "Any labor or social system that defined persons as property and deprived them of basic autonomy over their lives was irredeemably evil."<sup>1</sup> Despite the horrid conditions within slavery, slaves experienced a degree of flexibility within the system, which was often dependent on the slave's master. For instance, some slaves could supplement their diet with food that they gathered via fishing, hunting, trapping, and so on.<sup>2</sup> It is precisely this relative flexibility that made Neoslavery so bad. In short, conditions during slavery were extremely poor, even with the noted minor flexibility, precisely because masters treated slaves as property as opposed to human beings.

It should be noted that slaveholding was not the norm. Most Whites did not own slaves, even in the South. Of the Whites who did own slaves, most of them owned only a few.

"Slaveholding was concentrated in the hands of a significant minority of the population, and plantation-sized slaveholding was confined to a tiny minority."<sup>3</sup> Plantations were in the hands of only the extremely wealthy. Plantation owners were the period's "one percent," to use modern parlance. Because the rich were able to concentrate slaves in their hands, a discussion of slavery will necessarily focus on these slaves.

Perhaps the most important part of slavery in the Antebellum South was the slaveholding elite's denial of the basic humanity of slaves. Slaves were property, and masters treated them as such. Much of the injustice perpetrated against slaves stems from this fact. In court, for instance, trials involving slaves were civil suits. "While white men rarely faced criminal prosecution for striking out at slaves, they quite often found themselves in court for civil suits regarding property damage to the slave of another."<sup>4</sup> If a White man injured someone's slave, he would face trial not on the grounds of harming another human being, but rather for damaging property. The solution to many of these trials was that one party would have to pay the other. For instance, in Natchez, Mississippi, there was the 1856 case *Andrew Brown v. Samuel Cox*. Samuel Cox had shot Andrew Brown's slave, Jake. Andrew Brown wanted money for damages.<sup>5</sup>

The jurors ... could have found that Cox was justified in shooting Jake [a slave], simply out of the belief that a runaway slave is inherently threatening. Yet the jury found for Brown and awarded high damages, the full fifteen-hundred-dollar price asked for Jake. ... It seems likely that the jury found for Brown in part because he was prominent and popular in Natchez whereas Cox was unknown, rather than because of any community standard against killing slaves.<sup>6</sup>

In the aforementioned trial, the court only required Cox to pay Brown for damaging his property, even though Cox had killed a man. As noted in Gross, further evidence demonstrating slaves' status as property is the use of slaves as a form of credit. "Slaves were the cornerstone of the Southern credit economy."<sup>7</sup> Gross goes on to point out that "because [slaves] were easily convertible into cash, [they] were 'especially desirable for collateralizing debt arrangements.'"<sup>8</sup> Slaves were worth quite a bit of money, and so, of course, Whites used them for credit and debt related transactions. Moreover, owners would often lend out slaves to other individuals or even "corporate entities, especially towns and cities" for temporary use.<sup>9</sup> If one party breached the terms of the contract, the other would likely sue. "In some similar cases, owners sued hirers for mistreating a slave. More often, these cases resembled warranty suits in that hirers sued owners when the leased slave turned out to be 'unsound,' died, or ran away."<sup>10</sup> Essentially, if the slave's owner felt his property had been damaged, he would sue. If the person leasing the slave felt that he had been leased defective property, he would sue. Of course, slaves themselves were denied access to the courtroom. "The most silent participants in circuit court trials were the subjects of the disputes: the slaves themselves."<sup>11</sup> This makes sense; if two people were to get into a dispute about a chair, they would not seek the chair's testimony on the subject. The systematic denial of

slaves' humanity within the court system is a powerful reminder of the insidious nature of slavery. Slaves were not people, and were, therefore, not liable to be treated humanely.

Few slaves could share their experience without Whites filtering their stories. One notable exception is Frederick Douglass. Douglass grew up a slave before escaping to the North, and so his experiences provide an excellent window into the conditions many slaves faced. Douglass wrote of Colonel Lloyd's plantation in Maryland, where he lived for many years, that

Public opinion was, indeed, a measurable constraint upon the cruelty and barbarity of masters, overseers, and slave-drivers, whenever and wherever it could reach them; but there were certain secluded and out of the way places, even in the State of Maryland, fifty years ago, seldom visited by a single ray of healthy public sentiment, where slavery, wrapt in its own congenial darkness, could and did develop all of its malign and shocking characteristics, where it could be indecent without shame, cruel without shuddering, and murderous without apprehension or fear of exposure, or punishment.<sup>12</sup>

During the Antebellum Period, most members of White society believed that slavery in Maryland was not as bad as it was elsewhere due to the tempering influence of the nearby Free States.<sup>13</sup> Douglass acknowledges this belief, and even holds that it may be true where such tempering influences can be felt. However, he points out that on isolated plantations, such as the one on which he lived, slavery is just as brutal as it is elsewhere. Douglass shares many examples of masters' and overseers' cruelty and inhumane treatment of slaves. For instance, a slave came to their master complaining that her overseer was mistreating her. Rather than reprimanding the offending overseer, the master instead reprimanded the slave girl and ordered her to return to the cruel overseer.<sup>14</sup> "Thus the poor girl was compelled to return without redress, and perhaps to receive an additional flogging for daring to appeal to authority higher than that of the overseer."<sup>15</sup> Another incident that Douglass describes revolves around a young woman named Esther, a slave on the same plantation as Douglass. Another slave, Ned Roberts, was courting her. Douglass points out that while some slave holders would have been pleased with the match, their master, Captain Anthony, was not. He forbade the two from continuing to meet, but they disobeyed.<sup>16</sup> Captain Anthony, of course, was not tolerant of this disobedience.

I was ... awakened by the heart-rending shrieks and piteous cries of poor Esther. ... Esther's wrists were firmly tied, and the twisted rope was fastened to a strong iron staple in a heavy wooden beam above, near the fire-place. Here she stood on a bench, her arms tightly drawn above her head. Her back and shoulders were perfectly bare. Behind her stood old master, with cowhide in hand, pursuing his barbarous work .... He was cruelly deliberate, and protracted the torture as one who delighted with the agony of his victim. Again and again he drew the hateful scourge through his hand, adjusting it with a view of dealing the most pain-giving blow his strength and skill could inflict.<sup>17</sup>

Such deliberate torture clearly demonstrates the inhumane conditions that slaves regularly faced. One final example from Douglass's book is the murder of a slave by the name of Bill Denby. Whilst the overseer was flogging him, Denby broke away and dove into the nearby creek. Understandably, Denby refused to emerge even when the overseer ordered him to.<sup>18</sup> "[W]hereupon, for this refusal, Gore [the overseer] *shot him dead!*"<sup>19</sup> Both Captain Anthony, their direct master, and Colonel Lloyd, who owned the plantation, redressed Gore for killing Denby. However, Gore merely explained "that Denby had become unmanageable; that he set a dangerous example to the other slaves, and that unless some such prompt measure was resorted to there would be an end to all rule and order on the plantation."<sup>20</sup> Anthony and Lloyd found Gore's explanation satisfactory, and he returned to his job without repercussion.

Douglass mentions other occasions on which Whites killed slaves without consequence.<sup>21</sup> "One of the commonest sayings to which my ears became accustomed, was that it was 'worth but half a cent to kill a nigger, and half a cent to bury one.'"<sup>22</sup> This seems to conflict with the cost at which slaves were purchased ("'Prime male field hands' in the New Orleans market sold for about \$700 in 1846; their price had more than doubled by 1860 to upwards of \$1,700."<sup>23</sup>). But in a way, Douglass was nonetheless right. He points out that according to the law and public opinion, Whites were almost always justified in killing a slave.<sup>24</sup> The expense of a slave was not about the slave's life, but rather his labor. If the master, overseer, or another White deemed the slave to be unruly or dangerous and killed him, then said White was considered justified in his actions, and could often get off with little to no legal action, especially if the murdering party owned the slave. The blatant disregard for slaves' lives demonstrates, once again, the belief held by many Whites, that slaves were not human, or were less than fully human. It is for this reason that slaves were so harshly redressed for "misbehaving."

There were many punishments that slaves could face for displeasing their masters dependent on the severity of their transgression. At the harsh end of the spectrum was whipping, which looms large in the modern world as a symbol of slavery. For those who lived as slaves, whipping, whether it occurred frequently or not, remained a powerful reminder of who had authority. As John Boles stated, "The frequency of punishments like whipping has been hotly contested by historians, and the variables involved from planter to planter make any kind of numerical analysis futile. ... [But] in the minds of everyone involved, White and Black, the lash stood as an ever-present reminder of where authority lay."<sup>25</sup> Regardless of how often whipping actually occurred, it always remained a possibility. The threat of violent redress was there, which was itself a very effective tool for maintaining the status quo, regardless of how frequently masters and overseers actually whipped slaves.<sup>26</sup> Thus, slave parents taught their children from a young age "to fear the lash and taught them behavior that would avoid it, and the visible scars on many Black backs bore silent testimony to the pervasive reality of force."<sup>27</sup> The threat of whipping was so present in the minds of slaves that they would ensure that even their small children knew about it. As shown above, whipping was an ever-present part of Frederick Douglass's life, which backs

up Boles's assertion that regardless of frequency, whipping was a significant part of slavery. It is difficult to imagine the fear that slaves must have felt, unless one can visualize what a harsh whipping looked like.



“Whipped Slave,” photographer unknown, (Washington, D.C.: National Archives, c1863).

This photograph provides a moving image of what whipping could do to a person, and thus is one of the most infamous photographs concerning slavery. According to the original caption, the whipping was particularly harsh and left this man in bed, unable to work, for two months. As a result, the master fired the overseer who was responsible. However, one should note two things. The first is that the master likely did not punish the overseer because he felt the slave man had been treated unfairly, but rather he was likely angry at having lost the man's work for such an extended period. Second, even though this whipping represents the more extreme end of the punishment spectrum, it is still an important indicator of Whites' attitudes towards slaves. Put simply, if someone were to perpetrate such an act against someone the law considered a man, his punishment would have been worse. As it stood, since masters and the law regarded slaves as property and as inferior persons, the offending overseer's punishment was losing his job.

It is important note that the slaves had agency, which they used to improve their conditions and treatment.

Mules inexplicably let out of the barn lot, tools left in the rain, cotton plants accidentally plowed under, chores that required double the normal time to complete for mysterious reasons, sickness that struck down a large portion of the field hands – maladies too vague

to doctor but too “real” to ignore – such were the weapons “defenseless” slaves could bring to bear against rigid taskmasters.<sup>28</sup>

Masters’ mistreatment of slaves could lead to a variety of responses that would cut production of the plantation. Therefore, if masters wanted their plantation to be efficient, they had to assure a certain quality of living. “In clothing as in food, and, indeed, in their whole culture, slaves never simply accepted what the White man gave or left them . . . .”<sup>29</sup> Despite other people owning them, despite the conditions that they faced, slaves exercised a degree of control over their lives. Perhaps one of the most important examples of slaves’ agency had to do with food, “Food was if anything even more basic to the slaves’ well-being than clothing and shelter, and the quality and quantity of food available varied at least as widely.”<sup>30</sup> While slave-owners did provide enough food for slaves to maintain sufficient health, variety was lacking, and this is where slaves’ agency comes into play. Many slaves maintained their own gardens, and sometimes masters would buy some of the slaves’ produce. If slaves produced a surplus in their individual gardens, many of them would take their goods into town in order to sell them and earn some money.<sup>31</sup> Furthermore, “[i]t was not uncommon for slaves to own pigs, cows, even horses, wagons, boats, and household utensils beyond those provided by the master.”<sup>32</sup> Slaves could accumulate some wealth for themselves (though obviously not much). Beyond their own small gardens, some slaves could even hunt, fish, and trap “and the result of these activities added nutritional value and much-wanted variety to their meals.”<sup>33</sup> By exercising their agency, slaves improved the food that masters allotted to them, and masters allowed it, either explicitly or implicitly. In this way, at least, slaves were more than just property. Property cannot, through its own work, improve its lot. People can. That slaves could exercise a degree of their own agency proves false the notion that they were somehow less than human and merely the property of their masters.

Nevertheless, the fact remains that Whites bought and sold slaves; they did not receive the freedoms associated with being a fully recognized person.

[The] critical question about slavery is the absence of freedom, not the presence of relative physical comforts. No recitation of survival rates, daily caloric intake, and quality and quantity of living space can negate the psychological effect of bondage. The possibility of being whipped or being separated forever from a loved one and the reality of having little control over most aspects of one’s life must have been ever-present burdens oppressing most slaves.<sup>34</sup>

Throughout the Antebellum Period, masters denied slaves the basic freedoms associated with being a full person. Yet even within the bounds of a system which defined them as property, slaves were able to exercise agency in order to improve their condition. Despite the horrible conditions that slaves faced, they survived, and as traditional histories would have it, achieved their freedom following the end of the Civil War. Neoslavery, however, paints a different picture.

## NEOSLAVERY IN THE POSTBELLUM PERIOD

Following the end of the American Civil War, slaves were suddenly free. White former slaveholders obviously did not welcome this change. William DeRosset, of North Carolina, “remained willing to sacrifice his right arm if it would help to ensure the ultimate triumph of the Lost Cause.”<sup>35</sup> The “Lost Cause” was slavery, or, more specifically, southern states’ attempt to establish independence in order to safeguard slavery. Whites resorted to several methods to maintain a social hierarchy that ultimately resembled slavery so much, that slavery never truly ended. Several states enacted legal structures or “Black Codes” that severely curtailed the freedom of the Freedmen. Perhaps worst among the Black Codes were provisions that created the convict leasing system, in which the state sold “criminals” (whose only real crime was their skin color) out to corporations and individuals as a work force.<sup>36</sup> Violence, of course, pervaded the entire system, but even outside of the aforementioned legal systems, Whites committed organized acts of violence against former slaves. The ultimate result of these actions was the practical continuation of slavery.

Despite the Union forcing southern states to officially acknowledge the end of slavery as a prerequisite for reentry into the country, southern states quickly enacted a series of laws designed to perpetuate the “Peculiar Institution” in all but name. These so-called Black Codes were similar across the region, and all had the same effect: the legal continuation of slavery. Black Codes even thrust those Blacks who had already been free before the Civil War into neoslavery due to what historians call the “one drop” rule. “[N]egroes and their issue, even where one ancestor in each succeeding generation to the fourth inclusive is White, shall be deemed persons of color.”<sup>37</sup> All Blacks, whether recently freed slaves, or men and women who had been free for years, were now subject to the same set of laws that systematically deprived them of their freedoms. The Black Codes took more than just their abstract rights, too. “[N]o freedman, free negro or mulatto ... shall keep or carry fire-arms of any kind, or any ammunition, dirk or bowie knife....”<sup>38</sup> If free Blacks possessed these items or any other pieces of property that the state felt was inappropriate for them to own, they would face legal charges. For all intents and purposes, Black Codes denied African Americans the right to private property. And this denial did not just extend to weapons. “[No] freedman, free negro or mulatto ... [can] rent or lease any lands or tenements except in incorporated cities or towns, in which places the corporate authorities shall control the same....”<sup>39</sup> For many Americans in the nineteenth century, the idea of freedom and the idea of owning land were closely tied. Thus, Whites took this possibility away from neoslaves, “except in incorporated cities or towns, in which places the corporate authorities shall control the same....” Which means that even in towns and cities, where the law technically allowed neoslaves to own land, the town’s authorities ultimately had control over the neoslaves’ property.

Furthermore, Black Codes curtailed neoslaves’ right to become skilled laborers.

No person of color shall pursue or practice the art, trade or business of an artisan, mechanic or shop-keeper, or any other trade, employment or business (besides that of husbandry, or that of a servant under a contract for service or labor,) on his own account and for his own benefit, or in partnership with a white person, or as agent or servant of any persons, until he shall have obtained a license therefore from the Judge of the District Court; which license shall be good for one year only.<sup>40</sup>

Once again, this dramatically changed the condition of Blacks who had been free for a long time. Beforehand, the law entitled them to any work they chose. After state legislatures wrote the Black Codes into law, the only job a long freed Black person could legally do was work for a White person (unless of course a judge decided to grant them a license, and even then the license was for one year only). However, more recently freed slaves also felt the effect of such stipulations. During slavery, there had been skilled slave workers on plantations. For instance, Frederick Douglass wrote that "'Uncle' Toney was the Blacksmith, 'Uncle' Harry the cartwright, and 'Uncle' Abel was the shoemaker, and these had assistants in their several departments."<sup>41</sup> These men were skilled workers, and these men were slaves. Clearly, then, the aforementioned clause affected more than just long-free Blacks.

And then there were the vagrancy laws. Here are just two examples.

Version 1, from Mississippi:

...That all rogues and vagabonds, idle and dissipated persons, beggars, jugglers, or persons practicing unlawful games or plays, runaways, common drunkards, common night-walkers, pilferers, lewd, wanton, or lascivious persons, in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, misspend what they earn, or do not provide for the support of themselves or their families, or dependents, and all other idle and disorderly persons, including all who neglect all lawful business, habitually misspend their time by frequenting houses of ill-fame, gaming-houses, or tippling shops, shall be deemed and considered vagrants....<sup>42</sup>

Version 2, from South Carolina:

All persons who have not some fixed and known place of abode, and some lawful and respectable employment; ... those who are found wandering from place to place, vending, bartering or peddling any articles or commodities, without a license from the District Judge...; all common gamblers; persons who lead idle or disorderly lives ...; those who ... are able to work and do not work; those who ... do not provide a reasonable and proper maintenance for themselves and families; those who are engaged in representing publicly or privately ... without license, any ... entertainment ...; ... those who hunt game of any

description or fish on the land of others ... shall be deemed vagrants, and be liable to the punishment hereinafter prescribed.<sup>43</sup>

These two examples are almost identical; while the exact wording between the two versions may vary, both make almost all of the same things illegal. Under vagrancy laws, the police could arrest Blacks for a wide variety of crimes, but the basic effect was to make it illegal for former slaves to do much besides work. Vagrancy laws created the legal grounds for neoslavery more than any other Black Code. Not only did the laws force neoslaves to constantly prove suitable employment, but they also provided the convicts for the convict leasing system.

If any freedman, free negro, or mulatto, convicted of any of the misdemeanors provided against in this act, shall fail or refuse for the space of five days, after conviction, to pay the fine and costs imposed, such person shall be hired out by the sheriff or other officer, at public outcry, to any white person who will pay said fine and all costs, and take said convict for the shortest time.<sup>44</sup>

Men convicted of nothing more than being unable to provide proof of suitable employment could be sold back into slavery. Officially, Black Codes and their associated laws ended under Congressional Reconstruction, but they would return as Jim Crow laws only a decade later.

A discussion of convict leasing will necessarily focus on Mississippi. The aforementioned Black Code introducing the earliest version of convict leasing laws originally hails from Mississippi. Furthermore, convict leasing first took off in Mississippi, thanks to a man named Edmund Richardson.<sup>45</sup> Post-emancipation, White southerners' greatest fears had been realized – Black men were now free, and Whites believed that Black men were naturally criminals. “Southern whites had long viewed criminal behavior as natural to the Negro. They took his stealing for granted, as a biological flaw. An ‘honest darkey,’ most believed, was as rare as a Negro virgin of fifteen.”<sup>46</sup> As a result, former slaves were arrested in droves “for acts that in the past had been dealt with by the master alone.”<sup>47</sup> The policing of ex-slaves' behavior became the principal job of law enforcement. Southern prisons filled with Black prisoners. During the Antebellum and war years, prisons were for Whites. In the early years of the Postbellum Period, the reverse became true. “By 1866, the Natchez city jail held sixty-seven Black prisoners and just eleven whites. In Grenada ... there were seventeen Blacks and one white. In Columbus ... there were fifty-three Blacks and no whites. Almost overnight, the jailhouse had become a ‘negro preserve.’”<sup>48</sup>

The problem faced by southern states was that their prison systems were inadequate for such a sharp increase in prison populations, especially considering the Civil War had destroyed many of their prisons.<sup>49</sup> It is here that the aforementioned Edmund Richardson comes into play. Richardson needed labor, and the state needed a place to send ex-slaves. “The result was a contract that allowed Richardson to work these felons outside the prison walls.”<sup>50</sup> Richardson took the ex-slave convicts off of the state's hands, and the state paid Richardson \$18,000 a year. Convict

leasing had officially begun in Mississippi.<sup>51</sup> In the mid-1870s, convict leasing took off. The state legislature passed new laws, the sentences for minor crimes increased, and local courts began to destroy what protection neoslaves did have. From 1874 to 1877 the number of convicts quadrupled.<sup>52</sup> The state coupled these actions with an official leasing act, "All prisoners, it declared, may 'work outside the penitentiary in building railroads, levees or in any private labor or employment.' With the gates now officially open, Mississippi leased more than a thousand of its convicts in one fell swoop."<sup>53</sup> And of course, the law makers cleverly wrote the law so as to virtually exclude Whites from the leasing system.<sup>54</sup> The convict leasing system kept growing, and became exceptionally lucrative for rich Whites. "The exclusive right to lease state convicts quickly became Mississippi's most prized political contract, coveted by planters, businessmen, and speculators across the board."<sup>55</sup> Convict leasing had become a profitable enterprise, and everyone wanted the enormous wealth that they could gain from it.

In 1876, a man by the name of Jones Hamilton made a deal with the Mississippi state government, obtained the rights to all leased convicts, and began subleasing those convicts to others. He acted as something of a middle man between the state and the sublesers, making him rich in the process. Though the state paid Hamilton no money, he derived enormous profits through subleasing convicts out at nine dollars a month.<sup>56</sup> "From a business standpoint, the subleasing was ideal. It plugged the major weakness of the old system [slavery]: the high fixed cost of labor."<sup>57</sup>

In terms of human misery, however, this system could hardly have been worse. The convict now found himself laboring for the profits of three separate parties: the sublessee, the lessee, and the state. There was no one to protect him from savage beatings, endless workdays, and murderous neglect. 'It is to be supposed that sub-lessees [take] convicts for the purpose of making money out of them,' wrote a prison doctor, 'so naturally, the less food and clothing used and the more labor derived from their bodies, the more money in the pockets of the sub-lessee.' If a convict died or escaped, his employer lost nothing. Colonel Hamilton would profitably supply a replacement – at nine dollars per month.<sup>58</sup>

Here lay the major difference between convict leasing and slavery. Because slaves were expensive, and because the masters needed their labor, it made sense to make sure that the slaves were reasonably well-cared-for, even allowed a certain degree of freedom, as borne out in *Black Southerners*. Convicts, however, were cheap and by no means was leasing one a permanent agreement. Therefore, convicts became expendable commodities, and were treated as such. Their places of employment became veritable death camps, with the annual mortality rate reaching a staggering sixteen percent at points during the 1880s.<sup>59</sup> "In 1882 ... 126 of 735 Black state convicts perished, as opposed to 2 of 83 whites."<sup>60</sup>

Black men were not the only ones leased out under this system. Although Black women made up a relatively small portion of Mississippi's convict population, they, too, were leased out. Oftentimes they worked "as domestics and prostitutes for those in charge."<sup>61</sup> Perhaps worse still,

children were being leased out. "...[The Mississippi] penal code did not distinguish between adult and juvenile offenders."<sup>62</sup> Therefore, courts tried and punished Black children just as adults – and just as unfairly. Children convicts became a huge part of the convict leasing system. "By 1880, at least one convict in four was an adolescent or a child – a percentage that did not diminish with time."<sup>63</sup> Courts convicted children as young as six for minor crimes and threw them into this heinous system.<sup>64</sup>

Although the conditions faced by Black convicts in Mississippi were extreme, "Mississippi was hardly alone."<sup>65</sup> In Alabama, for instance, police arrested a Black man by the name of Green Cottenham for vagrancy and the prisons leased him out to a subsidiary of U.S. Steel. He was put to work in a mine called "Slope No. 12." Within a single year, sixty men at Slope 12 had died either of the physical torture inflicted upon them by their White taskmasters or to the disease that ran rampant through the mine's population.<sup>66</sup> Furthermore, it was not only large corporations that were guilty of renting convicts. "The judges and sheriffs who sold convicts to giant corporate prison mines also leased even larger numbers of African Americans to local farmers, and allowed their neighbors and political supporters to acquire still more Black laborers directly from their courtrooms."<sup>67</sup> Convict leasing had become such an important part of Southern life that the state government was using the system to garner political favors from rich Whites and wealthy corporations. Blackmon goes on to say that "[b]y 1900, the South's judicial system had been wholly reconfigured to make one of its primary purposes the coercion of African Americans to comply with the social customs and labor demands of Whites."<sup>68</sup> Furthermore, "[r]evenues from the neo-slavery poured the equivalent of tens of millions of dollars into the treasuries of Alabama, Mississippi, Louisiana, Georgia, Florida, Texas, North Carolina, and South Carolina – where more than 75 percent of the Black population in the United States then lived."<sup>69</sup>

Simply taking convict leasing into account is enough to prove that slavery continued beyond the end of the Civil War. Southern courts and penitentiaries systematically convicted and leased out African Americans to the benefit of rich Whites. And while it is true that the legal abolition of slavery served to protect many men and women from being bought and sold, convict leasing provided wealthy Whites an excellent way to work around the legal abolition of slavery. Once again, Whites were buying and selling Black men and women as commodities, just as they had under slavery. In fact, in many ways, David Oshinsky's title was right. Convict leasing was worse than slavery. At least conditions under slavery were livable. They were not so under convict leasing. Unfortunately, Whites' violence against Blacks was not confined to convict leasing.

Convict leasing represented the perfect combination of violence and law. However, violence against Blacks was much more widespread than the confines of the convict leasing system. Freedman's Bureau reports are rife with reports of violence committed by Whites against the former slaves, which, more often than not, remained unpunished. For instance, one agent reported the case of *Floyd Adams vs. Madison Doom*, in which Doom, a White man, assaulted Adams. The court ruled in favor of Doom, allowing his actions to go unpunished. As the agent put it, "In my opinion the action of the Grand Jury in discharging Madison Doooms from accountability

was an act of gross injustice and ... the jury [had] literally given the White man permission to knock the negro down without fear of molestation."<sup>70</sup> Despite gaining legal access to the courts, Blacks still found that Frederick Douglass's assertion that "it was 'worth but half a cent to kill a nigger,'" held true.<sup>71</sup> And of course, this was not an isolated incident. Crimes against Blacks were common, but courts almost never convicted Whites. In part, this was due to the difficulty of getting a case to trial.

Generally, the air is full of outrages on the Freedmen by the Whites ... but I understand you to mean violence, personal assaults, cruelty, of which very few cases have come to my knowledge, and then the facts were not clearly established, because the freedmen dare not testify through fear of yet greater violence.<sup>72</sup>

In many instances, Whites prevented Blacks from testifying against them by threatening violence. Even those cases that ended up in the courtroom rarely resulted in the authorities punishing the White party. "The trials have ... almost without exception where White persons have been parties the decisions have been in their favor - there have been several cases of assaults upon freedmen - in not one instance has any satisfaction been given the freedmen."<sup>73</sup> Despite Blacks' attempts to receive justice, Whites consistently avoided punishment for violence against freedmen. Violence went beyond merely beating or assaulting freedmen. Whites often killed freedmen, one of the most popular methods for doing so was lynching, as depicted below.



“Thomas Shipp Abram Smith Lynching,” Lawrence Henry Beitler, photographer (August 7, 1930).

The key feature is that it was a public event. People came out to watch these extralegal hangings, and the authorities sanctioned the activity. In order for an event to be public, it must be common knowledge. The fact is that the police did nothing to stop such brutal acts of violence, at least by the time that Lawrence Beitler took this photograph. Throughout the Postbellum Period and a large part of the twentieth century, lynching loomed as a threat to the lives of Black men, women, and children. While an initial reading might suggest that the aforementioned violence was random and disorganized – and perhaps some of it was – it was part of a broader effort to force former slaves back into slavery in a war that has mistakenly been called Reconstruction.<sup>74</sup>

The name historians have given to the first part of the Postbellum Period, Reconstruction, is a misnomer that represents an attempt to deny the extreme violence that permeated the period. Reconstruction was a time period that began immediately following the end of the Civil War and ended in 1877. Ostensibly, Reconstruction reunited the country and rebuilt the South. However, several historians have recently asserted that Reconstruction was actually a war, among them John Daly. Daly calls the period “the Southern Civil War.” He asserts that it was fought between Ex-Confederate Extremists on one side and a Biracial Coalition on the other. The former fought to destroy “the two local symbols of northern victory: the White unionist political organizations and the attempts by Blacks to live free.”<sup>75</sup> In short, they were fighting to preserve slavery. The extreme violence throughout the period was in no way random or disorganized, either. There were “dozens of battles and thousands of violent incidents in the South between 1865 and 1877.”<sup>76</sup> There was even a full scale pitched battle fought in the streets of New Orleans.

In a deliberate attack, as many as eight thousand White Leaguers, protesting the biracial government of Republican Governor Kellogg and intimidating voters in the upcoming election, devised barricades along Poydras Street and armed behind them. Ex-Confederate Extremists faced an Ex-Confederate Republican opponent, James Longstreet, Robert E. Lee's second in command during the American Civil War. Longstreet, led the combined forces of state government--the biracial militia of New Orleans and the biracial Metropolitan Police--against his former Confederate compatriots. The Biracial Coalition army, fighting for fair elections and civil rights and led by one of the most famous Confederate heroes, numbered perhaps two thousand and were well-equipped with Gatling guns and artillery pieces....<sup>77</sup>

The Ex-Confederates sought to destroy whatever freedoms that African Americans had obtained up to that point. They sought to restore slavery and reestablish themselves as the masters over the neoslaves. The violence was well-organized and coordinated. Reconstruction had all the trappings of a war, and the forces who aimed to reinstate slavery ultimately won. However, though they lost,

it is important to note, once again, that African Americans exercised their own agency. They fought alongside pro-freedom Whites to protect themselves. Just as in slavery, when slaves utilized what little agency they had to improve their conditions, so too did neoslaves utilize their greater agency to protect their freedom and their lives. Ultimately, this is perhaps why racist responses were so virulent; because slaves were free, they were a threat.

Both legally and violently, with convict leasing at the convergence of the two, Whites forced ex-slaves back into bondage. Thus, slavery was perpetuated, and even worsened in many practical ways. By no means do these represent the extent of the ways in which former masters sought to perpetuate slavery. One such example is sharecropping – a practice in which White plantation owners leased parcels of land and basic farming supplies to their former slaves in exchange for the neoslaves' profits – but sharecropping and other forms of economic oppression lie outside the scope of this paper. Despite Whites' attempts to curtail Blacks' freedom, former slaves remained determined to assert it. "No matter how each ex-slave chose to express [his or her freedom], many of them insisted that it be understood and acknowledged..."<sup>78</sup> However, former masters were ultimately successful and effectively established neoslavery.

## CONCLUSION

Frederick Douglass once wrote that "[u]nder the whole heavens there could be no relation more unfavorable to the development of honorable character than that sustained by the slaveholder to the slave."<sup>79</sup> Even people who, in the absence of slavery, would have been decent individuals were made indecent by the "Peculiar Institution." Douglass's assertion holds just as true to those who perpetuated slavery following the end of the American Civil War. The men who perpetuated slavery following the American Civil War were not decent or honorable. Slavery did not truly end in the United States until *much* later. Throughout the Postbellum Period and beyond, Whites forced former slaves and their families back into bondage. Legally, Blacks were deprived of their rights, and Whites violently rebuked or courts threw them into the appalling convict lease system when they attempted to assert a modicum of the rights they felt they were due as free people. Precisely for this reason, they were not free people. Slavery had ended only in name.

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<sup>1</sup> John B. Boles, *Black Southerners 1619-1869*, (Lexington, KY: University of Kentucky Press, 1983), 104.

<sup>2</sup> Boles, *Black Southerners*, 91.

<sup>3</sup> Boles, *Black Southerners*, 75.

- <sup>4</sup> Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom*, (Princeton: Princeton University Press, 2000), 23.
- <sup>5</sup> Gross, *Double Character*, 35.
- <sup>6</sup> Gross, *Double Character*, 38.
- <sup>7</sup> Gross, *Double Character*, 32.
- <sup>8</sup> Gross, *Double Character*, 32.
- <sup>9</sup> Gross, *Double Character*, 31-32.
- <sup>10</sup> Gross, *Double Character*, 32.
- <sup>11</sup> Gross, *Double Character*, 41.
- <sup>12</sup> Frederick Douglass, *Life and Times of Frederick Douglass*, (Secaucus, NJ: Citadel Press, 1983), 25.
- <sup>13</sup> Douglass, *Life and Times*, 25.
- <sup>14</sup> Douglass, *Life and Times*, 35-36.
- <sup>15</sup> Douglass, *Life and Times*, 36.
- <sup>16</sup> Douglass, *Life and Times*, 37.
- <sup>17</sup> Douglass, *Life and Times*, 38.
- <sup>18</sup> Douglass, *Life and Times*, 56-57.
- <sup>19</sup> Douglass, *Life and Times*, 57.
- <sup>20</sup> Douglass, *Life and Times*, 57.
- <sup>21</sup> Douglass, *Life and Times*, 58-59.
- <sup>22</sup> Douglass, *Life and Times*, 59.
- <sup>23</sup> Gross, *Double Character*, 31.
- <sup>24</sup> Douglass, *Life and Times*, 59.
- <sup>25</sup> Boles, *Black Southerners*, 81.
- <sup>26</sup> Boles, *Black Southerners*, 81.
- <sup>27</sup> Boles, *Black Southerners*, 81.
- <sup>28</sup> Boles, *Black Southerners*, 83.
- <sup>29</sup> Boles, *Black Southerners*, 87.
- <sup>30</sup> Boles, *Black Southerners*, 88.
- <sup>31</sup> Boles, *Black Southerners*, 89-90.
- <sup>32</sup> Boles, *Black Southerners*, 90.
- <sup>33</sup> Boles, *Black Southerners*, 91.
- <sup>34</sup> Boles, *Black Southerners*, 104.
- <sup>35</sup> Leon F. Litwack, *Been in the Storm So Long: The Aftermath of Slavery*, (New York: Vintage Books, 1980), 336.
- <sup>36</sup> Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, (New York: Anchor Books, 2008), 1.
- <sup>37</sup> The State of North Carolina, *The Public Laws of North Carolina, session of 1866*, (Raleigh: 1866).
- <sup>38</sup> The State of Mississippi, *Laws of Mississippi*, (Jackson: 1865).
- <sup>39</sup> *Laws of Mississippi*.
- <sup>40</sup> The State of South Carolina, *Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864-65*, (Columbia: 1865).
- <sup>41</sup> Douglass, *Life and Times*, 30.
- <sup>42</sup> *Laws of Mississippi*.
- <sup>43</sup> *Acts of the General Assembly of South Carolina*.
- <sup>44</sup> *Laws of Mississippi*.
- <sup>45</sup> David M. Oshinsky, “Worse than Slavery”: *Parchman Farm and the Ordeal of Jim Crow Justice*, (New York: The Free Press, 1996), 35.
- <sup>46</sup> Oshinsky, *Worse than Slavery*, 32.
- <sup>47</sup> Oshinsky, *Worse than Slavery*, 32.
- <sup>48</sup> Oshinsky, *Worse than Slavery*, 34.
- <sup>49</sup> Oshinsky, *Worse than Slavery*, 34.

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- <sup>50</sup> Oshinsky, *Worse than Slavery*, 35.
- <sup>51</sup> Oshinsky, *Worse than Slavery*, 35.
- <sup>52</sup> Oshinsky, *Worse than Slavery*, 40.
- <sup>53</sup> Oshinsky, *Worse than Slavery*, 41.
- <sup>54</sup> Oshinsky, *Worse than Slavery*, 41.
- <sup>55</sup> Oshinsky, *Worse than Slavery*, 43.
- <sup>56</sup> Oshinsky, *Worse than Slavery*, 43-44.
- <sup>57</sup> Oshinsky, *Worse than Slavery*, 44.
- <sup>58</sup> Oshinsky, *Worse than Slavery*, 44.
- <sup>59</sup> Oshinsky, *Worse than Slavery*, 46.
- <sup>60</sup> Oshinsky, *Worse than Slavery*, 46.
- <sup>61</sup> Oshinsky, *Worse than Slavery*, 169-70.
- <sup>62</sup> Oshinsky, *Worse than Slavery*, 46.
- <sup>63</sup> Oshinsky, *Worse than Slavery*, 46-47.
- <sup>64</sup> Oshinsky, *Worse than Slavery*, 47.
- <sup>65</sup> Oshinsky, *Worse than Slavery*, 53.
- <sup>66</sup> Blackmon, *Slavery by Another Name*, 2.
- <sup>67</sup> Blackmon, *Slavery by Another Name*, 6.
- <sup>68</sup> Blackmon, *Slavery by Another Name*, 7. Convict leasing carried on for most of the 20<sup>th</sup> century, but that is beyond the scope of my thesis.
- <sup>69</sup> Blackmon, *Slavery by Another Name*, 7-8.
- <sup>70</sup> Freedman’s Bureau, “[Letter from T. Cook to R.S. Lacey, July 6<sup>th</sup>, 1866],” (Staunton, VA, 1866).
- <sup>71</sup> Douglass, *Life and Times*, 59.
- <sup>72</sup> Freedman’s Bureau, “[Letter from W. Storer How to O. Brown, January 8<sup>th</sup>, 1866],” (Winchester, VA, 1866).
- <sup>73</sup> Freedman’s Bureau, “[Letter from T. Cook to R.S. Lacey, July 31<sup>st</sup>, 1866],” (Staunton, VA, 1866).
- <sup>74</sup> Daly, *Southern Civil War*, 2-3.
- <sup>75</sup> Daly, *Southern Civil War*, 3.
- <sup>76</sup> Daly, *Southern Civil War*, 2.
- <sup>77</sup> Daly, *Southern Civil War*, 1-2.
- <sup>78</sup> Litwack, *Been in the Storm*, 339.
- <sup>79</sup> Douglass, *Life and Times*, 34.

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