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Men, Women and Children in the Stockade:
How the People, the Press, and the Elected
Officials of Florida Built a Prison System

by

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To my children, Steve, Dale, Eric and Jamie,
and
my husband and sweetheart, Robert J. Webb

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ABSTRACT

This study examines form and change in the early development of the Florida prison system, especially the period from 1821 to 1925. I also examine influences on prison growth, including change in the state's economy and politics. I place particular emphasis on local and national pressures for change that government officials, the press and popular opinion demanded. That pressure occurred through statements published in newspapers, in speeches or letters to officials or through elected officials.

"Men, Women and Children in the Stockade" includes a brief overview of the administrative practices followed in state prisons and jails throughout the American colonies and in the 19th and early 20th centuries. It will present the history of the early Florida prison system in its historical context.

I have woven through the study consideration of how race and class affected actions and attitudes toward control of deviants. Specific chapters will examine how treatment of women and children evolved in Florida's early prisons and the use of the convict leasing system. Reports on how state officials and the public reacted to those practices are investigated. Official state records, newspaper reports, letters and other sources are examined to discover how the system adapted to deal with women, children and other special populations.

Finally, and important to presenting a full and balanced portrayal of the development of the Florida prison system, available letters and testimony of prisoners and ex-prisoners are included. Evidence gathered from the above sources balance the voluminous papers and reports Florida officials created.

PREFACE

Most analyses of the South's development of prison systems begin with the work of George Washington Cable.¹ A fiction writer, Cable told the story in a way that made people stop and take a second look. Other writers followed Cable's lead and his work has attained the status of a primary source. A few of his earliest followers were reformers like Julia Tutwiler,² Rebecca Felton and Selena S. Butler. Their works and others such as Hilda Jane Zimmerman's dissertation, "Penal Systems and Penal Reforms in the South since the Civil War,"³ Donald R. Walker's *Penology for Profit*⁴ and Blake McKelvey's *American Prisons*⁵ had considerable influence. To investigate the origins of Florida's prison system Kathleen Falconer Pratt's thesis, "The Development of the Florida Prison System,"⁶ and Noel Gordon Carper's dissertation, "The Convict-Lease System in Florida, 1865-1923"⁷ must be included.

Mary Ellen Curtin⁸ argued that early reformers embraced stereotypes of blacks as criminals and accepted convict leasing as the only way bankrupt southern states could cope with the upsurge of crime they suffered after slavery ended. Other writers, such as Mark T. Carleton in *Politics and Punishment*,⁹ and William W. Rogers' *Convicts, Coal, and the Banner Mine Tragedy*,¹⁰ rooted the use of the convict lease system in Democratic factionalism and agrarian revolt. They found the entire system the idea and action of the industrializing Redeemers.

Some scholars found convict leasing a product of varied economic, political, ideological and cultural forces all working together to promote the power of white supremacists. To Edward Ayers in *Promise of the New South*,¹¹ the world of the black convict was a slightly distorted view of the larger southern society. Alex Lichtenstein, in *Twice the Work of Free Labor*,¹² Martha A. Myers' *Race, Labor, and Punishment in the New South*,¹³ Mary Ellen Curtin's *Black Prisoners and Their World*,¹⁴ and the work of other scholars, most of them social scientists, explore the economic context of prison systems.

Racial interpretations include Milfred C. Fierce's *Slavery Revisited*,¹⁵ and David Oshinsky's *Worse Than Slavery*.¹⁶ Matthew J. Mancini's *One Dies, Get Another*,¹⁷ must be included, but Mancini's work and that of Noel Carper, although rich in detail, are flawed by over reliance on John C. Powell's memoir, *The American Siberia*.¹⁸ Both writers include "facts" from Powell's work such as

descriptions of punishments and unverified charges of official corruption. Later works copy and repeat those allegations as fact.

Finally, writing about the prison system in late 19th century Florida must include the works of Joe Martin Richardson¹⁹ on the challenges freedmen faced after the end of the Civil War. The story is not complete without the work of Jerrell H. Shofner in *Nor is It Over Yet*,²⁰ or that of Vivian L. Miller²¹ on the pardon process and on women in the Florida prison system. This work has benefited from information discussed in James M. Denham's *Rogue's Paradise*,²² William Warren Rogers and James M. Denham's *Florida Sheriffs*²³ and many others.

Two chapters of "Men, Women and Children in the Stockade" begin telling the important, neglected and continuing story of the treatment of women and children in the Florida Prison System. The facts that bring this picture into focus are scattered throughout the state's records, in letters and articles in its newspapers and in letters to Florida officials. The chapter on women in Florida's convict lease system owes a debt to Estelle B. Freedman's *Their Sisters' Keepers*²⁴ and many earlier works on American prison systems.

"Men, Women and Children in the Stockade" attempts to acknowledge the complexity of motives and circumstances that affected the development of Florida's prison system. At the same time, it presents documentation of the many ways the views of the people of Florida guided form and change in that development.

INTRODUCTION

A few years ago some pious people undertook to make the state of the prisons better. The public was roused by their exhortations, and the reform of criminals became a popular cause. New prisons were then built. For the first time the idea of reforming offenders as well as punishing them penetrated into the prisons. But that happy revolution in which the public cooperated with such eagerness and which the simultaneous efforts of the citizens rendered irresistible could not be accomplished in a moment.

In this statement from *Democracy in America*, de Tocqueville suggests that the views of members of a particular society directed and shaped its agents for social control. Many studies of social control focus their questions on the agents or institutions created by and empowered to act for that society, ignoring available evidence of the views of members of that society. They often neglect any research that reveals or explains the pressure of public opinion. Omitting the record of the views and expectations of private citizens and ignoring any changes such pressure may have engendered, results in a distorted view of institutional development.²⁵

Studies of social control often endow police, juvenile and adult courts, jails, prisons, and other public institutions with a life and mind of their own, treating them as though they are completely separate from the society that created them. Most of these studies examine the form and development of institutions of social control as an activity fully within the grasp of elected or appointed officials or hired bureaucrats. They examine the actions of those officials without considering public opinion. Newspaper editorials, letters to the editor and letters to public officials, however, reveal public support or opposition to actions taken by elected officials or bureaucrats.²⁶

The peoples' ideas, needs, demands and expectations continuously change, and they express those changes through public statements and pressure on public officials. The

public institution in question eventually evolves to conform to society's demands.

Criminals, or people who perpetuate behaviors harmful to a society, and the officials responsible for the control of those people, are never separate from society, but are both active and integrated parts of society. Form and change in the institutions created to serve a society cannot be understood if the views and actions of the officials of that society's institutions and the views and actions of its people become separated.²⁷

"Crime then," says historian David Rothman, "is not to be the mere violation of legal rules that vary in time and place. Instead, crime is to be defined as any conduct that runs counter to the well-being of society." Definitions of crime and the institutions a society creates to enforce those definitions are expressions of public fears, wishes and opinions. An entire society creates police forces, courts, jails, prisons and the laws under which they operate, not elected officials, hired bureaucrats or an impersonal and somehow separate "state".²⁸

Definitions of criminal acts are constantly changing. Ideally, these definitions protect the safety and welfare of a whole community. Often however, institutions and laws are created and enforced to directly serve the needs of the people that hold the most power in a community. The power of elite groups may be economic or political, or most often, it is a combination of both.²⁹

Criminal law then, or the law a society creates to protect itself from deviants, is a set of rules made up to regulate human conduct. Governmental bodies sometimes create laws in the heat of passing emotion without the benefit of rational study. At times, a single heinous criminal act results in the passage of a tough new law. Sometimes the publication of new and barely understood statistics indicating an alarming increase in a certain type of crime inspires the passage of new laws. Often, mere overheated political rhetoric acts to spur a legislature to pass poorly thought-out laws to control crime.³⁰

At times, legislators enact harsh laws to illustrate their strength and willingness to do whatever is necessary to protect their constituents. These laws sometimes prohibit acts the community's elite find morally reprehensible. Sociologist Lawrence W. Friedman argues that these "methods of punishment are always related to ideas about the causes and cures of crime" held by individual members of a society.³¹

This study will trace the development of the Florida prison and correctional system from 1821 to 1925. It will sample Florida citizens' statements to discover their views on the system their state officials created to punish and correct people who violated their society's rules.

Letters to editors of important state and local newspapers, editorials published in those newspapers and statements of public officials reveal Florida citizens' views on the structure and development of the state's early criminal justice system and its methods of punishment. An examination of laws controlling deviance the legislature enacted but engendered no recorded public comment, are equally revealing.

People elected and/or hired to operate the institutions of Florida's government created the largest volume of records available on the development of the prison and criminal justice system. The investigator cannot take these records at face value, however, but must read them with skepticism and carefully balance them with pertinent comments of entities outside governmental control.

This combination of public records and public comment explains why the state abandoned its first effort to establish a prison and turned the facility into a hospital for the insane. More importantly, when these records are combined with the history of economic development, they reveal how and why Florida adopted a system of contracting out the labor of its prisoners to businesses and individuals. These varied records will also explain how and why the state abolished its convict lease system and created the beginnings of a true prison system to take its place.

In chapter one, a short overview of the development of prison systems in other American colonies and states will place Florida's attempts to establish a workable prison system in historical context. It will help explain why the state resorted to a convict lease system and place that action in the context of American development of prisons and correctional systems.

Florida was not original in leasing the labor of its prisoners to private enterprise. Nor was Florida original in using prison labor to finance its prison system or subsidize public road construction. As a territory and then a state, the variations of prison and punishment activities Florida employed were first developed and tested in older, more settled states.

The will of the people of Florida created and guided establishment of Florida's first prison in the old Federal Arsenal in Chattahoochee, Florida. The same people supported the state's convict lease system. They approved, either directly, or by omission, the use of the chain gang, of shackles and night chains, of whippings, and other punishments. Prison administrators and other officials hired and directed by the elected representatives of the people of Florida, devised and administered the types of punishment used to discipline prisoners.

The modification and eventual abandonment of the convict leasing system by state and local governments was a response to the pressure of public statement and changes in elected officials. The people clearly displayed their unwillingness to dig into their pockets to provide tax dollars needed to properly maintain and oversee this system. This unwillingness encouraged many of the convict lease system's excesses. The people of Florida waited until they achieved prosperity before they found compassion for the prisoners trapped in their convict lease system.

Floridians demonstrated their willingness to allow any individual or business to assume all responsibility for prisoners. They gave lessees full and unfettered control over prisoners, be they men, women or children. The people of Florida and their elected representatives often appeared to care only that the person or entity that won the prisoner lease agreed to assume the cost of their food, shelter, medical attention and other maintenance. They demanded only that the lessee provide enough control over the prisoners to maintain public safety.

Prison history is not and never has been main stream. This is partly responsible for public disinterest, and apathy. Historians and criminologists alike continue to neglect the historical record of deviance. They rarely examine the form taken by institutions and activities created for the punishment of deviance as an expression of a society's mores. Historians include no more than passing mention of crime and punishment in their texts. Criminologists produce "ahistorical, atheoretical, temporally or geographically microscopic empirical studies in an effort to find immediate solutions to the seemingly ever-pressing problems of crime and delinquency."³²

Many historians completely ignore the shape and form taken by control of crime and punishment of deviants within a society. Many simply note prison building as a part of other institutional development. They generally ignore the

effect on a society of its institutions and the reason for their existence. Works on corrections, as the study of penology is now called, are either "consistent with the assumptions and orientation of the march of progress school," take a radical position, or are commingled with the social context.³³

Not examining a system of criminal justice in the light of the actions or lack of actions taken by the individuals who make up a society effectively separates the "system" from the people. This separation gives bureaucrats considerable control of these systems, and bureaucrats often seek to preserve their jobs rather than serve society's needs.

Historian David Rothman asserts that "innovations in control of deviance were created to satisfy society's need for reforming criminals, delinquents and the insane." These innovations, he maintains, however much they may have lost their focus over time, "were designed to channel orphans and the poor into socially and economically useful activities, and making their rehabilitation (i.e., acquisition of the habits of order, discipline and self-control) a model of behavior for society."³⁴

Immediately following the Civil War, the need for order was desperate in Southern society, and especially desperate in Florida society. Most of the state was unsettled, a frontier. Uncounted miles of woods, rivers and savannas provided endless hiding places for bands of unemployed and uncontrolled men and women, most of them ex-slaves.

This study brings together the records that show the views of Floridians and their interaction with elected officials that guided the development of the state's early prison system. These records combined with the voluminous reports and papers state government agents created, will widen the lens used to view the history of the structure, development and administration of systems of prison and punishment in early Florida.

Adding Florida citizens' views to the survey makes it possible to re-adjust the traditional view of this history, that assumes absolute administrative control of these institutions, only occasionally modified by the pressure of reformers. It will focus on the effect the opinions of individuals exerted in shaping the development of a public institution in a free society.

CHAPTER ONE

Early American Jails, Punishments and Prisons

Jails in some form were a necessity from the very beginning of American settlement. Physically, they ranged from simple wooden or iron cages, many of them located in a prominent place such as the village green or commons, to a complete building, created specifically as a jail. In some cases, a courthouse or other municipal building had a cage with bars or a reinforced room with a grilled door built into it.

Rarely, local governments built a stout log, stone or brick structure for the specific purpose of imprisoning offenders. In later years, jails were often one or more cells built inside the sheriff's house. The Old Jail Museum in Taylor County, Florida, built in 1912, includes the sheriff's residence.³⁵

By the early 18th century, every town of any consequence in New England, and most county seats, had their own house of detention. Historian Carl Bridenbaugh explains that during the 17th and early 18th centuries, the towns and villages of "colonial America had more jails than public schools or hospitals."³⁶

Officials jailed and carried out physical punishments for slaves and indentured servants who escaped their bondage or became so unruly their masters despaired of controlling them. They also jailed men and women accused of criminal acts and awaiting trial. They immediately incarcerated or expelled from the town as vagrants or vagabonds, any strangers who arrived without proof they could support themselves. Every American colony also imprisoned bankrupts and debtors, even those who owed trifling sums amounting to the equivalent of one or two dollars.

The harshness of colonial vagrancy and debtors laws emphasized the great difficulty settlers experienced in earning a living on a frontier. These isolated people lived one step away from starvation at times, on the edge of the wilderness. Individuals feared that if they dared to take on the responsibility of caring for an outsider or a person who had already failed in the struggle to make a living, they might themselves face destitution or expulsion into the wilderness.³⁷

Colonial prisons and jails were grim. Local governments were unwilling or in many cases unable to

provide the necessities of life for their prisoners. Officials did not furnish such things as food, wood for heat, clothing, or blankets. The prisoners or their families had to give them these items.

Prisoners did not receive medical care. Debtors, vagrants, and vagabonds, who had no money to buy food or other basic items from the keeper and no family living nearby to provide them, faced harsh decisions. Many imprisoned strangers "volunteered" for a period of indentured servitude or military enlistment to avoid starvation. Others received permission from the jail's keeper to leave the prison for a few hours each day to wander about the town and beg.³⁸

Places of incarceration for criminals, runaways, orphans, vagrants, drunkards, debtors, and the destitute included, in addition to jails or prisons, institutions variously named "bridewells," "workhouses" and "almshouses." Later, as soon as they built up their tax base enough to afford them, most towns and counties established and operated poor houses or poor farms.³⁹

Officials usually ignored the reasons for the incarceration of prisoners and other inmates when determining whether they received food, clothing or other necessities at the expense of the community. Inmates may have been sentenced for a violent crime, a debt, an offence against propriety, or they might be in the institution because they were orphaned or disabled and had no family to provide for them.⁴⁰

Town governments often sentenced prisoners and other dependents to serve as indentured servants for a respectable, solvent member of the community. Orphans were usually "farmed out" to any family willing to take them in and feed them until they reached their majority at twenty-one.

"Farming out" prisoners or dependents saved the town or county the expense of providing for them from the public purse or watching them starve. Occasionally, kind-hearted community members gave gifts of food and other necessities to prisoners or other inmates with no family or friends to support them, but this rarely occurred. Colonists feared strangers and few came forward to assist them.⁴¹

The function of the jail has changed little in almost a thousand years of western history. It has always been a place of temporary confinement. Officials held offenders and suspected offenders in jail for arraignment. If there was enough evidence, they returned to the jail to await

trial. Unless the court allowed them to post bond for their re-appearance, they stayed in jail until their trial date.

If found guilty and sentenced to serve less than a year the offender returned to the jail until he or she served the specified time. If the offender received a sentence of twelve months or longer, he or she went to a state or federal prison.

The County Sheriff, an elected or "constitutional" officer, administered county jails in most states. Police or correctional departments usually operated jails in towns or cities. Only Delaware and Rhode Island operated differently; their jails were under the control and direction of the state government.

This local control of jails often permitted prejudice to impact jail management and the treatment of prisoners. Finding enough funds to properly finance jail operation and staffing has frequently presented a challenge for local governments. Lack of funds reduced wages and benefits and made it difficult to attract prospective employees. It reduced the amount of training available to new officers and often forced jail administrators to accept barely qualified personnel. Frequently, as soon as the new employees had enough training to be useful, they sought a better position and the administration had to hire and train someone new. ⁴²

American Colonial Punishments

English settlers in North America perpetuated the harsh British methods of controlling crime. Colonists rarely used imprisonment as a punishment until the 1780's, and did not consider rehabilitating the offender. Common punishments for breaking community rules were fines or some form of publicly administered corporal punishment. Punishments often included requiring an offender from the lower classes to stand in stocks or pillory in a public place to endure the harassment and humiliation of other citizens. The rich usually paid a fine. ⁴³

Stocks were simple devices made of two heavy boards attached by a hinge at one end with a lock at the other. The boards had cutouts for the prisoner's ankles or wrists that were too small for their hands or feet to pass through. After the stocks shut and locked over the prisoner's hands, he or she could not move. Even the smallest village could afford to make and use a set of stocks.

A pillory was a much larger and more complicated device. It held the prisoner in a standing position with

his or her head as well as hands trapped. If the offence was particularly egregious, the offender might also have one of their ears nailed to the framework of the pillory. This punishment was not only painful, it forced the victim to look up so he or she could not hide his or her face in shame or protect their faces from tormentors who often yelled insults and pelted them with rotten vegetables.

In severe crimes, when the offender completed the pillory punishment, an official cut off one or both of the malefactor's ears. Depending on the law or rule they had broken, other deviants were tied in a dunking stool and dipped in a pond or river a given number of times, or tied to a stake and whipped.⁴⁴

Flogging with a leather bullwhip or strap was the accepted punishment for many petty crimes. Occasionally texts refer to this as whipping or rawhiding the prisoner. In some New England villages lawbreakers had their wrists tied to the back of a cart, their shirt or blouse ripped open to bare their backs, and were forced to follow the slow moving cart. Someone from the court walked behind them and administered the proscribed number of lashes as the cart moved from place to place in the village. This exercise ensured the offender's broadest possible humiliation. Officials expected the public spectacle to act as a deterrent to future lawbreakers.⁴⁵

The whipping post eventually replaced the moving cart. This was a heavy log with one end securely buried in the dirt of the prison or jail yard where all prisoners could witness the whipping. In some cases the whipping post stood in the middle of the village green. Officials also expected this spectacle to deter future crime. Some whipping posts had shackles securely attached to the wood to hold a prisoner's hands during the whipping. Both men and women prisoners were whipped on their bare back. Sentences ranged from five to 100 lashes and sometimes more, depending on the severity of the offense.⁴⁶

Crimes that early settlers considered truly heinous received the harsher punishment of branding. Using a hot iron, officials burned a letter into the malefactor's hand or in some cases, into his forehead or cheek. This brand permanently marked the man or woman as a drunk, a fighter, an adulterer, a blasphemer, a rogue, or a thief.

When the colonies were organized, British settlers provided the death penalty for a long list of crimes, including many infractions now considered little more serious than petty theft. Officials carried out death

sentences through public hanging and expected the spectacle to frighten onlookers and prevent future criminal acts.⁴⁷

Blasphemy was rare, and the method of punishment provides a clue to its avoidance. Several colonies bored a hole through the miscreant's tongue with a hot iron. Some officials punished serious crimes with other forms of mutilation, such as slicing the person's nostrils or lips or cutting off their ears. Instead of death, perpetrators of crimes such as sexual misconduct or slave stealing were banished from the village. In the middle of a wilderness, in a country that automatically branded strangers suspect if not criminal, a sentence of banishment was only a little short of a death sentence.⁴⁸

The Puritans who settled the Massachusetts Bay Colony supported particularly harsh punishments for anyone who committed a deviant act. Puritan governance rested strictly on religious principles, and the community's leaders equated crime with sin. They treated the slightest deviation from community mores as a crime worthy of the harshest penalties.

The Massachusetts Bay Charter required that Company leaders erect a "House of Correction" to punish anyone who deviated from the community's rules. The General Court at Boston complied with this requirement in 1632, when the colony was only two years old. The Court ordered the City of Boston to build a "prison house" and a house for the "Beadle." The Beadle was the prison keeper or warden. At that time, and in Florida as late as the early 1900s, the prison or jail and the warden's house were often placed under the same roof.⁴⁹

American Prisons

Prisons or penitentiaries in the United States are essentially the same thing. The difference inherent in the words does not apply to American institutions regardless of their name. The word penitentiary, as early reformers such as Jeremy Bentham and John Howard used it, meant a place of incarceration where the criminal would pay his debt to society and be prepared to return to that society a reformed person.⁵⁰

American colonies in the northeast established the earliest true prisons in an effort to mitigate the severity of the criminal law. As the population of the colonies grew and crime increased in the late 17th century, community leaders and legislatures became reluctant to sentence so many people to death.⁵¹

Historians J. M. Moynahan and Earle K. Stewart argue that settlers eventually viewed the early practices for controlling and punishing deviants overly harsh and barbaric. They describe the establishment of prisons as an alleviation of this harshness. "The foundations for the development of the prison in America had been laid during the late seventeenth century and the eighteenth century." Moynahan and Stewart go on to assert that the prison was, in fact, the inevitable outcome of societal forces. One of the most important factors in the development of prisons was the colonists' attitude toward the harsh English legal system. Many of the people who settled in the New World had spent time in English jails; some suffered for various ideological and social beliefs. Once they settled in the New World they tended to reject the harsh treatment given to offenders that was the practice in England.⁵²

Connecticut and Massachusetts tried using heavier fines and harsher whippings to punish and deter the perpetrators of crimes that had formally called for the death penalty. The state's leaders eventually decided those remedies were not useful. Inevitably, local jails and houses of correction could not accommodate the number of people charged with crimes. In addition, the construction of jail buildings did not adequately provide secure enough imprisonment.

Community leaders concluded they needed prisons to control crime. They also believed a prison or penitentiary offered hope of reforming deviants and returning them to society as productive citizens. Connecticut created the first state prison and Massachusetts and New York followed soon after.⁵³

Connecticut established the nation's first prison when the state's jails and workhouses brimmed over with men and women who could not pay their fines. Legislative committees suggested that prisoners work in the state's copper mines where officials had difficulty recruiting free labor.

State leaders built an administration building over the shaft of a copper mine in Simsbury, Connecticut, and renamed the mine "Newgate Prison." The first inmate entered the prison in 1773, and thousands followed until the prison closed in the 1827. Prisoners lived and worked inside the mine, producing copper ore for the state. Newgate housed both violent and non-violent criminals including men, women and children.⁵⁴

Newgate did not have cells; large open areas of the mine held the shackled prisoners in groups. Once they entered the mine, the prisoners never saw daylight again unless they out-lived their sentence or escaped. Surprisingly, many did find their way out of the mine's abandoned tunnels and shafts to freedom. Guards placed shackles on the prisoner's ankles when they entered the mine and they spent every day digging for ore. The first prison riot in the United States broke out in Newgate in 1774 protesting the prisons' harsh conditions. When copper mining did not make the prison self-supporting, state officials added stonecutting and finally shoemaking to the prisoner's work, but nothing earned enough money. Newgate prison never paid its way and closed down in 1827.⁵⁵

The establishment of modern penitentiary-like institutions in the United States began in New England early in the 19th century. Early Pennsylvania prison reformers ideally wanted to provide "extreme isolation of criminals from society, extensive supervision over their daily lives, and compulsory productive labor." The prisoners could not interact with each other or with anyone from outside the prison. They lived in private cells with a Bible as their only company. Reformers believed that separating deviants from their normal environment and placing them in a strictly structured one would "retrain" and reform them.⁵⁶

New York began the "Auburn System," that is sometimes called the congregate system. The rules required inmates not to look at each other or talk to each other, although they worked and ate together. New York reformers believed that this "congregating" relieved psychological pressures created by solitary confinement and overcrowding. A prisoner who talked or looked at his or her neighbor faced physical punishment or a period of hard labor. Because the Auburn System cost less than the Pennsylvania System, which required the physical separation of the prisoners, several states adopted it.⁵⁷

Historians and criminologists often debate the motives of the founders of early penal institution. They were invariably middle to upper-class men who described themselves as "acting for the deviant and dependent." Historian David Rothman questions their assertion of humanitarian motives. He argues that however they tried to position themselves as benefactors to these "unsuccessful" members of their society, most of the founders "were

responding to fears of social disorder and acting from their need for social control."⁵⁸

Beginning in the late 18th century, reformers tried to make incarceration of deviants more humane. Groups such as the Boston Prison Discipline Society helped improve jails and penitentiaries built after 1810. New York instituted a system of discipline that allowed some interaction between prisoners when their jobs required them to work together, but continued to forbid verbal communication. Pennsylvania kept prison inmates in complete solitary confinement, so that one could never know the identity of another. Most mid-Atlantic and northeastern states adopted variations of one or the other of these systems before the Civil War.⁵⁹

Early prison reformers believed that environment caused criminal behavior. Officials designed the New York and Pennsylvania prison systems to take deviants completely out of the living conditions that produced them. They proposed to keep these men and women separate from their previous associates and expose them only to good influences. Reformers expected prisoners held at various levels of isolation to use their solitude to contemplate their lives and abandon their errors through learned self-discipline.⁶⁰

After the Civil War ended, several northern states experienced a surge of reforming vigor affecting the form and structure of all its institutions and particularly its penal systems. Several states moved away from prison as "keeping" deviants and toward a goal of reforming them. They designed and constructed penitentiaries to reform and rehabilitate the inmates.⁶¹

Some historians and sociologists charge that from the beginning, prisons in the United States perpetrated a system of class control. There is no doubt that they were used as a system of racial control. Twenty-nine percent of the prisoners in the New York State Prison of 1814 were black. de Toqueville observed that "in those states in which there exists one Negro to thirty whites, the prisons contain one Negro to four white persons."⁶²

Prison Labor

The activities of early reformers and the rhetoric they used in opposition to slavery directly linked perpetual slavery and the punishment of criminals in America. Thomas Clarkson, an English reformer, found penal slavery or the practice of requiring prisoners to labor for the benefit of the state justified, but he believed that

requiring a prisoner to labor for the benefit of an individual was not.⁶³

American lawmakers first formally linked slavery and criminal punishment when Thomas Jefferson drafted the Northwest Ordinance, adopted by Congress on July 13, 1787. The Ordinance outlawed slavery and involuntary servitude in the area it covered, except when slavery or servitude was punishment for a crime. "There shall be neither slavery or involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted."⁶⁴

The words of the "penal servitude" provision in the American Constitution came from the Northwest Ordinance. Requiring prisoners to perform labor as punishment for law breaking in America is older than the Constitution, and a part of the fabric of the Republic.

After the Civil War, the thirteenth amendment to the Constitution officially abolished slavery, except for those convicted of a crime. The amendment says, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."⁶⁵

From the earliest colonial times, American communities supported using prison labor to reduce incarceration costs. Typically, the prison keeper or superintendent charged a proscribed fee for furnishing the prisoner's basic needs. America inherited this fee system from England, and it lasted in some areas of the country well into the 20th century. This system may well be the root of the persistent notion that a prisoner should be self-supporting.⁶⁶

According to George Washington Cable, "the management of a state's convicts is a public interest that still waits for the same sort of recognition and treatment" afforded public hospitals and public schools. Cable found two dissimilar motives in the government of American prisons. In his view, a few prisons operated to exert a "generous, judicious control to generate a result to the public interest." Most prisons however, operated to gain such "good results as may be got without an appreciable excess of expense over income. In other words, to treat them as unworthy appeals to public charity."⁶⁷

Whether prisons operated as a "public interest" or "public charity," the prison and the prisoners remained in the charge of state officials. "The criminals are kept continually within the prison walls, and the prison

discipline rests intact." The prisoners labored either under the Public Accounts System, where their overseers were officials of the state government or in the Contract System where their overseers were employees of the contractors. Both of these methods theoretically protected "the detention, the health, the discipline, and the moral reformation of the prisoner." ⁶⁸

Convict leasing schemes began to flourish in the United States early in the 19th century. The country experienced severe labor shortages resulting from a manufacturing boom during the War of 1812. Several state governments and interested business leaders in the northeast developed various plans to use prisoners to relieve the labor shortage. As settlement moved west in ensuing years, elements of these plans followed to other territories and states. ⁶⁹

Opposition to convicts taking free labor's jobs began with the first convict work schemes. The Simsbury, Connecticut, mine that became Newgate Prison took free labor's jobs. New York, Pennsylvania and other states that had prisoners making their own shoes and clothes did so as well.

A 1913 bulletin of The National Free Labor Association published a list of states that leased their prisoners to private contractors. Southern states included Florida, Alabama, Kentucky, South Carolina, Tennessee and Virginia. It omitted Georgia that had recently abandoned leasing its prisoners to use their labor in building roads. This bulletin also listed as using a convict lease system, Connecticut, Delaware, Maryland, New Hampshire, Maine, Vermont, New Jersey, Rhode Island and West Virginia in the east. Among the mid-west and western states, it included Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Wisconsin and South Dakota. It omitted some states known to use forms of leasing including Texas and California. The article also charged that although Massachusetts and Ohio did not use a convict lease system in their prisons, they leased out inmate labor in the "workhouses in Ohio and the reformatories of Massachusetts." ⁷⁰

The labor movement, almost from its inception, protested the use of prisoners' labor to break strikes and to hold down wages. By the 1890s, labor leaders swayed public opinion enough so that many states abolished the use of prison labor. Finally in the 1930s, Congress passed the

Hayes-Cooper Act and the Ashurst-Sumner Act that outlawed the use of leased prison labor for profit.⁷¹

Records of statements opposing prisoners taking jobs of free labor exist throughout United States history. During times of high unemployment, the controversy became particularly heated. Workers and their supporters expressed their opposition to prison labor in letters to editors, editorials in newspapers, and articles in magazines. They also stated their views in protests to state legislatures, and to the Senate and House of Representatives of the United States. In 1864, the preamble to the Cigar Makers' International Union Constitution contained a plea for prohibition of "the system of letting out by contract the convict labor in prisons and reformatory institutions."⁷²

Labor union views had some political support.⁷³ The Labor Reform Party resolved in 1872, for example, "that the enlightened spirit of the age demands the abolition of the system of contract labor in our prisons and other reformatory institutions." The Prohibition Reform party crusaded against "all barbarous modes and instruments of punishments." In 1874, The American Prohibition National Party Platform opposed putting "prison labor in competition with free labor."⁷⁴

The Socialist Labor Party Platform, issued in New York City on July 4, 1896, demanded the abolition of the convict labor system. The National Greenback Party platform called for the abolition of convict labor. The Platform of the National Progressive Party pledged to "work unceasingly in state and nation for the abolition of contract labor." Even the General Federation of Women's Clubs passed a resolution during its biennial convention of 1912 declaring its opposition to the "contract system of prison labor."⁷⁵

The Knights of Labor, the major American labor union federation until the emergence of the American Federation of Labor, sought the abolition of child labor and convict labor. One of the "Objects and Principles" of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) has always been to "abolish the competition of convict labor with the labor of free workers." Typically, the St. Petersburg, Florida, Local No 531, of the United Brotherhood of Carpenters and Joiners of America spoke out in opposition to the use of prison labor on construction work.⁷⁶

Most states tried various convict labor schemes at different times. Free labor always opposed them. Fringe political parties added planks in their platforms against

prison labor. Even the main stream Progressive Party of Theodore Roosevelt included a statement in opposition to convict labor in its platform. Nevertheless, after the Civil War, all eleven of the former Confederate States and most of their political subdivisions operated convict labor systems.

The idea that a prisoner should pay for his or her incarceration is older than the United States. Productive labor for prisoners to defray prison costs was accepted practice in the towns and villages of America's earliest colonies, and incorporated into the design and operation of the country's first prisons.

Before the Civil War Florida was a raw, new country, at war with the Seminole Indians, and fighting to tame the wilderness. At the end of the Civil War, the people of the state had to rebuild their homes, transportation facilities, industry and government. They had to re-create a criminal justice system that was still in its infancy when the war started.

CHAPTER TWO

Early Law Enforcement in Florida

English colonists founded Virginia, Massachusetts, Connecticut, Maryland, Rhode Island and other states of the northeast, middle-Atlantic and upper south in the first half of the 17th century. The governments of those states developed sound tax bases to support community needs well before the Civil War.

Florida, however, did not become a United States territory until 1821, and attained statehood in 1845, only sixteen years before the Civil War began. Throughout the entire 19th century and well into the 20th, Florida was still in the settlement stage, an untamed frontier, with a grossly inadequate tax base to support its burgeoning need for institutional development.

Frederick Dau, James Denham and other historians suggest that convict leasing may have started in Florida long before the Civil War. Some records indicate that counties leased prisoners to plantation owners for planting, tending and harvesting crops, and to corporations and individuals to work in the state's forests in lumbering and turpentine processing. The almost complete absence of adequate jails throughout the state supports the likelihood of convict leasing usage before the Civil War, as does endemic white hostility toward Indians and blacks, whether slave or free.⁷⁷

Frederick Dau cites Florida records showing that "in both the territorial stage and as a state prisoners were leased to individuals to be worked on turpentine tracts." Historian Hilda Jane Zimmerman reasons that Florida would have followed the practice of North Carolina and "hire out to any person willing to pay the fine" for a prisoner. She reports that in North Carolina this hiring happened "at the courthouse door."⁷⁸

During the territorial period, law enforcement in Florida was partly the responsibility of United States marshals who represented the federal government on the local level. The marshals took the national census every ten years. They distributed presidential proclamations, and collected statistical information. They supplied the names of government employees for the national register and performed other routine tasks for the federal government. United States marshals apprehended, confined and presented

prisoners for trial. They also executed punishments as judges in the territorial courts directed.⁷⁹

President James Monroe appointed James Grant Forbes as Florida's first United States Marshal. Forbes' orders were to live in Jacksonville or Pensacola and appoint a deputy marshal to live in the opposite place. In addition to his other duties, Forbes had the responsibility of protecting Florida's great forests of live oak and cedar for use in the nation's shipbuilding industry.⁸⁰

The county sheriff enforced the law locally. An ordinance issued by Military Governor General Andrew Jackson in Pensacola stated that "there shall also be a sheriff appointed to each court, to execute the process thereof." In 1821, Jackson appointed James R. Hanham, Sheriff of St. Johns County and James Pendleton Sheriff of Escambia County.⁸¹

James R. Hanham, the first Sheriff of St. Johns County, held his post for only a little over two years. He resigned in frustration, explaining there were "no funds available to operate his office, no jail to house his prisoners and he was facing lawsuits for failing to pay for feeding his prisoners."⁸²

As stipulated in one early law, the Florida sheriffs punished gamblers or vagrants by contracting out their labor to the highest bidder for one year or by a whipping that could not exceed thirty-nine stripes. The sheriff collected fees for performing his various duties. This seems to have been his only remuneration, at least during the territorial period, as any adjudged fines went directly to the court.⁸³

Governor Jackson had county sheriffs collect fees for such things as serving a citation, one dollar-fifty, a subpoena, fifty cents, and keeping a prisoner, twenty-five cents each day. Under state statutes of 1846, passed when Florida became a state, the sheriff collected two dollars for whipping a court-sentenced person. He received three dollars for confining a person, and ten dollars for conducting a hanging.⁸⁴

When Jackson accepted the surrender of Pensacola for the United States in 1821 one of his first actions created the city police department. He appointed one city constable. Pensacola had an existing jail. The building appeared on a Pensacola map drawn in 1813 by Vincente Pintado, marked "Public Prison."⁸⁵

In 1827, six years after Jackson began Pensacola's police department the Pensacola News described the jail as

in "deplorable condition." Several escapes occurred, and as late as 1829 another newspaper report said that a prisoner escaped from the jail because of its dilapidated condition. By 1845, when Florida became a state, Pensacola had a fully organized police department with several officers employed to keep the peace.⁸⁶

One of the Florida Legislative Council's first acts adopted the English "common law" as it existed in England on July 4, 1776. Throughout the 19th century, Florida law mainly consisted of English Common Law and precedents created case by case in Florida courts. The civil Law of Spain also influenced Florida law. The United States treaty with Spain stipulated that Florida honor legal rights created under Spanish law. In the early years of the territory and state governments, many disputes occurred over land obtained under Spanish law; the most famous of these disputes involved the Arredondo family holdings near Gainesville.⁸⁷

Authorities in Washington appointed territorial judges, but when Florida became a state in 1845 and adopted the 1838 constitution, it created a Supreme Court. This court consisted of Circuit Courts judges who served in the four Florida counties sitting to hear appeals. The Legislature amended the Constitution in 1851 providing the Supreme Court with its own justices. The State Legislature appointed the justices and they served during their "good behavior." This method of selecting the justices lasted two years. In 1853, a Constitutional amendment authorized the popular election of the justices for six-year terms. In 1861, another Constitutional amendment gave the Governor power to appoint the Supreme Court Justices for six-year terms with the advice and consent of the Senate.⁸⁸

From 1846, the organization of the state's judicial system required that the justices who served as both appellate and trial-level judges travel around the state to hold court. Florida, the least populous of the southern states, had its population concentrated in a strip across the northern part of the state. It was also one of the largest states if measured in miles from end to end, and most of it remained a wilderness without trails or roads. People who lived in middle and south Florida often traveled north to Jacksonville or Lake City to appear before one of the judges.⁸⁹

The territory began with only two counties, and sheriffs had the responsibility of enforcing the law in huge areas. Florida had only a few jails and no prison.

Judges "riding circuit" on horseback or in a boat, held court in each population center no more than two or three times a year.

In 1840, Territorial Governor Robert R. Reid described as "desperate" Florida's need for a territorial prison and a general modernization of its criminal code. Reid complained that "In East Florida there is not a secure jail in any one of the counties, and it is believed that the South, Middle and Western districts are almost or quite as destitute." The Governor argued that "without prisons the criminal law cannot be enforced--with them, and an appropriate discipline, the cause of humanity might be advanced, by abolishing the barbarous punishments of whipping, branding and pillory."⁹⁰

Governor Reid explained to the Legislative Council the obvious inadequacy of a criminal code in which crimes such as "intent to commit murder, are not as severely punished as the offence of maliciously maiming and wounding cattle." He argued that if punishments should be made suitable to the offense, "imprisonment would have to be added to the existing method of demanding that violations of the law be punished by the imposition of fines."⁹¹

Duval County did not have a jail in 1840. The St. Johns County Sheriff and the United States Marshals used Fort Marion to incarcerate their prisoners. In 1841, Territorial Judge William Marvin wrote to Florida's congressional delegate David Levy, asking him to appeal to the authorities in Washington for assistance because the bankrupt territory could not appropriate money for a jail. In 1843, Alachua County officials erected a jail of logs. It was a simple box with an opening at the top large enough for a prisoner to enter. This structure was needed because the judge had been "compelled to fasten on rail fences" any persons he needed to detain.⁹²

As the population of the state grew, towns were established and living conditions improved. Some Florida citizens began to develop pride in their state. Controlling deviants using primitive punishments abandoned as barbaric in other states became an embarrassment.

Mainly wealthy landowners settled in the middle counties of upper Florida. The majority were slave owners and planters⁹³ from Virginia and North Carolina. The settlers in eastern and western counties, according to historian James Denham, were "highly individualistic and mobile, fiercely dedicated to popular democracy, generally possessing antipathy toward Indians and African Americans."

Many settlers throughout Florida came from Georgia, Alabama and South Carolina. These people served as jurors in the state's courts.⁹⁴

Jurors had their own ideas of the law and did not hesitate to express them through jury nullification. They demonstrated their opinion of certain laws and proscribed penalties when they found defendants not guilty, despite overwhelming evidence. They also made their views on the law known when they ordered the guilty to pay insignificant fines.⁹⁵

Buckingham Smith, Chairman of the "Florida Committee on the State of the Territory" reported to the Legislative Council in 1841 on the state's need for a prison system. His report verified Governor Reid's assertion that the territory was "desperate" for a prison. Smith warned the Council, "crimes in the Territory were increasing not only in number, but in magnitude." He pointed out that the "only safe jail in the territory was in Apalachicola." According to the committee report, Jackson, Gadsden and Calhoun Counties had jails, but Smith described them as woefully inadequate. He also stressed to the legislators that only once since 1832 had Florida executed a white man for a crime.⁹⁶

This early implication that many of Florida's law enforcement officers and its criminal justice system appeared racist, echoes throughout the state's history. As will be seen in subsequent chapters, the echoes were never louder than in the years when Florida operated the convict lease system.

The "Committee on the State of the Territory" suggested that Fort Marion in St. Augustine "would be far better than any [prison] the Government" would be willing or able to fund. The members proposed to repair the old fort and use it as a state penitentiary. The Committee's report also suggested that the facility be under the direct control of the Legislative Council.⁹⁷

The Council did not act on Smith's report and continued using whipping, branding and pillory as punishments. Courts had to either use those methods or lease the prisoner out to work for anyone willing to pay his or her fine.⁹⁸

In 1841, Governor Reid suggested in his official message to the Legislative Council that the Territory apply to Congress for a grant to aid in establishing a prison. The Legislative Council submitted a request to the Congress

later that year asking for an appropriation adequate to build several jails and a penitentiary.⁹⁹

Members of Congress apparently ignored the request. No response appears in Washington or Florida records. In 1843, Governor Richard Call again asked Congress for an appropriation to build the basic structures that would enable the territory to establish and operate a modern system of criminal justice. The Congress ignored this request as well.¹⁰⁰

None of the Florida constitutions in 1838, 1861, or 1865 included a provision for establishing a state prison, leaving the punishment of convicted criminals to the counties. Without a prison and with almost no jails worthy of the name, hanging continued as the penalty for crimes such as murder, sexual assault, and arson. Before the Civil War, stealing slaves was also punishable by hanging. Officials or owners usually punished slaves by whipping, but they punished them for a serious offence by cropping, or cutting off part of one or both of their ears. Sometimes they branded them on their face or hand with a hot iron. Lesser criminals faced punishments such as whipping, or a stint in pillory. Most states had abandoned use of the pillory and branding during the colonial period.¹⁰¹

Terms in pillory added ridicule and humiliation to physical pain, and officials expected the sight of the prisoner's misery to deter others considering criminal activity. Some sentences to a term in pillory also included nailing the offender's ear to the crossbeam and then cutting it off.¹⁰²

Public sentiment gradually turned against these forms of punishment. Many Florida law enforcement officials and judges, understanding that the people disliked these methods, became hesitant to use them. Imposition of fines worked poorly when most people did not have money to pay a fine. Thus, without any central direction, Florida local governments used convict leasing up to, during and long after the Civil War.¹⁰³

Governor Richard Call and other state leaders in the 1840s were much more interested in lobbying Congress for funds for "naval construction, roads, bridges and other internal improvements" than for constructing jails. The state desperately needed internal improvements to open the wilderness to settlement. Florida's population in 1825 was 13,400, by 1840 it had burgeoned to 54,500. Towns grew and despite the hardships the Seminole Wars brought to frontier

settlers, people penetrated and tamed the plains and forests of south, middle and west Florida.¹⁰⁴

The dearth of jails in Florida continued into the 1850s and 1860s. In 1836, fire destroyed Leon County's jail. Almost two years later there was still no replacement. Existing jails throughout state operated almost exactly like those of the early colonial period in the northeastern states. In 1858, Franklin County had a stone jail. A letter sent to the Appalachicola Commercial Advertiser condemned the jail's condition, explaining that there were "no beds, pallets or covering, not a bench or a stool to sit on." The writer also complained that the prisoners had not "even a bundle of straw to lie upon or a coal of a fire to warm their benumbed bodies."¹⁰⁵

The group of people who settled the middle "plantation" counties controlled political and judicial posts in antebellum Florida. Richard Call and his associates were Jacksonian Democrats in their early years, but they evolved into a "conservative ruling class opposed to the policies advocated in the 1830s by the Jacksonian Democrats." Call and his friends wanted a government that supported internal improvements and passed legislation allowing highly flexible charters for banks.¹⁰⁶

The Call group backed the sale of bonds to financiers in New York, Boston, Amsterdam and London to encourage people to establish banks. The financial panic of 1837 caused many of the new banks to face failure and threatened to force their owners into bankruptcy. The banks had loaned money to many of the large planters to buy slaves. The Legislative Council supported their members and friends who owned the banks by imposing taxes on Florida residents to pay interest on the bonds.¹⁰⁷

Floridians resented the tax burden created by actions they believed were corrupt. In 1845 they voted to oust Richard Call and his adherents and elected a Democratic Governor, William Dunn Moseley. The majority of Florida citizens supported continued Democratic control of the state government. They also advocated "Southern Rights," or the protection of slave property.¹⁰⁸

With the conclusion of the second Seminole war, the state's Indian problems finally ended and tourism emerged as a staple of the economy. Florida prospered. Cotton prices rose dramatically, and lumber mills could not keep up with their orders. There was a critical shortage of laborers.

Slave prices doubled until Floridians had more money invested in slave property than in any other asset. The population of the state went from 87,000 people in 1850 to 140,000 in 1860. Slaves constituted forty-four percent of the states' overall population. The number of slaves was highest in the "plantation counties" of middle Florida. They made up, for example, fifty-eight percent of the population in Gadsden County and sixty-five percent in Leon County. ¹⁰⁹

Florida, along with most southern states, faced economic devastation after the Civil War. Poverty constrained and limited the options available to the Florida government officials until the land boom of the early twentieth century. The treasury had little money to build or operate schools, hospitals or a prison.

According to historian John E. Johns, the Civil War caused "loss in Florida property and property values [that were] enormous." He argued that "besides the incalculable loss of real and personal property caused by the depredations of Federal troops and Union sympathizers," the value of their possessions depreciated heavily because of their defeat. Before the Civil War, Florida was economically sound. The state's debt was approximately \$1,200,000, but it was perfectly manageable. The assessed value of the state's property, real and personal, including slaves, was almost \$69,000,000. When the war ended, the people of Florida had lost the value of their slaves, worth approximately \$22,000,000, and an additional forty-seven percent of their other property values. The treasury was empty and the state faced a huge debt. ¹¹⁰

After the Civil War, county and town governments throughout Florida desperately needed better facilities to handle a rapidly increasing number of criminals. Duval county jail was reportedly in such a terrible state of repair that a doctor attributed a prisoner's death to the condition of the building. Dr. G. T. Maxwell described the jail as made up of cells badly ventilated and crowded with prisoners. He stated the prisoners included people of every color, age, sex and condition, and the crowded situation stimulated the spread of disease. ¹¹¹

Jails throughout Florida remained in poor condition if they existed at all. At state or county level, funds were unavailable to build, repair or improve them. In 1866, legislators passed an act saying the commissioners of any "County in which any fine, penalty or forfeiture may be imposed, shall have the custody of the person of the

convict, and may adopt any and all measures to put the party convicted to labor, either by ball and chain or otherwise." ¹¹²

Although this act did not explicitly direct the counties to employ a convict leasing system, various county commissions interpreted it to legalize leasing the labor of county prisoners to private persons or businesses. Under this act, the Commissioners of Leon County passed the following resolution:

In all cases where it becomes necessary that a person convicted of any offense by the County Criminal Court, shall be hired out in order to pay such fine, forfeiture or penalty as may be imposed by said Court, with the costs of prosecution, the Sheriff of the County is hereby authorized, with the consent of the convicted person, and the approval of the Judge of Probate to hire out such person at private hire if it shall seem best to do so. ¹¹³

Convict leasing in Leon County began in 1866 when the criminal court fined three men who could not pay their fines and court costs. Instead of placing the responsibility for the care and expense of feeding the men in the jail on the sheriff, the County Board of Commissioners leased them to two plantation owners. The men received a certain amount of credit for every hundred pounds of cotton they picked, and when the total equaled their fine and costs, they were to be set free. ¹¹⁴

Jefferson County followed Leon's lead and selected one of their commissioners to "act for the Board in hiring out such Criminals as are now in the County Jail." Marion and other counties adopted leasing in early 1867, and Columbia County in 1875. Most Florida counties operated a convict lease system under the 1866 law and its subsequent modifications until the abolition of county leasing in the early 20th century. ¹¹⁵

Blake McKelvey and other historians argue that the Civil War halted the development of the penitentiary system in the southern states. The social, economic, and political unrest of the Reconstruction period fixed the convict lease system on the South so firmly it almost excluded other forms of labor. ¹¹⁶

McKelvey's conclusions are partly correct, but Reconstruction in Florida cannot compare with the experience of the rest of the South. The "Radical Republicans" in Florida were more moderate than radical.

Republican leaders were the first to lease out the labor of the state's prisoners, but they resorted to the lease system when seeking a way to support the operation of the prison at Chattahoochee. When the "Bourbon Democrats" regained power with the election of George Franklin Drew in 1876, they readily embraced the Republican's infant lease system and nurtured it through more than forty years.¹¹⁷

Early in the Reconstruction period, members of the Florida House of Representatives adopted a resolution assigning to its Judiciary Committee the task of inquiring into the "prison system of the State." The committee was to determine if the prison system was not "defective for want of a State prison or penitentiary." The House resolution also asked that committee members report their views on the efficacy of a state prison in deterring crime. Finally, the legislators charged the committee to offer an estimate of the effect the creation and operation of a state prison would have on state revenues and expenses. They also asked the committee to advise if a "penitentiary would sustain itself, pay officers and all other expenses."¹¹⁸

A few months after the end of the Civil War an editorial urging the establishment of a state prison appeared in the Tallahassee Weekly Floridian. The writer argued that the need for a state penitentiary was becoming urgent. He stressed that "the laws for the punishment of crime fall so far short of effecting the end desired, that they seem to afford a full and free license to evil doers." This writer also expected his readers to understand fully the poverty of Florida's government. He urged the state to use the work of prisoners to build and support a prison.¹¹⁹

Other important newspapers around Florida also urged state government leaders to establish a prison, citing the need to deter the growing instances of criminal activity throughout the state. An article in The Tampa Peninsula said that "imprisonment, whipping or the pillory is prescribed by the Statutes laws of Florida, but it is inconsistent with a Republican form of government to whip or pillory." This writer also advocated that prisoner labor support construction and operation of a prison. He suggested that if properly managed, a state prison should "ultimately be a source of revenue rather than an expense."¹²⁰

Florida, like most southern states, had serious financial problems for years after the end of the Civil War. Provisional Governor William Marvin stated it very simply. "The State Treasury is empty." After national

elections in 1866, Republicans took control of the state government. They immediately constructed new schools for blacks and whites and repaired and extended railroad tracks. These activities were critical to the rebuilding of a viable government, but they cost money. Florida citizens objected to paying taxes for any reason. They did not want their taxes used to build and operate a prison, especially when most of the prisoners who filled it would be black.¹²¹

In 1866, Colonel Thomas W. Osborn, local head of the Freedman's Bureau, tried to get the Chattahoochee Arsenal property for the state. Osborn wanted the legislature to turn the arsenal into a prison and abolish the "cruel punishment" of pillory and whipping inflicted on so many freedmen. Governor David Shelby Walker "agreed that if the United States would give the arsenal to the state, he would attempt to bring an end to whipping and the pillory." The next session of the legislature tabled a bill to abolish corporal punishment. When General John G. Foster, Assistant Commissioner of the Freedman's Bureau, found out the legislators had tabled the bill he declared, "this terminates my desire to give them the arsenal."¹²²

In 1868, Republican Governor Harrison Reed appealed for the establishment of a state prison in his annual message to the Florida House. Reed emphasized that the prison must be without cost to the state. He reported that counties that incarcerated prisoners sentenced under state statutes and subsequently billed the state for prisoners' food and care resulted in a financial burden on the treasury. Governor Reed complained that he had to use his pardon power to protect the state from bankruptcy, releasing on the populace many criminals who did not receive "adequate punishment for the offense." He also argued that a state prison, if it were "judiciously managed" and "utilized its convict labor, could be a source of profit rather than an expense to the state."¹²³

The Legislature increased taxes several times during the 1860s. Taxpayers complained that the increases were excessive and unnecessary. In 1871, a Jacksonville hotel owner who had emigrated from Boston shortly after the war complained that his taxes increased six-fold since he arrived, but there were still no improvements. His county did not even have a decent jail or a courthouse.¹²⁴

By 1871, except for Pensacola and Key West, people had only settled a narrow strip across the northern part of Florida. It was impossible for the existing number of people or businesses to pay the level of taxes Governor

Reed estimated it would take to support the growing needs of government. Reed justified the sharp increase in levies and the state's ballooning debt while pointing to the "inheritance bequeathed" to his administration by seven prior years of "anarchy and misrule." He complained repeatedly of his inheritance of an "empty treasury," a large indebtedness, and inadequate revenue laws that left the state "with no schools or school system, no benevolent institutions, no almshouses, no penitentiary, and scarcely a jail."¹²⁵

An editorial in the Tallahassee Weekly Floridian suggested that the Governor and members of the Legislature investigate the old Federal Arsenal at Chattahoochee as a site for a prison. The federal government built the arsenal in 1834. The federal military abandoned the facility early in the Civil War and Confederate troops occupied it in 1861. The property included several buildings the writer described as suitable to adaptation for safely housing prisoners. He also argued there was land enough included in the property for the prison to maintain a farming operation that if properly managed, would provide adequate food for the prisoners. Finally, he particularly stressed that the arsenal property was within reasonably easy travel distance of the State Capitol, making governing the prison convenient.¹²⁶

Governor Reed made a trip to Washington in September of 1868 and successfully applied to the Secretary of War and the Commissioner of the Bureau of Freedmen, Refugees, and Abandoned Lands for control of the Chattahoochee Arsenal. The Freedman's Bureau gave Florida perpetual control of the property at no cost in 1869.¹²⁷

As a territory and state, Florida's criminal justice system was rudimentary. The trauma of the Civil War nearly destroyed even that. When the war ended the state was in debt, and the debt grew more than tenfold during reconstruction. More than sixty percent of the debt was from issuance of railroad guarantee bonds. Historian Kenneth M. Stamp points out that Florida's debt went from \$524,000 in 1868 to "\$5,621,000 in 1874. The interest burden on the debt kept the state's treasury empty. The acquisition of the old Chattahoochee Arsenal at no cost appeared to give Florida's leaders the opportunity to begin building a modern criminal justice system.¹²⁸

CHAPTER THREE

Florida's First Prison

As soon as Florida officials gained ownership of the Chattahoochee Arsenal, legislators drafted and enacted laws enabling state officials to create a penitentiary. They added governance of the prison to the responsibilities of the Board of Commissioners of Public Institutions, under provisions of the Florida Constitution of 1868:

Article 1, Section 19, Neither slavery or involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

Article VII, Section 8, The Adjutant General shall, under the orders of the Governor, have the administrative supervision of the military department, and the supervision of the State Prison, and of the quarantine of the coast, in such manner as shall be prescribed by law.

Article X, Section 2, A state prison shall be established and maintained in such a manner as may be fixed by law. Provision may be made by law for the establishment and maintenance of a House of Refuge for Juvenile Offenders, and the Legislature shall have power to establish a home and workhouse for common vagrants.

Article XI Section 2, The Legislature shall provide by law for organizing and disciplining the militia of the State, for the encouragement of volunteer corps, and the safe keeping of the public arms, and for a guard for the State prison. ¹²⁹

Every building on the Chattahoochee property, and the wall surrounding them, was in an advanced state of disrepair. Abandoned when the Confederate Army disbanded in 1865, the buildings housed the Freedman's Bureau for a few months then went unused. Local residents ransacked the property for usable construction materials. Shutters, doors, flooring and ceiling-boards vanished. Staircases and window sashes disappeared. Scavengers removed lead from the roofs.

One inspector described the buildings as "little better than ruins, and anything but a secure place to confine criminals." An 1870 report to the Florida House of Representatives stated there was not a single room in any of the buildings where "a man in ordinary health and strength, could be secured without being ironed, or placed under vigilant guard."¹³⁰

The Board of Commissioners of Public Institutions, which had administrative control of the prison, included elected officials who had to consider the wishes of Florida voters. Led by the Governor, the Board included his entire cabinet, i.e., the Secretary of State, the Attorney General, the State Treasurer, the Superintendent of Public Instruction, the Comptroller, the Surveyor General, the Adjutant General and the Commissioner of Immigration.¹³¹

The Board of Commissioners also had responsibility for negotiating contracts for leasing the labor of prisoners. Legislators required that any labor contract the Board accepted profit the state. They also stipulated that labor contracts protect prisoners' health and safety. The requirement that the prison be self-supporting, however, coupled with the state's continued poverty, overrode any humanitarian motives of the legislators and negated that cautionary note in the statute.¹³²

The prison at Chattahoochee operated as a military post under the requirements of the state constitution and under the direction of the Adjutant General. He chose a former Union Army officer, Malachi A. Martin, as prison commander. Martin served as a quartermaster clerk in Tallahassee during the Union occupation. A native of Ireland, he joined the Army in New York, coming south with the military.¹³³

When the occupation ended, Martin resigned from the army and stayed in Florida. He served as agent for the Freedman's Bureau in Leon and Wakulla Counties and tried farming, but failed. Active in local politics, he made some powerful Republican friends. The Board of Commissioners approved Martin's appointment and gave him the rank of colonel.¹³⁴

Guards employed at the prison operated under military discipline. The Adjutant General appointed them for three-year terms and assigned them military rank. They wore uniforms, and had United States Army equipment. The prison employed a surgeon who held the rank of Captain. He wrote a monthly report to the Adjutant General and received the same pay and amenities as the commanding officer.¹³⁵

As commanding officer of the prison, Colonel Martin received \$5.00 a day and free quarters on site. Part of his duties were to record a full description of each prisoner received and make a regular report to the Board of Commissioners on the prisoners' conduct. The Board considered Martin's reports when awarding "good time" to prisoners and when investigating pardon requests.

Regulations directed the commanding officer of the prison to record all expenditures. He had to account for income received from prison labor contracts and from crop sales. He included this record in his monthly reports to the Adjutant General. The institution also held a few federal prisoners and Martin recorded their maintenance costs so the Comptroller could bill the United States government.¹³⁶

Colonel Martin wrote rules and regulations for the prison and the Board of Commissioners adopted them. Prisoners had to wear a special uniform. They could not communicate with another prisoner, their guards, or anyone outside the prison without special approval. All prisoners worked eight hours a day for the benefit of the state.

Prisoners could not be subjected to "inhuman or cruel punishment" or "punishment injurious to the mind or body." Guards could not force a prisoner to work without food. State prisoners who obeyed all rules earned "good time," up to eight days each month. Awarding "good time" credits was the responsibility of the Commissioners of Public Institutions acting as a committee. They based their decisions on Colonel Martin's monthly reports.¹³⁷

In his 1869 legislative message, Governor Reed reminded legislators they had not appropriated funds to operate the new prison. Reed explained that he financed the prison the preceding year from the state's Executive Contingency Fund. He urged the legislators to appropriate funds to operate the prison and build individual cells for one hundred convicts. The Governor considered the cells a priority, because all prisoners lived in one large open room, in shackles and under guard day and night.¹³⁸

The legislators agreed with Governor Reed's arguments and voted to appropriate \$20,000 to pay operating expenses. They also appropriated the sum of \$12,000 to begin construction of individual cells. None of this money reached the prison's operating account. The state treasury had a deficit of almost \$90,000 that year, so the funds were not transferred to the prison.¹³⁹

