

To My Sister Susan & Brother Buck &
Family - Love & Solidarity,
Lee

PRISON SLAVERY

- and best
always -
Barbara

by

Barbara Esposito & Lee Wood

Editor: Kathryn Bardsley

Committee to Abolish Prison Slavery

Cover photo from *Conversations with the Dead* by Danny Lyons—Magnum Photo

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*As in the original prison slavery paper by
Lee Wood, this book is dedicated to the memory of
Sergio Adgigo.*

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Sergio died yesterday, October 26, 1973, in the California Medical Facility at Vacaville. . .

For the past week, Sergio had been complaining of severe abdominal pains and urinating blood. Several times he went to the Doctor's Line for treatment, but they said nothing was wrong with him.

Then, as he got off his job as a first floor porter Thursday night and started up to the second floor, he fell backwards down the stairs. The previous day Sergio was given a 115 disciplinary write-up for "Disrespect Toward a Doctor." This same Doctor declared that nothing was wrong with Sergio. His doubled-up body was not sufficient to warrant admission into G-2 Hospital. His roommates had to help him into the bed and they also state that he complained of unbearable pain. The next morning a roommate tried to awaken Sergio. . . but he was dead.

This one is for you Sergio. As we always agreed, "A threat to one is a threat to all." And as you would have wanted it, it is for all the Sergios of the past, and the present, and for all the Sergios of the future.

Acknowledgements

Credit for the research and writing of this book belongs to the Committee to Abolish Prison Slavery and all those who have worked with C.A.P.S. over the past six years. *Prison Slavery's* final editing, production and distribution has been the responsibility of the Inalienable Rights Institute.

Because development of this book has been part of the Committee's program to build a new abolitionist movement to end "slavery . . . as a punishment for crime," the research and writing of its many drafts cannot be separated from C.A.P.S.'s ongoing education and organizing program with hundreds of prisoners who contributed to this book. C.A.P.S.'s national circulation of the Petition to Abolish Prison Slavery has elicited the questions from concerned supporters and non-supporters which this book seeks to answer. Many hundreds of hours have been spent researching answers to those questions within the abolitionist perspective developed through the Committee's grass-roots education, organizing, lobbying and legislative-action programs. This book's development has been one part of a meagerly-funded organization's many-faceted struggle for slavery abolition, and reflects that struggle's collective process of development. We are grateful to prisoners who have patiently endured delays in correspondence, and to members who have waited three years for this book's completion, especially those members who sent contributions towards its completion. It is designed to explain our mutual quest for slavery abolition.

Research and writing of the first manuscript was financed by donations from community supporters in Berkeley and Oakland, California. The Poverello Fund in San Francisco gave C.A.P.S. its first grant for book production in 1978. After consulting with several activist supporters across the country who had reviewed that first draft, we learned that we needed to answer new questions and do more research and analysis to augment our thesis. We then relocated our national operations in Washington, D.C., were given shelter by several Quakers and prisoner supporters, borrowed office space from the National Moratorium on Prison Construction, and dug into research and writing again.

With the assistance of the American Friends Service Committee, we published *Prison Slavery in the Thirteenth Amendment* in 1978, a booklet adapted from one chapter of that year's book draft. The next year, we asked prisoners to contribute work for an anthology of prison slave writings. Lack of funds made that project impossible, but a small grant from the P.B.P. Foundation of New York enabled us to reprint the booklet and combine prison slave writings with data already gathered for this book. Just as much work remains in the struggle to restore citizenship, labor and human rights to prisoners and the communities from which they come, much research remains in the im-

mense task of prison slavery abolition which lies before us. It is our hope that this work will encourage others to join that struggle.

Several foundations have provided funding which has enabled us to complete the arduous research and writing to substantiate our case. Among them are the American Friends Service Committee, the P.B.P. Foundation of New York, the Poverello Fund of San Francisco, the United Methodist Church Board of Global Ministries Office of Urban Ministries, the Department of Political and Human Rights of the Board of Church and Society of the United Methodist Church, the Women's Division of the United Methodist Church General Board of Global Ministries, and the Program Agency of the United Presbyterian Church in the United States of America.

Periodic consultation with Dr. Thorsten Sellin and recourse to his book *Slavery and the Penal System* have made the task easier. While most of those who given assistance, support, encouragement and counsel know who they are, we would like to give special acknowledgement to Marcy, to Ruth Cohn, Scott Christiansen, Congressman Ronald V. Dellums, Dr. Dorothy Donnelly, C.S.J., Christopher Dunne, Jackie Foster, Bob Heaney, Barbara Moffit, Pete Ortiz, Sandra Turner, and Brad Zigler.

Mrs. Abby Hadley shared her home with us for a year, R.W. McCoy and the Reverend Guillermo Chavez have given understanding and inspiration in difficult moments, Dr. H.B. Franklin has given invaluable encouragement and Christopher Fisher made important personal sacrifice. Special thanks go to Kathryn Bardsley, who stuck with us through several months of editing by the interruptions meager resources create, and to John Morris, who proofread the final copy.

The greatest acknowledgement belongs to prisoners and their family members. Because this book belongs to all of them, choosing from among their testimony was a painful process. We have included the identities of those now released from prison, omitting or giving pseudonyms to those still inside or on parole. To give them their rightful recognition would make them vulnerable to punishment and harassment by corrections officials. It is because of prison slavery that they must remain unnamed; it is because of the courage of these men and women, and their commitment to generations after them, that this book can begin to expose "slavery . . . as a punishment for crime."

Credit for this book must be extended to two more: Richard Myers and Abre Lee Wood. Throughout the course of its writing, Richard Myers, once full-time volunteer organizer with the Committee, kept its production going by long hours of dedicated labor at tasks upon which the survival of our struggle depends. And Abre Lee Wood, born and stolen from her father's love because of the slavery which still tears children from their parents' breasts - she has been an inspiration for this work. It is for her, and millions of children like her, that this book has been written. So that, someday, she and they will understand.

Introduction

Slaves are in the tribe, but not of it. Without citizenship, slaves are outside the realm of jural personality, and their debased status does not contradict the slaveholders' notions of social equality - for themselves, exclusive of the slaves.

- E. Adamson Hoebel'

America responds to lawbreakers by making slaves of them: a shocking statement but true. This book has been written to document the historic and class-based roots of slavery as a punishment for crime. It seeks to explain how our prisons are the last vestige of constitutional slavery.

In 1970, defendants awaiting trial in the New York City Tombs were beaten when they protested against the conditions forced upon them. The next year California prison activist George Jackson was murdered in San Quentin and prisoners at Attica were gunned down in the State of New York's response to their demands.

Like many other caged brothers and sisters throughout the country, those of us imprisoned in California were strongly moved by the struggles of our fallen brothers. Our lives were constantly pressed by poor diet, inadequate and irresponsible medical care, isolation from our loved ones, meaningless labor forced upon us for pennies or no pay at all, and the continual servility that was demanded to "earn" parole. A few of us had been singled out for exceptionally harsh punishment or transferred from prison to prison in an attempt to neutralize our efforts to organize for better conditions. Several had been through prison work strikes at Susanville, Folsom, San Quentin and Tombs which had been squashed by our keepers. We had been pitted against each other by the divisive tactics of our masters; we had been beaten and had watched others being beaten for refusal to bend to whimsical demands. Divided and conquered, we were rendered powerless to create change.

A few days after the Attica massacre we began quietly discussing the oppressive conditions that faced all of us locked inside. Our discussions led to the formation of a small study group which we were careful to keep hidden from the prison administration, since visible prisoner organizing was - and is - rapidly crushed. Through study and discussion, we were trying to find out *who* and *what* we were as prisoners. At one meeting a prisoner declared he was a "slave". Although this made gut sense, we "knew" slavery had been abolished after the Civil War. Another participant brought his paperback copy of the U.S. Constitution to the next meeting and read the Thirteenth Amendment:

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.*

The book was passed around so everyone could see the EXCEPTION. This - the constitutional denial of our basic human, citizenship, and labor rights - was the common denominator of our mutual oppression.

A few of the original study group members were paroled during 1975 and 1976, and proceeded to contact those community people to whom we had previously smuggled our analysis. Together we organized the Committee to Abolish Prison Slavery. When we reached the point where we could mimeograph leaflets to inform the community about the reality of "slavery . . . as a punishment for crime" and the need for its abolition, we went to the people with our struggle. The nickels and dimes dropped in our campaign buckets were not enough, so we took full- or part-time jobs and put our earnings toward building a new slavery Abolitionist Movement. Since our beginning, we have obtained several thousand signatures on the nationally distributed Petition to Abolish Prison Slavery and, through grassroots methods of organizing, we grow closer to the abolition of prison slavery and the return of inalienable citizenship, labor, and human rights to our incarcerated brothers and sisters.

Slavery is a harsh word, having different associations for different people. Among historic accounts of slavery are bondage in the ancient civilizations of Egypt, Greece and Rome, convict slavery of those who rowed the massive ships of European kings during the fourteenth through seventeenth centuries, American antebellum chattel slavery, the industrial servitude of wage slavery, and the concentration camps of Nazi Germany. Slavery has three attributes: ownership, possession or control of a person; denial of citizenship rights; and denial of labor rights (the rights to sell one's own labor). American imprisonment meets all three criteria: convicts are completely controlled by the State, are denied the practices of their citizenship - virtually all expression of "guaranteed" freedoms are squashed - and they are either forced to work without just compensation and worker protections or are not allowed to work at all.

Prison is the last stop on the line for the poor, the minorities, the disenfranchised of our nation. Our large and ever-increasing prison and jail populations are among the highest in the world. Each year, a half million Americans are denied participation in the democratic process while over \$5 billion of our yearly tax bill is spent to maintain human bondage. With over 500,000 people in federal and state prisons and jails, we spend an average of nearly \$10,000 to confine one person in prison for one year. Thus, we invest more money in denying

*Capitalization of the slavery proviso is ours, and we use it throughout to emphasize the importance of this exception . . . then and now.

citizenship, labor and human rights to each prisoner than it would cost to send that same person to a public university and financially support his or her family.²

As with many contemporary injustices, prison slavery is more deceptive and sophisticated than its historical counterparts. Its most visible cruelties are hidden from general public awareness behind closed doors and high prison walls. Because prisoners are denied the right to vote, no elected representative is politically obliged to listen to prisoner needs. Denied the practices of their citizenship, prisoners lose their freedoms of speech, press, association, due process, freedom from undue search and seizure, and other democratic protections. Like chattel slaves in the antebellum South, today's prison slaves are separated from, and often lose, their families. They are forced into submission and subjected daily to the cruel and unusual punishments of an environment devoid of democratic process. Prison slavery teaches failure, disempowering the convicted and diminishing their capacity to reenter society. Our nation's high rate of recidivism can be easily understood by watching people released from prison finding themselves lonely, bitter, impoverished, and unskilled in the practices of a society reluctant to give them any opportunity to succeed.

As the fear, force and degradation emitted from this nation's prisons colors and corrupts the fabric of our society, efforts to reform our prison systems fail. They fail because they seek to change the superficial methods and forms of treating offenders and do not confront the issue of our prisons being historically, legally, and intrinsically based in the institution of slavery. Slavery cannot be reformed, it can only be abolished.

More than half of American prisoners are black or other minority and practically all are poor. They have had few educational opportunities, and have suffered unemployment, underemployment, negligent medical care, toxic and hazardous physical environments, high rates of illness and death, and all forms of institutional discrimination. Those who suffer under prison slavery are not new to exploitation and victimization. As the late Soledad Brother Fleeta Drumgo wrote from prison:

It seems at times that the oppression and violence inflicted upon us here in the maximum security is more intense than that inflicted upon us in the minimum security, but really it's utterly impossible for me or any of us here to distinguish the oppression and violence we are all victimized by. I am constantly thinking about unemployment, under-employment, poverty and malnutrition that are the basic facts of our existence; it's this which sends persons to these concentration camps; it's this which causes so-called crime in general.³

In contrast, the crimes of the wealthy go largely unpunished and are instead rewarded with decontrols and tax breaks. The crimes of cor-

porate industries rip off millions, yet such crimes are practically ignored by the State; unsafe working conditions and over-exposure to toxic industrial substances cause untold numbers of illnesses and deaths each year. American University Professor Jeffrey H. Reiman has shown that life can be far more dangerous in the workplace than the streets: 390,000 people were reported injured at work while 218,383 were injured in acts of crime, and 114,000 died from occupational-related diseases and accidents while only 9,285 died from "crime."⁴ The richer the culprit, the more lenient the hand of justice. In a study of seventy of the largest U.S. corporations over forty years, Edwin Sutherland showed that

generally, the official records reveal that these corporations violated the trade regulations with great frequency. The "habitual criminal" laws of some states impose severe penalties on criminals convicted the third or fourth time. If this criterion were used here, about 90 percent of the large corporations studied would be considered habitual white-collar criminals.⁵

But our prisons do not house the well-to-do:

Of the 7724 inmates of *federal* prisons and reformatories in 1970 who had an income in 1969, 4491 (nearly 60 percent) reported an annual income of under \$2000. Of 141,600 persons confined in *local* jails throughout the nation in mid-1972, 61,800 (44 percent) had a prearrest annual income of less than \$2000 - only 11 percent reported a prearrest income of \$7500 or more. "The 1972 U.S. median income of \$9255 was exceeded by roughly 10 percent of the inmates. Only 6 percent had prearrest incomes of more than \$10,000."⁶

While such statistics indicate that more dangerous corporate crimes are largely untouched by prosecution and public outrage, the processing of street crimes is permeated with class and racial discrimination, given hourly "cops and robbers" media coverage and subjected to manipulation by political candidates.

Government failure to weigh the consequences of economic inequalities among its citizens enables it to cloak injustice by asserting that "equal opportunity" and "equal protection before the law" are upheld by government when in reality they are not. When the law does not consider the economic inequalities among its people in judging them, there can be no equal opportunity and equal protection before the law:

. . . legal equality in the face of the existence of economic inequality is repressive. . . to treat unequals equally is scarcely just. . . If the law is indifferent to the distinctions between rich and poor, it follows that the law will necessarily support and maintain this distinction.⁷

As eighteenth century slavery abolitionist John Woolman warned, “while oppression in the extreme appears terrible,” oppression in its most refined forms “remains to be oppression, and when the smallest degree of it is cherished it grows stronger and more extensive.”⁸ Slavery consumes lives and constantly expands in its pursuit of power; that is the nature of slavery: increasing power of the few by subjugation of many.

Punishment in the form of slavery is the centuries-old method of maintaining class-based rule. As this book is readied for press, economic class lines are becoming sharper in America. Unemployment is increasing, government is slashing aid to the poor and the needy, and crime in our communities continues to increase. A new “war on crime” has begun, harsher laws are being passed, legal aid for the poor is being withdrawn and new protections have been given to the wealthy. Meanwhile, prison populations are increasing and record numbers of poor people wait on Death Row.

Most Americans do not know that our Constitution still authorizes slavery or that prisoners are slaves. For many who have never been imprisoned, the reality of this enslavement may be difficult to absorb. For most who have been imprisoned, it epitomizes the many oppressions suffered inside. Regardless of our experience, the exception within the Thirteenth Amendment represents a painful and offensive reality which victimizes all of us.

As defined in *Instead of Prison* by the Prison Research Education Action Project, victims are “all those who have suffered either by collective or individual acts of violence. Victims usually feel powerless to alter their situations since few avenues for relief are available.”⁹ The cycle of violence begins with poverty, unemployment, underemployment, substandard housing and medical care, poor education, unequal opportunity and protection before the law, and unequal political representation for the needy by a government more favorable to the well-financed representation of the rich and the privileged. Increasingly fewer avenues for relief are available, and “without relief for constructive action, feelings of powerlessness can easily turn into rage and violence.”¹⁰

Victims of gross misrepresentation, we have unwittingly participated in the destruction of prisoners, their families, the communities from which they come and the communities in which we live. As victims of crime and the inequities that encourage crime, we have become unknowing self-oppressors in our function as taxpaying slaveholders. In any form, slavery dehumanizes, cripples and destroys anyone who willingly or unwillingly partakes in its practice. Until the abolition of all slavery is obtained, we all remain victims.

Slavery’s poisons pass in undetected ways through literary resources, cultural imperatives and human limitations to all of us, and slavery’s continuance cannot be separated from the inequities most of us consciously and unconsciously live with. This book touches

upon the long history and profound victimization of prison slavery. It also contains limitations resulting from the urgent need for its publication. Its completion has taken a number of years with very limited finances. Hence, we ask that particularly those who read from non-Western perspectives recognize its shortcomings as contrary to our intent and dictated by the limitations of time, resources and the urgent need to bring the cause of slavery abolition to the American public. This book is only a beginning, one part of a many-faceted struggle to abolish "slavery... as a punishment for crime."

Thirteenth Amendment:

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.

C.A.P.S.' Proposed Amendment Change:

Neither slavery nor involuntary servitude shall exist within the United States or any place subject to their jurisdiction.

Notes

1. E. Adamson Hoebel, *Anthropology: The Study of Man*, (New York: McGraw Hill), p. 410.

2. The estimated U.S. detention population in Fall 1981 was 579,772.^{2a} ("Cage Count," *Jericho* [National Moratorium on Prison Construction, 324 C Street, S.E., Washington, D.C. 20003], no. 26, Fall 1981, p. 12).

Based on prison maintenance costs reported to the U.S. Department of Justice Statistics on 1978, the National Moratorium on Prison Construction estimates the average cost per state prisoner in the United States to be \$9,143 per year. Limited to "direct" institutional costs, this amount does not include legal, medical and educational costs, additional welfare benefits paid to families with incarcerated breadwinners, prison construction^{2b} and other bills payed by the taxpayer. (More detailed explanation of costs of imprisonment is found in Note 9, Chapter 7.)

2a. The actual number of Americans subjected to imprisonment is much larger - there are 6.2 million commitments to jail each year. ("Fact Sheet on American Jails," National Coalition for Jail Reform, 1333 New Hampshire Avenue, N.W., Suite 1220, Washington, D.C. 20036.)

2b. Prison construction is expensive. As reported by the National Moratorium on Prison Construction (*Jericho*, no. 26, p. 12), a general cost analysis for "New [Prison] Facilities Proposed or Under Construction" in Fall 1981 follows:

No.	Type	Average Capacity	Average per facility cost	Average per bed cost
8	Federal	176	\$ 6.9 million	\$39,204
182	State	450	\$23.22 million	\$51,600
459	Local	159	\$ 6.68 million	\$42,013

Total facilities: 649

Total estimated capacity: 156,288

Total estimated cost: \$7.35 billion

3. Fleeta Drumgo, "Letter from Fleeta," Angela Y. Davis, Ruchell Magee, Soledad Brothers and other political prisoners, *If They Come in the Morning: Voices of Resistance*, forward by Julian Bond (New York: The Third Press, Joseph Okpaku Publishing Company, Inc., 1971), p. 115.

4. Jeffery H. Reiman, *The Rich Get Richer and the Poor Get Prison: Ideology, Class and Criminal Justice* (New York: John Wiley and Sons, 1979), pp. 65-69.

5. Edwin Sutherland and Donald R. Cressey, *Criminology*, 9th edition (Philadelphia: Lippincott, 1974), p. 41; quoted in Reiman, p. 108.

6. Reiman, pp. 126-127, and cites U.S. Department of Justice, U.S. Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, *Survey of Inmates of Local Jails: Advance Report* (Washington, D.C.: U.S. Government Printing Office, 1974), pp. 3, 4, 16.

7. Isaac D. Balbus, *The Dialectics of Legal Repression: Black Rebels before the American Criminal Courts* (New York: Russell Sage Foundation, 1973), p. 5.

8. John Woolman, *The Journal of John Woolman and A Plea for the Poor*, introduction by Frederick B. Tolles (Secaucus, N.J.: Citadel Press, Inc.), p. 249.

9. Prison Research Education and Action Project, *Instead of Prisons: A Handbook for Abolitionists* (Syracuse, N.Y.: Prison Research Education Action Project, 1976), p. 21.

10. *Ibid.*

Chapter 1: Roots

One should always address a slave in the language of command. One should not sport or jest with slaves, whether male or female; for though this is often done, it is a senseless practice and its result is to spoil the slave, making his life of servitude more difficult to bear and the authority of the master harder to maintain.

- The Athenian Stranger, *The Laws*, Plato¹

It's really cold in the East Wing this day in April. But my cell was colder in January, so I shouldn't complain. It gets my mind off the depression of solitary (or segregation, isolation, lock-up or whatever they're calling it today). But it would help if they started giving me the iron pills the doctor cut off last week, and if I started getting the diet for hypoglycemia I might stop blacking out each time I get up from the bed. This will probably take awhile; the doctors here wouldn't even give me a high-protein diet when I was pregnant - told me to eat crackers - told me pregnant women don't need extra protein. And when I asked why there was such a high percentage of poor women with inadequate diets who had retarded children, he said I don't want to be confused with facts and walked out. This was the competent doctor. He had promised me the month before he would set up a "pregnant diet" for the 30 pregnant women here. He had promised. . . .

I remember the last time, the police put me in a cell with a grill over the window. I could only see shadows passing in front of the sunshine. This cell is a lot better. It has a view of the prison grounds in the distance and a five by ten inch opening through the bars so I can feed the cats most of my food. Sometimes, even they won't touch it. Then the birds get it or the possums come around at night. Maybe we should start naming our animals - this is working out to a long-term relationship.

I'm not having my nightmares lately. The last one was about my mother. I dream about her a lot in prison. It's always dark. This time I was a little girl and sleeping next to her. A whole wall of our house was missing and when I opened my eyes, I could feel the evil of the wind blowing over my clothes - they were sheets - and watched the ripples, terrified of the evil. . . The rippling quieted, then returned, and I turned to my mother and cried, "Why, Mama, why?" She kept on sleeping.

Solitary is a long hall with cells on both sides. The cells don't have bars, but heavy steel doors - just like on the main unit of PTU [Psychiatric Treatment Unit] - and bars on the windows. But in solitary there is no closet, desk or commode cover - just a sink, a commode without a seat, and a single bed. Someone hypothesized last night that we were living in a bathroom; as I looked around and realized they were right, I had a surreal feeling of sleeping in a Greyhound bus station ladies room - in Tijuana.

I've been thinking about my friends here and on "campus." They're mostly 189's - that's murder. And I'm just small time - welfare fraud; even smaller - I didn't do it. It's hard to explain to the people "outside," I wouldn't have been able to understand what I am about to say when I was "outside"

either. People in prison, I thought, who take lives must be incredibly evil, and there is no way of rationalizing what they did so that they don't deserve it all; it's payback time. I couldn't possibly like these people. I thought. Yes, intellectual and wise as I was, as just and fair, and self-righteous; I thought. I know.

The people here are like those from any neighborhood. One could be the girl smiling back at the cashier's check-out stand, another might be the secretary in your accountant's office, or at your attorney's or dentist's office or the life-guard at the beach, or the president of the P.T.A. The difference between you and them is that just one time they did just one thing that society says can't be done.

You can separate the people from their "crimes." Most people here don't talk about their cases, unless they're professional thieves and are proud of their skills, or are hypes who need the momentary self esteem rip-off stories get them. But then hypes have been looking for things all their lives which always seem to come real close, to surround them and then disappear. . . .

Nearly every morning of the last ten months I've awakened and promised myself I'd try to get through the day without thinking or feeling. It's too painful to think. It hurts too much to feel. My ex-husband kidnapped my four- and five-year-old children; they're 3,000 miles away, maybe happy and healthy. I can talk about my children, but I can't just sit and think about them. It hurts too much to feel. . . .

They won't allow me to go to school here because I won't work anywhere except the law library. (In the law library, I can file writs and appeals and get women out of here.) Even when I was pregnant, the administrators said I was too pregnant to work in the law library, but wanted me to work in "industry." Only a few credits away from an A.A. and they won't let me "program" my way - everything is punitive here.

The police walk by and lock through my door-window. I'm sitting on the toilet. But then, I should be used to this by now. There are room searches, skin searches. There is no privacy.

It must take a special kind of person to believe in prisons.

Tonight, I'm being released, going back to PTU "Proper." But I have another 10 days coming for another refusal to work - whenever they feel like giving it to me, then another, and another for contesting my baby's transfer to my home county. . . .

It's my right to go to court. I feel helpless and hold the anger inside. It's my right!

Two people escaped a few nights ago. My heart is overflowing with good will for them - I dance inside.

Legend has it I'm a problem here; I'm a "troublemaker," the chief medical officer said. Even when I was pregnant, I was a "threat to the institution" because I asked to see a good gynecologist at the nearest county hospital. They locked me down even tighter, then sent me to a mental institution so I wouldn't screw up the prison budget. My baby was born there. The mental institution sent me back.

Why is nothing being done, I wonder as I gaze at the faces, the expressions, see the cries in people's eyes, hear the screams. Who would do this to another creation of God? Civilization. Yes, that is the answer. Tearing children from their mothers - tearing away at colors of life, blindly; the whirlwind. A Kafka story I'm trying to understand.

The perimeter car circles, our bodies are counted again, and as the nurse's tray squeaks down the hall, I see the girl who swallowed gasoline and stabbed herself with a pin - a long one near her heart. What good is it doing her to be locked back here in solitary, I wonder.

But then, I ask "why" too often. I ask: WHY?

*- Marianne Hricko Stewart, #W13238
"A Day in the Life of a Prison Slave," 1979*

How Did It All Begin?

Slavery denies human rights, treats people as property and exploits their labor. For centuries, slavery has existed as a spoil of war, as a class status and as a punishment for crime. Contemporary prison slavery is only one sophisticated version of that slavery triad. Slavery as a spoil of war may be as ancient as migrating tribes fighting over use of water holes. Captives may have been released, killed, adopted as tribal members, or enslaved. According to anthropologist E. Adamson Hoebel, however, the two forms of slavery internal to a tribe - slavery as a class status and slavery as a punishment for crime - occur only in "advanced primitive societies with quasi-capitalistic practices of borrowing and lending."² We find all three forms of this "peculiar institution" occurring throughout civilization, a stage in social development characterized by nation-states, ownership of private property, and division of the population into economic classes.

Civilization, however, is only three thousand years old and we know little of how people lived before that time. Since precivilization remains a matter for theoretical controversy, we turn to anthropologist Evelyn Reed's *Woman in Evolution*, which has empowered the women's movement while causing debate among her colleagues. Anthropologists generally divide precivilization into two stages: "savagery," a hunting and gathering economy lasting about a million years, and "barbarism," which coincided with the development of agriculture and lasted for five thousand years. As Reed explains it, more than 99 percent of human history falls within the stage of development called savagery during which people knew no private property, no state and no patriarchal family. They hunted and gathered food and owned all property communally within the tribe. There was complete independence in division of labor - men hunted while woman tilled the soil. The nuclear family did not exist and the role of the father was social rather than biological or sexual. Family relations were reckoned through the mother's line and people lived in self-governing communities where all members shared equally in economic functions, enjoying social and sexual equality.³

During the period known as barbarism, agriculture developed as men learned the skills of husbandry - husbandman means tiller of soil. Due to their division of labor, men were responsible for the cattle,

and as farming developed, they came to own the herds. As greater value accrued to labor because the cattle multiplied faster than the family members who tended them, captives of war were increasingly used as slaves, instruments of labor; and human labor power came to be used like the cattle themselves. Hence, the word for property in people - "chattel" - derives its meaning from "cattle," the first form of private property.⁴

Women were not always oppressed; it was the inception of private property during barbarism and, finally, slavery which sealed their fate. As ownership of property increasingly fell to the men in the tribe, inheritance evolved from being matrilineal to patrilineal, eventually resulting in the "child price," exchange of a gift of cattle for a man's right to a woman's children. Patriarchy gradually replaced matriarchy and today we see remnants of the "child price" in the tradition of dowry payments in marriage.⁵

Gradual enslavement of those without property by property owners developed into civilization with its wealth-based class distinctions. A wealthy few ruled the early civilization of Egypt, Greece and Rome:

Forced labor had existed in Egypt since time immemorial. It had built the tombs, pyramids, and monuments, impressed by rulers who owned all the natural resources and whose subjects were in reality their bondsmen. It is not impossible that such forced labor was used as a punishment for crime at quite an early date. In fact, Sabbacus, an Ethiopian king of Egypt in the eighth century B.C., abolished the death penalty during his reign and substituted penal labor in chains on public works.⁶

Ancient Greece

We find the influence of ancient Greece throughout American institutions, in philosophy, education, law, government and in the controversy over slavery which has persisted throughout history. Some Greeks, like Aristotle, held that foreigners were natural slaves; others, like Antiphon, believed that all men were born free and equal - that fate, not nature, made some men free and other men slaves. Regardless of philosophical or moral argument, slavery remained as intrinsic to the Greek socioeconomic structure as it later became to the American antebellum South. Those Greeks who held the most property were those with the greatest political power.⁷

After Solon (640-558 B.C.) divided Athens into social classes according to the amounts of property owned, only 20 percent of the total Athenian population had the right to vote. This ancient practice of restricting the vote to those who held the most property continued through to 1787 when less than 15 percent of the population in the young republic of the United States were allowed to vote.⁸ The top fifth

of the Greek population included four classes ranked according to property, wealth, and accompanying privileges. Remaining Athenians who otherwise retained full civil rights could not vote. Called metics, this large, immigrant class consisted of craftsmen, artists, bankers and businessmen - occupations held in low regard by the voting classes. At the bottom of the social ladder were slaves. Owned by the state for use on public works or by citizens for domestic service, they were chattel who had no rights. Since most slaves were non-Greeks, considered naturally inferior, it was deemed appropriate to enslave and rule them.⁹

There existed two systems of punishment in Greece: one for citizens and one for non-citizens. With the exception of treason, all citizen crimes were punishable by payment of fines. The greatest dishonor faced by a citizen was exile or death; in contrast, those without property paid for their crimes in their bodies. Floggings and penal slavery were the lot of many throughout the Greek city-states.¹⁰

Rome and the Birth of Criminal Law

We also inherit much from the Roman Republic; our language reflects its roots in Roman tradition. *Webster's New World Dictionary of the American Language* cites the root word for "slave" as being of Latin origin: "sclavus" in Middle Latin, or "Sklabos" in Late Greek. The word initially referred to captives of Slavic origin in southeast Europe enslaved by the Romans.¹¹ Even the word for the cornerstone institution of modern civilization, "family," has Latin origins. "Familia" signified the totality of slaves belonging to one person and came from the word "famulus," meaning household slave. The Romans invented the expression to signify the paternal power of life and death over all.¹²

As in the Greek city-states, native-born and wealthy Romans possessed the greatest power and could outvote other citizens. The lowliest citizens were proletarians, propertyless laborers. Below these came the coloni, or sharecropper peasants, bound by heredity to the land no matter what changes occurred in its ownership. Beneath the coloni were the slaves.¹³

Before the birth of criminal law, civil law was the only system of justice. Under civil law, Rome did not claim itself as victim in crimes. Unlike today, few offenses were considered crimes against the State, but the State did lend its services as arbitrator in criminal disputes, receiving payment for its services in court fees.¹⁴ Excepting the crimes of treason and patricide, Roman citizens rarely suffered the punishment of death and could not be flogged or executed without opportunity to appeal to the Centuriate. Noncitizens and slaves, on the other hand, had no access to the assembly to appeal convictions and were often victims of the arbitrary justice of the magistrate, who could sen-

tence them to death, floggings, fines, confiscation of property, and crucifixion in the case of slaves.¹⁵

As Roman courts evolved, officials were appointed to particular kinds of cases such as treason, patricide, and murder. The Roman judicial system grew more intricate and became a lucrative source of revenue for the State. Soon there were citizens charged not only to discover and try offenses that had been committed but also to anticipate potential crimes. The State began to classify crimes and, in 149 B.C., a mandate enabling provincials to recover funds a Governor-General had taken improperly marked the beginning of Roman criminal law.¹⁶ The criminal justice system became more intricate as Rome forced other nations to surrender to its rule. In addition to increasing judicial revenues to the State from court fees, fines, and convict labor, Rome's new criminal code increased control over its expanding empire. Property rights determined wealth, wealth determine nobility and class, and class determined punishment. Criminal law displaced civil law, punishment for crime took on forms formerly reserved for slaves and, by the third century A.D., torture was being used to extract information from lower-class criminal suspects. The Romans laid the ground-work for what would follow: class-based criminal law and "slavery . . . as a punishment for crime."

The Germanic State in the Middle Ages

The most severe punishment in the Germanic states was death. Fines were imposed for most crimes, the amount dictated by the seriousness of the crime. If an offender could not pay for his crime, he and his family could be enslaved by the victim. Traditionally, retribution was a private matter, an issue to be resolved between victim and offender; however, as the State increased in power, vengeance became government-administered and punishment again emerged as a major source of revenue for the State.¹⁷

Around the tenth century A.D., serfdom and servitude were quite prevalent.¹⁸ Big landowners and a military aristocracy ruled the common people who, though greatest in numbers, had no political power. The maturing feudal system began to eliminate the need for chattel slaves as serfs came to serve the primary economic needs of the ruling class. Criminal justice remained in the hands of the aristocracy and slavery and its particularly brutal punishments were reserved for disobedient commoners.¹⁹

By the end of the twelfth century, slave punishments were enshrined in law and applicable to free and unfree alike.²⁰ Lower class freed-people, like those of Greece and Rome, were without the resources of their wealthier countrypersons and subject to the judicial punishments of civil death and enslavement. As historian Gustav Radbruch wrote:

To this day, the criminal law bears the traits of its origin in slave punishments. . . . To be punished means to be treated like a slave. That was symbolically underscored in olden times when . . . flogging was joined with the shearing of the head, because the shorn head was a mark of the slave. . . . Slavish treatment meant . . . not just a social but a moral degradation. "Baseness" is thus simultaneously and inseparably a social, moral and even an aesthetic value judgement. The lowly born is also a "mean fellow." . . . In both French and English the unfree peasant and the scoundrel are called villains. . . . In the illustrations in the *Sachsenspiegel* the faces of the common people are pictured as ugly and coarse. The diminution of honor, which ineradicably inheres in punishment to this day, derives from slave punishments.²¹

Vagrancy Laws

The fourteenth through sixteenth centuries witnessed the fall of feudalism and the rise of commerce and industry. As urban centers flourished, wages for free workers rose and the plight of feudal landlords worsened. Pressed to pay higher wages for free labor, landowners could not provide even the standard of living they had formerly supplied their serfs. Serfs had no alternative but flight from the land should they choose to better their position. Such flight might mean both freedom and better conditions, since the possibility of work in the new weaving industry was great and the chance of being caught small.²²

Loss of lives during the Black Death of 1348 and the crusades hastened the demise of feudalism. Exorbitant costs of war pressed some feudal landlords into selling freedom to their serfs. Refugees from serfdom migrated to cities that "offered bright but illusory hopes of success and prosperity," most of them sinking even further into poverty as increasing city populations resulted in business-designed barriers to keep newcomers out.²³

Migration to the cities also threatened the state with vast, indigestible socioeconomic changes. Between 1349 and 1351, in an effort to avert the inevitable, England issued the Statutes of Labourers which forced every able-bodied person lacking means of support to accept the low wages prevailing before the Black Death. The statutes forbade migration from one county to another where a worker might find higher wages and forbade poor people to spend money in any manner that might represent them as other "than a poor and dependent person."²⁴

An abundant labor supply meant owners could afford to place little value on workers and less on the jobless. Given the limited and oppressive alternatives defined by the vagrancy laws, the poor could do little to improve their situation. Some worked for power-hungry lords, while most sank into bitter poverty.

The Statutes of Labourers not only victimized the poor, they reinforced the attitude that immorality rather than oppressive inequality caused crime. Harsh criminal codes directed at the poor were among the first fruits of free enterprise. Crimes against property were common during the latter part of the fifteenth century, but poor people were not the only thieves. Increase in the size of aristocratic families over the course of generations produced large numbers of younger sons with no prospect of inheritance. Many of these landless knights took to highway robbery, just as their subjects did on a smaller scale. While destitute peasants had to rob openly, however, these knights could camouflage their activities under the pretexts of legitimate warfare or of avenging the pauperized masses on rich city merchants who "ruined the populace bodily, economically, and morally."²⁵

As feudalism gave way to the need for a mobile free labor force, the vagrancy laws fell into disuse until 1530, when England directed its attention to criminal offenders. As demonstrated by a 1547 statute, new vagrancy laws not only prosecuted offenders, but also those deemed capable of crime - the poor and the jobless:

Whoever man or woman, being not lame, impotent or so aged or diseased that he or she cannot work, not having whereon to live, shall be lurking in any house, or loitering or idle or wandering by the highway side, or in streets, cities, towns, or villages, not applying themselves to some honest labour, and so continuing for three days; or running away from their work; every such person shall be taken for a vagabond. And . . . upon conviction of two witnesses . . . the same loiterer (shall) be marked with a hot iron in the breast with the letter V, and adjudged him to the person bringing him, to be his slave for two years. . . .²⁶

New law also "provided that all vagrants who refused to work or ran away could be adjudged slaves of their masters for two years; second offenders could be sentenced to slavery for life, and third offenders to death."²⁷

While vagrancy laws were initially aimed at inhibiting the political and economic changes ushered in by capitalism and industrial development, they came to serve new functions dictated by economic changes in the fourteenth through sixteenth centuries.²⁸ Labor acquired new value and vagrancy laws helped control the common labor pool in the best interests of the powerful few. While lawful distinctions between lord and serf became outmoded under capitalism, vagrancy statutes which criminalized even "honest" efforts of the poor to advance themselves crushed all hopes for social mobility. Threatened punishments kept workers in servant roles and those who tried to improve their condition found few lawful means to do so. If people left their jobs in search of better pay or working conditions, they were guilty of vagrancy; if they crossed county lines or were caught beg-

ging or stealing, they were criminals. While property holders enjoyed the protection of the State, those without property were forced to devote their labor to maintaining the status quo.

As in times before, the wealthy were not only free of the need to commit crimes to survive but, should they be found guilty of crime, their punishments were limited to fines or banishment, in which case they took their riches with them. Owning property not only enabled the upper classes to pay fines but automatically conferred personal honor, while the term "villain," originally designating a person of low economic status, also came to mean a person of immoral character.²⁹

The Punishment of Slavery Benefited the State

Methods of punishment began to undergo a gradual but profound change toward the end of the sixteenth century. The possibility of exploiting the labor of prisoners now received increasing attention. Galley slavery, deportation, and penal servitude at hard labor were introduced, the first two only for a time, the third as the hesitant precursor of an institution which has lasted into the present. . . . These changes were not the result of humanitarian considerations, but of certain economic developments which revealed the potential value of a mass of human material completely at the disposal of the administration.³⁰

Galley slavery, which existed in ancient Greece and Rome, appeared in France and Spain during the fourteenth and fifteenth centuries. Since wage laborers refused to work rowing the massive ships of the kings, government turned to the convenient labor source of convict slaves. Prisoners, proclaimed civilly dead upon conviction, were chained in ship galleys. Galley slavery, "tantamount to a slow and painful death,"³¹ inspired many convicts to save themselves through disabling injuries. Self-mutilation became so prevalent among galley slaves that, in 1677, French law ordered the death penalty for it.³² As more sophisticated sailing methods replaced teams of oarsmen, use of galley slaves declined in the eighteenth century. However, the following royal mandate indicates that convict slaves served the reigning monarchs well:

Since His Majesty urgently needs more men to strengthen His rowing crews. . . to be delivered at the end of the following month, His Majesty commands me to tell you that He wishes you to take the necessary steps in His name in order to have the criminals judged quickly.³³

A fundamental development in the exploitation of prisoner labor was provided by the Houses of Correction of sixteenth century England. Run by wealthy, state-appointed citizens for government profit,

these houses were thought to humanize punishment by providing job training for convicted vagrants. Custom dictated use of "shackles of iron for the taming of wild and lewd persons"³⁴ and, as in all forms of penal slavery, corporal punishment disciplined the laborers. Workhouses in sixteenth and seventeenth century Amsterdam followed the same tradition and, spreading throughout the continent, "they became state factories serving the mercantilistic policies of rulers more concerned with the balance of trade than with the reformation of criminals."³⁵ Like contemporary prison manufacture of license plates, many workhouses secured trade monopolies. Those monopolies meant that freed prisoners would find their workhouse experience of no use in securing employment. And, as if a mirror were held up to reflect today's prejudices against hiring ex-convicts, people released from workhouses were excluded from guilds and rejected by potential employers.

European governments discovered the flexibility of penal servitude and, by the seventeenth century, were using slave labor to fill production gaps left by work too expensive or too harsh to be done by paid laborers. The Thirty Year War (1618-1648) resulted in a diminished labor force throughout Europe and, just as today's convicts erect prisons and state buildings and maintain highways, seventeenth century convicts were put to work in the fortresses of the State and, over the next three centuries, on public works.

In France, the revolutionary penal code of 1791 introduced a punishment "in irons" as a substitute for sentences to the galleys. The convicts were to be "employed at forced labor to the profit of the state, either in a *maison de force* [maximum security prison] or in ports and arsenals, or in the extraction of ores, or in draining of marshes, or, finally, in any other painful labor which upon demand of a department [administrative district] might be determined by the legislative assembly."³⁶

Brutal Punishments

Corporal punishment accompanied penal slavery and the poorer the offender, the harsher the punishment. Before the nineteenth century, the death penalty punished many minor offenses and torture extracted "the truth" from the accused. Without riches to protect them, punishment of poor people became grotesque spectacles comparable to the Roman practice of sentencing errant slaves and lower class citizens to die in the arena:

Publicity was officially believed to enhance the deterrent value of punishment. Thieves were more often left hanging in the air than buried in order that everyone might see them and fear a similar fate. But the whole system was primarily the ex-

pression of sadism, and the deterrent effect of publicity was negligible. That is why the most morbid imagination today can hardly picture the variety of tortures inflicted. We read about executions by knife, ax, and sword, heads being knocked off with a plank or cut through with a plough, people being buried alive, left to starve in a dungeon, or having nails hammered through their heads, eyes, shoulders, and knees, strangulation and throttling, drowning and bleeding to death, evisceration, drawing and quartering, torture on the wheel, torture with red-hot tongs, strips being cut from the skin, the body being torn to pieces or sawed through with iron or wooden instruments, burning at the stake, and many other forms of cruelty.³⁷

Since punishments inflicted by a society at any given time reflect prevailing social relationships, the forms of cruelty have changed.³⁸ Much has been done with little effect, however, to remedy the inequities of punishment inflicted on the poor or to alter the justification for capital punishment voiced in the following eighteenth century statement:

No man of common humanity or common sense can think the Life of a Man and a few shillings to be of equal Consideration, . . . [but] the Terror of Example is the thing proposed, and one man is sacrificed for the Preservation of Thousands.³⁹

In the twentieth century, the Nazis also rationalized use of the death penalty as a deterrent, although statistics show no conclusive evidence that increased punishment deters crimes.⁴⁰ A more accurate expression of the import of the death penalty may have come from the German theoretician who stated that "the necessity of retaining it in the National Socialist state requires no defense. The death penalty is the expression of the domination of the whole over the individual. . . ."⁴¹ Historians George Rusche and Otto Kirchheimer explain Nazi repressive punishment in this way:

A significant feature . . . is the avowed necessity to keep down the living standard of the lower strata. In order to facilitate the acceptance of this program by the masses, considerable effort is spent in cultivating a moral distinction between those who are poor but honest and the strata which have become criminal.⁴²

We can apply this understanding to American justice today, especially in light of recent invocations of the death penalty. John Spinkelink, a Florida prisoner who claimed he murdered in self-defense, was executed on May 23, 1979. Only four days before, San Francisco conservative council member Dan White, who admitted shooting defenseless Mayor George Moscone and gay council member Harvey Milk in their separate city offices, was found guilty of voluntary manslaughter, which carries a sentence of no more than eight years' imprisonment.

The startling contrast between these two convictions and sentences reflects biases that still determine criminal punishments.

In the current period of deepening recession and high unemployment, government reinstatement of the death penalty exhibits a vindictiveness characteristic of historic responses to an over-abundant labor force. Death is always the slavemaster's ultimate weapon but when the supply of slaves runs short, he looks to other methods of punishment. While sixteenth through eighteenth century justice promoted the death penalty as the best deterrent to crime, increased need for labor in the colonies of the new world prompted European governments to offer slavery as a reprieve from death. Convict transportation to America in indentured servitude became a popular way to escape execution.

Notes

1. Plato, *The Laws*, Book VI, line 778a.
2. Hoebel, p. 410.
3. Evelyn Reed, *Woman's Evolution: From Matriarchal Clan to Patriarchal Family*, (New York: Pathfinder Press, Inc., 1975), pp. xiv-xx, 69-72, chaps. 4-7, 11 (for social organization). The terms "savagery" and "barbarism" are used for scientific description. As Evelyn Reed explains:

The terms "savage" and "primitive," often used in a derogatory, colonialist or racist sense, are here used exclusively in a scientific way. "Savage" is simply a designation for our earliest ancestors. Without their colossal achievements over a span of a million years, humanity could not have walked the last mile to civilization. (Ibid., p. xviii)
4. Ibid., pp. 312-313, chap. 14 (especially pp. 412-415, 429-430); Hoebel, p. 422.
5. Reed, chap. 14, especially pp. 412-413, 429-430.
6. J. Thorsten Sellin, *Slavery and the Penal System* (New York: Elsevier Scientific Publishing Co., Inc., 1976), p. 18.
7. Ibid., p. 5.
8. Ibid., pp. 5-6 for Solon's division of Greek social classes; Linda Grant De Pauw, "Land of the Unfree: Legal Limitations on Liberty in Pre-Revolutionary America," *Maryland Historical Magazine*, 68 (1973): 363-365 for percentage of voting Americans. De Pauw's article is reprinted in *The American Revolution: Whose Revolution?*, James Kirby Martin and Karen R. Stubaus, eds. (Huntington, New York: Robert E. Krieger Publishing Co., 1977).
9. Sellin, pp. 3, 5-10.
10. Ibid., pp. 12-18.
11. *Webster's New World Dictionary of the American Language*, 2nd college ed. (1970), s.v. "slave."
12. Frederick Engels, *The Origin of the Family, Private Property and the State*, intro. and notes by Eleanor Burke Leacock (New York: International Publishers, 1972), p. 121; Reed, p. 430.

13. Sellin, pp. 23-25.
14. Gilbert M. Cantor, "An End to Crime and Punishment," *The Shingle*, 39 (1976): 99-100.
15. Sellin, pp. 25-26.
16. Cantor, p. 100.
17. See Sellin, pp. 30-33.
18. *Ibid.*, p. 39.
19. *Ibid.*, p. 41.
20. *Ibid.*
21. *Ibid.*, p. viii, Sellin quotes from "Der Ursprung des Strafrechts aus dem Stande der Unfreien," reprinted in Gustav Radbruch, *Elegantiae juris criminalis* (Basel: Verlag für Recht und Gesellschaft, 1950), pp. 11-12.
22. William J. Chambliss, "A Sociological Analysis of the Law of Vagrancy," *Social Problems*, 12 (1964): 69.
23. *Ibid.* for black death and the crusades; The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 88 (1967), "The Collateral Consequences of a Criminal Conviction," *Vanderbilt Law Review*, 23 (1970): 946.
24. Chambliss, pp. 69-70; quotation is from Beatrice Webb, *The English Poor Law* (London: Oxford University Press, 1928), p. 1.
25. Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Russell and Russell, 1968; reprint ed. Columbia University Press, 1939), pp. 12-13. (Complaint against city merchants is on p. 13. The citation given for this quotation is W. Andreas, *Deutschland vor der Reformation* [Stuttgart, 1932], p. 289.)
26. Chambliss, p. 73.
27. Rusche and Kirchheimer, p. 39.
28. See Rusche and Kirchheimer, pp. 14-18; Chambliss, pp. 69-74.
29. Rusche and Kirchheimer, p. 15.
30. *Ibid.*, p. 24.
31. Sellin, pp. 46-48; Rusche and Kirchheimer, p. 57 for description of galley slavery as a slow and painful death.
32. Rusche and Kirchheimer, p. 57.
33. *Ibid.*, p. 55, quotes a February 21, 1676, letter to the public prosecutor in Paris.
34. Sellin, p. 72.
35. *Ibid.*, p. 81.
36. *Ibid.*, p. 60.
37. Rusche and Kirchheimer, pp. 21-22.
38. *Ibid.*, p. 23, as follows:
 Brutal punishment cannot be ascribed simply to the primitive cruelty of an epoch now vanished. Cruelty itself is a social phenomenon which can be understood only in terms of the social relationships prevailing in any given period.

39. Alan George Lewers Shaw, *Convicts and the Colonies* (London: Melbourne University Press, 1977; reprint ed. Faber & Faber, Ltd., 1966), p. 28, quoting Henry Fielding.
40. Rusche and Kirchheimer, p. 183.
41. Ibid, quoting E. Wolf, "Das künftige Strafsystem und die Zummessungsgründe," *Zeitschrift für die gesamte Strafrechtswissenschaft*, 54 (1935), 546-547.
42. Ibid., p. 182.

Chapter 2:

A New Nation

What, to the American slave, is your Fourth of July? I answer; a day that reveals to him, more than all other days of the year, the gross injustice and cruelty to which he is a constant victim. To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciation of tyrants, brass fronted impudence; your shouts of liberty and equality, hollow mockery; your prayers and hymns, your sermons and thanksgivings, with all your religious parade and solemnity, are to him, mere bombast, fraud, deception, impiety, and hypocrisy - a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation of the earth guilty of practices more shocking and bloody than are the people of these United States, at this very hour.

**- Frederick Douglass
Independence Day Speech, 1852¹**

Of Class, War, and Punishment

The first slaves in America were its own conquered and exploited people. Even the Puritans who fled England for their own religious freedom made slaves of their neighbors.

No new community in the midst of virgin soil ever had enough labor to satisfy it, and the English settlers at once began to enslave their neighbors, soothing their consciences with the argument that it was right to make slaves of pagans. Fierce, intractable, unaccustomed to continuous labor, the Indians fled or died in captivity, leaving few of their descendants in bondage. Rather by way of experiment than with any confidence in their usefulness, in 1619 the Virginians began to import African negroes, first from the West Indies; later by a steady direct trade from Africa.²

Not until 1726 to 1788 did African slavery begin to supplant indentured servitude in Virginia. During the earlier period of colonization, trade in Europeans was found cheaper than African slave trade. It is possible that the first Africans brought here were treated like indentures. Slavery in all three forms had found its way to new soil: Native Americans and Africans were spoils of European wars on their villages, impoverished Europeans were slaves of punishment or class through indentured servitude. As the peculiar institution of chattel slavery became entrenched in the colonies, Afro-Americans became slaves of class when, after 1640, they and their unborn children were sold as life-long chattel.³

Native American Resistance

More than a century before the American Revolution, Native Americans were enslaved by colonists. Regarded as useful in the profitable fur trade and in knowledge of the land, business interests guided colonial attempts to enslave them. The Puritans engaged in wars with native tribes, taking as many into bondage as they could while still keeping their friendships with the "more important" tribes. During the war with the Pequots, the Puritans made women and children captives slaves while shipping the men to slave traders abroad.⁴ The following 1637 description of the Puritan disposition of women captives indicates the base regard many colonists had for their new neighbors:

There is a little squaw that Steward Calient desireth, to whom he hath given a coat. Lieutenant Davenport also desireth one, to wit, a small one that hath three strokes upon the stomach.⁵

When the supply of European indentures grew short, colonists bargained with the natives for their labor.

Their labour was desired by the European settlers. So much so, in fact, that when the Indians for one reason or another wished no employment their labour was acquired by subterfuge. A group of Indians could be persuaded to contract, say, to build a stone fence, for a certain sum and within a certain time. If they became reluctant to go through with their task, if, perhaps they found out that they had contracted for too small a price, they were forced by legal process to go on with their work and in some such cases they were put to the lash and forced to work at the end of a whip!⁶

Some Iroquois even apprenticed their children to colonists for the purpose of learning the new language and trades, but the children were treated harshly and many were sold to slavers for the West Indies trade.⁷ In spite of their lack of advanced weaponry, the Native Americans were not easily enslaved. Unlike the people stolen from Europe and Africa, they had not been torn from their native systems of support and knew the land and its resources. Although the following statement does not treat Native Americans fairly, it helps clarify the victimization of these people during the period of colonial expansion:

The North American Indians, inasmuch as they had not emerged from the hunting stage, could not be enslaved; they were too 'wild'. So the English colonist slew them, drove them away, or bought them off, and put his own back to the labours of the fields.⁸

Indentured Servitude

England's Vagrancy Act of 1547, authorizing magistrates to sentence vagrants to work as slaves for their masters, was repealed in 1550. In 1598, a reenactment of the statute declared "that any rogues appearing 'dangerous to the inferior sort of people' or 'such as will not be reformed of their roguish kind of life'" could be transported or sent to the galleys.⁹ Transportation became a favorite means of getting rid of "undesirables," particularly political dissidents. Building prisons would be expensive, transportation "was defended as cheap punishment,"¹⁰ and the bonded labor of the criminal element would fill the need for free labor power to colonize the New World.

In 1611, Sir Thomas Dale requested convicts for Virginia so that criminals "might be rather corrected than destroyed and that in their punishmentes some may live and yeald a profitable service to the commonwealthe in partes abroad."¹¹ In 1656, England ordered the "apprehending of lewd and dangerous persons. . . who have no way of livelihood. . . and treating with merchants for transporting them to the English plantations in America."¹²

The Habeas Corpus Act of 1679 forbade transportation without a trial but also legalized the pardoning of prisoners if they agreed to serve a sentence of indenture in the colonies. Between 1679 and 1699, 4,500 convicts agreed to be transported in lieu of impending corporal punishments or death.¹³

Between 1688 and 1819, nearly 187 capital offenses were added to the original 50. Menial crimes such as stealing or injuring gates, deer, fish, and shipwrecked goods became punishable by death and the available free convict labor to the crown also increased as servitude was offered as a reprieve from death. During the Seven Years War (1756-1763), convicts were used more in the war efforts than in transportation.¹⁴ John Lauson, sentenced to fourteen years of indenture, left a rare account of indentured servitude in *The Felon's Account of his Transportation at Virginia*: ". . . Of honest parents did I come tho' poor/ Who besides me had no children more. . ." ¹⁵ John ran away from his master, taking part in a robbery with seven others, all of whom were apprehended. Three of his friends were hanged, he and the others transported.

The Captain and the Sailors, us'd us well,
But kept us under lest we should rebel.

We were in number much about Threescore,
Wicked and cruel lousy Crew as ever went over,
And after sailing Seven weeks or more,
We at VIRGINIA all were put ashore,

Then, to refresh us, we were all made clean,
That to our Buyers we might better seem. . . .
Some ask our Trades and others ask'd our names,
Some view'd our Limbs turn'd us around,

Examining like Horses if we were sound,
 What trade, my lad? said one of them to me,
 A Cooper, Sir, that will not do for me.

Not sold on the first day ashore,

Down to the harbour I was took again,
 On board a Ship bound with an iron chain,
 Which I was forc'd to wear night & day,
 For fear I from the sloop should run away.

Finally sold,

At last to my new masters house i came,
 To the town of wicowoco call'd by name,
 Here my Europon cloaths were took away from me,
 Which never after i could see.

A canvass shirt and trowsers me they gave,
 A hop-sack frock in which i was a slave
 No shoes nor flockings had i for to wear
 Nor hat, nor cap, my hands and feet went bare,
 Thus dress unto the fields i next did go,
 Among Tobacco plants all day to hoe
 At day break in the morn our work begun,
 And lasted 'till the setting of the sun.

My fellow slaves were five transports more
 With eighteen Negroes, which is twenty-four,
 Besides four transports women in the house,
 To wait upon his daughter and his spouse.

We and the negroes both alike did fare,
 Of work and food we had an equal share . . .

But if we offer once to run away,
 For every Hour we must serve a Day,
 For every day a Week, they're so severe,
 Every Week a month, every month a Year.

But if they Murder, Rob, or Steal when there,
 They're hang'd direct, the Laws are so severe . . .

At last it pleased God I sick did fall,
 Yet I no favour did receive at all,
 For I was forc'd to work while I could stand,
 Or hold the Hoe within my feeble hands.

Much hardship then indeed I did endure,
 No Dog was ever nursed so before:
 More pity the poor Negro Slaves bestow'd,
 Than my Inhuman brutal Master show'd.

John's master eventually sold him to another who treated him more kindly. After serving his full fourteen years, John Lauson returned to England.

And in my heart I often griev'd to see,
 So many transport Felons there to be;

Some who in England had liv'd fine and brave,
Was there like horses forc'd to trudge and slave.

Not Just For Punishment

More than half the European colonists migrating to this nation were indentured servants. Regardless of the laws passed to prevent abuse of the system, people were also transported illegally. The term "kidnapping" originated with the stealing of indentured servants, or "kids." They were lured with sweetmeats or promises of a life of leisure, seduced by ladies of the night or forcibly carried off. The practice became so popular that the ladies of the royal court and the mayor of Bristol were suspected of sharing in its profits.¹⁶

Besides the involuntary indentured servants convicted of crimes or kidnapped, there were many Europeans who willingly leased themselves for a two to seven year term of indenture in exchange for their voyage to America. For those rendered hopeless by economic conditions at home, indentured servitude in America provided an alternative. The agreement was usually made with a representative of the colonial master in England, who later transferred the contract to the servant's master. Many voluntary servants not yet of age were considered apprentices who would serve a colonial master while learning a trade. Those apprenticed included youngsters who had no family capable of supporting them and were a burden the state was not willing to assume. Other voluntary indentures were redemptioners, usually Germans, many of whom later settled in Pennsylvania. They came to England to sign contracts that included the voyage of entire families to the colonies. The redemptioner signed an agreement to have colonial friends or relatives pay the ship's captain for the voyage upon arrival. If he was not "redeemed," the captain could sell him and his family into indenture to the highest bidder.

The "voluntary" nature of such indentures is questionable since the recruitment process was enmeshed with deceit. Contractors employed agents all over Europe who received commissions on tickets sold to America. Among those who earned a reputation for promoting immigration through lies were the Nuelanders (new landers) who were the subject of warning in a letter from Muhlenburg, Germany, published in 1769:

In order to accomplish their purpose the more readily, they resort to every conceivable trickery. They parade themselves in fine dress, display their watches, and in every way conduct themselves as men of opulence, in order to inspire the people with the desire to live in a country of such wealth and abundance. They would convince one that there are in America, none but Elysian fields abounding in products which require no labor; that the mountains are full of gold and silver, and

the wells and springs gush forth milk and honey; that he goes there as a servant, becomes a lord; as a maid, a gracious lady; as a peasant, a nobleman; as a commoner or craftsman, a baron. . . . Now, as everybody by nature desires to better his condition, who would not wish to go to such a country!¹⁷

The demand for indentured servants was greater than the agents could supply. Their slave labor was preferred to free labor and remained so "until the population increased enough to provide a surplus of men making it possible to hire and fire at will."¹⁸ Those involved in human traffic spent little to assure the health and safety of their victims. For all transports, the long voyage to America was dangerous: ships were overcrowded, ventilation poor and nourishment inadequate. Voluntary and involuntary servants alike suffered terrible conditions.

During the eight to twelve weeks voyage, there was "on board these ships terrible misery, stench, fumes, horror, vomiting, many kinds of sea-sickness, fever, dysentery, headache, heat, constipation, boils, scurvy, cancer, mouth rot and the like. . . and. . . add to this want of provisions, hunger, thirst, frost, heat, dampness, anxiety, want, afflictions, lamentations." Conditions on board were probably no worse than in many contemporary gaols, where the felons lay "worse than dogs or swine and are kept much more uncleanly than those animals are. . . the stench and nastiness are so nauseous that no person enters without the risk of his life and health"; yet they were overcrowded with prisoners lodged in irons between the decks.¹⁹

The labor of the indentured servant belonged to the master. A servant could own no property other than what the master allowed, could not marry without permission, or frequent taverns. Indentures could be sold away from their families against their will or seized to pay for their master's debts.²⁰ They were subjected to cruel corporal punishments, even to service in irons. As with chattel slavery, the conditions under which indentured servants lived varied according to the cruelty or kindness of their masters and to laws dictating their treatment within the several colonies.

"What we unfortunat English People suffer here is beyond the probability of you in England to Conceive," lamented one girl to her father; "let it suffice that I. . . am toiling almost Day and Night, . . . and then tied up and whipp'd to that Degree that you'd not serve an Annimal, scarce any thing but Indian Corn and Salt to eat and that even begrudged. . . almost naked no shoes nor stockings to wear, and. . . slaving during Masters pleasures. . ." ²¹

Whether stolen, transported as convicts, apprenticed or voluntary, all "indentured servants were temporarily chattel."²²

They were recognized as property; they sold themselves or were sold for given terms, and had no protection as to the place or nature of their service except such as was extended by quite general legislation. Indentured servants often got scant justice under the laws of the time. Into the nineteenth century this form of labor was often termed slavery.²³

African Slavery

With the initial shipments of Africans to the colonies and the first regular charter voyage in 1631, the African slave trade became a lucrative and important business, "especially in the south, where the master class of tobacco, rice, sugar, and cotton planters found slavery an invaluable, unequaled source of profit." After 1640, blacks were sold into life-long slavery, their unborn children and grandchildren sold with them. In 1662, Charles II chartered the "Company of Royal Adventures" for the African trade and, in 1713, England secured a monopoly of colonial slave trade by a treaty with Spain known as the *Asiento*.²⁴

Before the American Revolution, England engaged in a triangular slave trade with Africa, transporting between 40,000 and 100,000 slaves to America each year.²⁵ Slave ships, loaded with goods to exchange with slavers for kidnapped Africans, completed their trade in Africa and carried their victims to the colonies. Many died from the cramped and diseased conditions aboard ship, some committing suicide rather than face bondage. In the colonies, these men, women and children were traded for rum, cotton, and other goods which were carried back to England.

Europeans and Africans labored side by side under early American servitude. It is possible that the first Africans brought to Virginia in 1619 were treated like indentures, since it was one half-century after the first permanent settlement before chattel slavery of blacks "became an important substitute [for indenture], chiefly because the supply of indentured servants was insufficient." Indentured servitude paved the way for the colonial master's receptivity to chattel slavery and, as chattel slavery became entrenched in the colonies, indentured servitude more and more resembled the condition of African slaves.²⁶

Increased plantation production generated the need for craftspeople to build barns, warehouses, and the like. When there were not enough indentured servants, the plantation master had indentured train slaves in their crafts, increasing the monetary value of the slave. The common bondage of Europeans and Africans on plantations created a sense of kinship, mutual struggle, love and resulting marriages. In response, a 1691 Virginia law forbade further marriages between white indentures and black slaves. The new law forbidding "miscegenation" was aimed at dividing the master's slaves and preventing them from uniting against him.²⁷

Indentured servitude differed from chattel slavery in three main respects - bondage was temporary rather than lifelong; indentured servants could sue their masters for violating their rights to a minimal standard of living; and successful escape was much easier for the white servant. Black and white servants often ran away from their masters but runaway Europeans were much more difficult to find since they assimilated easily into the free white population. Parallel to fugitive laws for runaway slaves, penalties were imposed on anyone found harboring a fugitive indentured servant. Many newspaper ads offered rewards for the capture of runaways. Searching for escaped slaves, however, was more attractive, since the redeemer had to release the unclaimed servant but could keep the unclaimed slave for his own use.²⁸

As plantation colonies flourished, southern masters came to prefer black slavery to white indenture and used their white servants as overseers, slave drivers, and superintendents.²⁹ The lifelong service of chattel slaves and their descendants proved more profitable for plantation owners. Chattel slavery supplanted indentured servitude when, after the American Revolution, transportation of indentured servants from England ended.

Lacking plantation economies, the northern colonies did not purchase slaves in great numbers but did nevertheless profit from the slave trade. New England colonists purchased slaves and traded them for ship-building materials in South Carolina, molasses in the West Indies and large barrels in other colonies. Traders made West Indies molasses into New England rum which they poured into the barrels to ship to Africa in exchange for more slaves. In the West Indies, Connecticut colonists traded horses for slaves to sell in other colonies. Newport, the hub of the business in the North, became a thriving port because of the pre-Revolution slave trade. No lawful measures against the trade were taken in any part of New England until the first few years of American independence.³⁰

Those slaves purchased to live in New York and New England were treated in the same manner as servants generally, while those living in Pennsylvania were treated much like serfs. The aristocratic caste system, and its "peculiar institution" of chattel slavery, flourished in the plantation colonies of the South.³¹

Several authors of the Declaration of Independence did not believe that slavery would be upheld in the new nation. Thomas Jefferson, Virginia plantation and slave owner who professed a loathing for slavery, participated in its writing and was responsible for the following section of the original document, which charged the king with waging a

...cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare,

the opprobrium of *infidel* powers, is the warfare of the *Christian* king of Great Britain. Determined to keep open a market where *men* should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce. And that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty which he has deprived them, by murdering the people on whom he also obtruded them: thus paying off former crimes committed against the *liberties* of one people with crimes which he urges them to commit against the *lives* of another.³²

The above portion of the Declaration of Independence was deleted because it did not win approval by all the delegates. Jefferson later explained that it was

“struck out in complaisance to South Carolina and Georgia, who had never attempted to restrain the importation of slaves, and who, on the contrary, still wished to continue it. Our northern brethren also, I believe,” said he, “felt a little tender under those censures; for though their people had very few slaves themselves, yet they had been pretty considerable carriers of them to others.”³³

Whose Revolution Was It?

Although Britain could be charged with initiating the African slave trade, many wealthy colonists, including Thomas Jefferson, participated in the loathsome system. Jefferson’s words rang true, however, in accusing the king of encouraging rebellion among the slaves. In 1775, royal governor Lord Dunmore of Virginia decreed that all rebelling colonists were traitors, and offered freedom to slaves who would fight for the British:

I do hereby further declare all indented servants, Negroes, or others, (appertaining to Rebels,) free, that are able and willing to bear arms, they joining His Majesty’s Troops, as soon as may be, for the more speedily reducing the Colony to a proper sense of their duty, to His Majesty’s crown and dignity.”³⁴

Even before his November proclamation, Dunmore was known to sail “up and down the river, . . . and where he finds a defenceless place, he lands, plunders the plantation and carries off the negroes.” Colonial masters tried to discourage their slaves from joining the British, further accusing Dunmore of inoculating blacks with smallpox and sending them ashore to spread the disease. Thousands of slaves joined the British and sailed their war vessels, bore their arms and foraged plantations at night for food and livestock to earn their promised

liberty. Several went to England in freedom after the war.³⁵

With the exception of those who supported the British in exchange for their freedom, slaves and indentured servants fought according to the desires of their masters. During the war, feelings against slavery rose and, in recognition of their participation in battle, the North emancipated many of its slaves after the Revolution. The South, however, demanded that the slave trade continue since "slaves, by pillage, flight, and actual fighting, had become so reduced in numbers during the war. . ."³⁶

Although history texts speak little of them, working class women also fought among American troops. An eyewitness account of the battle of Monmouth records that

A woman whose husband belonged to the artillery and who was then attached to a piece in the engagement, attended with her husband at the piece the whole time. While in the act of reaching a cartridge and having one of her feet as far before the other as she could step, a cannon shot from the enemy passed directly between her legs without doing any other damage then carrying away all the lower part of her petticoat. Looking at it with apparent unconcern, she . . . continued her occupation.³⁷

In "The Truth About Molly Pitcher", John Todd White explained how women who followed their working-class men into battle have been historically misunderstood as having been limited to domestic camp chores because of nineteenth century attempts to romanticize their role and transform them "into an acceptable legend of middle class femininity."³⁸

Another social class of women, the wives of the new American lawmakers, are known to have tried to persuade their men to give women the right to vote, as illustrated by the famous but ineffective appeal from Abigail Adams to her husband John:

- and by the way in the new Code of Law which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If perticular care and attention is not paid to the Ladies we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.³⁹

Despite such appeals, the plight of women worsened under the new government. American widows received only one-third of their husband's estate and were often forced to work by necessity or by the compulsory work requirements of poor laws, unless a male relative took them in. Divorces, much easier to obtain under British rule

became “practically impossible for a woman to obtain” after the Revolution.⁴⁰

Instigated and led by wealthy colonists whose political aspirations were frustrated by their lack of recognition by the ruling British, the American Revolution is more properly called the War for Independence.

Indeed, leadership analysis tends to conclude that the confrontation after 1763 resulted not so much from a class struggle as from a struggle within the ruling class. . . .⁴¹

Although the Declaration of Independence called for consent of the governed, few Americans were sufficiently “equal” to have their consent measured in ratification of the Constitution of 1787. Those delegates who drew up the proposed Constitution represented the propertied interests of America. They were “practical men” with the interests of their own class at heart. Some actively preferred aristocratic rule to protect government from what they feared as the incompetent and anarchistic sentiments of the lower classes. Seeking to ensure economic advantage for their own interests, the delegates fought over whether to determine government power by city or agrarian property,⁴² but the main dispute, said James Madison, was over the issue of slavery:

“the States were divided into different interests not by their difference of size, but by other circumstances; the most material of which resulted partly from the climate, but principally from the effects of their having or not having slaves. . . . the institution of slavery & its consequences formed the line of discrimination” between the contending states.⁴³

Slavery continued under the new government. Oliver Ellsworth, delegate from Connecticut, offered one convincing argument for patience:

As slaves multiply so fast in Virginia and Maryland that it is cheaper to raise than to import them, whilst in the sickly rice swamps foraging supplies are necessary, if we go no further than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless.⁴⁴

There were already many poor laborers in new nation. Most colonists who fought for the right of self-government did not participate in it: more than 85 percent of the American population did not meet the property requirements to vote on the proposed document for new government. Almost one quarter of the disfranchised population were chattel slaves; about 12 percent of the voteless were indentured servants; and another 6 to 13 percent were free white men not owning enough property to qualify them to vote in their respective states. The rest of the voteless population were women and children.⁴⁵ These

statistics do not include Native Americans, generally regarded as aliens on "American" soil; their fate would be determined by the imperialistic policies of a government which would steal their lands. Three-fourths of the adult male population did not vote on the Constitution of 1787, "either on account of their indifference or disfranchisement by property qualifications," and not more than one-sixth ratified the Constitution.⁴⁶

In fact, the proposed document caused considerable controversy. The Federalists, nicknamed the "aristocracy" by their opponents, represented the propertied classes and favored ratification. They put the great advantage of their wealth into proratification propaganda in privately owned newspapers, printing and distributing leaflets, and other means to defend their cause.⁴⁷ As Charles Beard concluded in his *Economic Interpretation of the Constitution of the United States*, the "Constitution was not created by 'the whole people' as the jurists have said; neither was it created by 'the states' as Southern nullifiers long contended; but it was the work of a consolidated group whose interests knew no state boundaries and were truly national in their scope," growing out of their economic base in currency, public securities, manufacturing, trade and shipping. "The Constitution," wrote Beard, "was essentially an economic document based upon the concept that the fundamental private property rights are anterior to government and morally beyond the reach of popular majorities."⁴⁸

Chattel Slavery in the Constitution of 1787

Slavery and the slave trade embarrassed the writers of the American Constitution and they took great pains to avoid discussion of the issue. Nevertheless, the topic required attention and debate ensued between those for and against perpetuating the right of private property in human beings.

Luther Martin of Maryland regarded it [the slave trade] as "inconsistent with the principles of the revolution, and dishonorable to the American character."⁴⁹

[Delegates from South Carolina and Georgia] - Baldwin, the Pinckneys, Rutledge, and others - asserted flatly, not less than a half-dozen times during the debate, that these States "can never receive the plan if it prohibits the slave-trade"; that "if the Convention thought" that these States would consent to a stoppage of the slave-trade, "the expectation is in vain."⁵⁰

"Every principle of honor and safety," declared John Dickinson of Delaware, "demands the exclusion of slaves."⁵¹

Rutledge...[of South Carolina] declared: "If the Northern States consult their interest, they will not oppose the in-

crease of slaves which will increase the commodities of which they will become the carriers." This sentiment found a more or less conscious echo in the words of Ellsworth of Connecticut, "What enriches a part enriches the whole."⁵²

Pressure successfully applied by delegates from states like Georgia and South Carolina resulted in a compromise favoring Southern slaveholding interests. While anti-slavery factions consoled themselves with the belief that slavery and its trade would die by degrees, slave-trade continued under a policy of *laissez-faire*. Article I, Section 9 of the Constitution of 1787 resolved the slave-trade question by permitting it to continue without interference until 1808, and by imposing an import duty of no more than ten dollars per slave. The assembly further decided that delegates to the House of Representatives would be determined by the population of each state, each slave to be counted as three-fifths of one person.⁵³ Article IV, Section 2 of the Constitution contained the following fugitive slave clause:

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.⁵⁴

W.E.B. DuBois said of the Continental Congress that

To be sure, the South apologized for slavery, the Middle States denounced it, and the East could only tolerate it from afar; and yet all three sections united in considering it a temporary institution, the corner-stone of which was the slave-trade. . . . Instead of calling the whole moral energy of the people into action, so as gradually to crush this portentous evil, the Federal Convention lulled the nation to sleep by a "bargain," and left to the vacillating and unripe judgement of the States one of the most threatening of the social and political ills which they were so courageously seeking to remedy.⁵⁵

The Constitutional article pertaining to slave-trade did not go unrebuked by concerned Americans. In a letter from "Centinel," published in the *Independent Gazetteer*, the following Quaker statement demonstrates the presence of abolitionist sentiment in the United States in 1787:

We are told that the objects of this article are slaves, and that it is inserted to secure to the southern states the right of introducing negroes for twenty-one years to come, against the declared sense of the other states to put an end to an odious traffic in the human species, which is especially scandalous and inconsistent in a people, who have asserted their own liberty by the sword, and which dangerously enfeebles the dis-

tricts wherein the laborers are bondsmen. The words, dark and ambiguous, such as no plain man of common sense would have used, are evidently chosen to conceal from Europe, that in this enlightened country, the practice of slavery has its advocates among men in the highest stations.⁵⁶

Prison Slavery in the Northwest Territory Ordinance

Land speculators from the Ohio Company of Associates and the Society of Cincinnati who wanted to establish colonies provided the impulse for the Northwest Territory Ordinance.⁵⁷ In 1784, the first Northwest Territory Ordinance was adopted. Thomas Jefferson, chairman of the committee in charge of its writing, is largely credited for Article 5, which read:

That after the year 1800* of the Christian era there shall be neither slavery nor involuntary servitude in any of the said States, OTHERWISE THAN IN THE PUNISHMENT OF CRIMES WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED TO HAVE BEEN PERSONALLY GUILTY.⁵⁸

Defeated by a narrow majority, Article 5 was dropped from the final document. Several attempts were made to readmit the article, including one by Rufus King in 1785, but nothing came of such efforts until 1787, when a new ordinance was drafted to provide more efficient territorial government.

As Jefferson was in France at the time of its writing, Nathan Dane and Rufus King of Massachusetts, Richard Henry Lee of Virginia, and Revolutionary soldier and statesman Timothy Pickering are held responsible for Article 6 of the Northwest Territory Ordinance of 1787, modeled after the old Article 5.⁶⁰ Article 6 of the Ordinance of 1787 stated:

There shall be neither slavery nor involuntary servitude in the said territory, OTHERWISE THAN IN THE PUNISHMENT OF CRIMES WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED. *Provided, always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.⁶¹

Many of the delegates participating in the writing of the Ordinance of 1787 had also been delegates to the Constitutional Convention in

*The reason for "after 1800" seems to be that slavery had already been introduced into the territory due to slaveholding settlers from Virginia and France's Louisiana.⁵⁹

Philadelphia. Since the Constitution's fugitive slave clause already ensured legal protection of the master's right to claim runaway slaves and plantation owners desired to maintain their monopoly of cheap labor south of the Ohio River, the southern delegates agreed to the inclusion of Article 6 in the Ordinance.⁶²

In 1775, twelve years before the passage of Article 6, Timothy Pickering wrote to Rufus King, stressing the need to prevent slavery from spreading to the Northwest:

For God's sake, then, let one more effort be made to prevent so terrible a calamity. It will be infinitely easier to prevent the evil at first than to eradicate it, or check it at any future time.⁶³

Pickering's words proved a sad warning, for although chattel slavery was prohibited by the 1787 law, slavery and involuntary servitude for "the punishment of crimes" endures today. That exception to prohibition of slavery in Article 6 served as the model for the Thirteenth Amendment to the United States Constitution 77 years later, and we, nearly two centuries later, inherit the enormous task of its abolition.

Since Thomas Jefferson is credited with the original 1784 article, we looked to his ideas on punishment to explain it. Like many political thinkers in the "Age of Enlightenment," Jefferson believed that laws should result from and uphold the social contract and he valued Cesare Beccaria's ideas on law and punishment as being humane and conducive to strong government.

Cesare Beccaria, Father of Prison Slavery

Cesare Beccaria (1738-1794) was an Italian nobleman of Jesuit schooling whose theories were embraced by many leaders of the "Age of Enlightenment" besides Thomas Jefferson. Beccaria's 1764 *On Crimes and Punishments (Dei delitti e delle pene)* was revolutionary in its time, so much so that he originally published it anonymously. At the time of his writing, punishments had become grotesque spectacles. Torture was used to elicit "truth" from the accused and justice was so arbitrary that a person could be found guilty of committing an act not previously declared unlawful. Beccaria knew little of penology and relied on his friend Alessandro Verri, the Protector of Prisons in Milan, Italy, to advise him. Based on the social contract theory, which supposes that citizens agree to give up certain liberties to ensure peaceful government, Beccaria's treatise insisted that laws, not town magistrates, should instill fear and respect in the people. He criticized the popular practice of using torture to elicit confessions from the accused, calling for due process by trial before one's peers and insisting that punishment should be only as severe as the crime. It was certainty, he said, rather than cruelty or severity of punishment that

would deter crime, and speediness of trial that would link punishment with the crime and therefore serve as an effective example for others.⁶⁴

Beccaria argued that laws must treat all equally and that the example of punishment should deter others from committing crime. He therefore warned against use of pardons since they weaken the effectiveness of example. He spoke against banishment as being more hurtful to society than suicide: the suicide leaves his property behind while the migrator takes his property with him, causing society a double loss. Keep people happy at home, he said, so they will not leave.⁶⁵

While he criticized frequent use of the death penalty as too cruel, Beccaria also challenged its effectiveness as a deterrent to crime. Instead, he said, lifelong slavery would serve as the most influential example of punishment:

The strongest deterrent to crime... [would be] the long and painful example of a man deprived of his freedom and become a beast of burden, repaying with his toil the society he has offended... No one today, in contemplating it, would choose total and perpetual loss of his own freedom, no matter how profitable a crime might be. Therefore that intensity of the punishment of lifelong slavery as a substitute for the death penalty possesses that which suffices to deter any determined soul. I say that it has more. Many look on death with a firm and calm regard - some from fanaticism, some from vanity, which accompanies a man beyond the tomb, some in a last desperate attempt to cease to live or to escape misery - but neither fanaticism or vanity dwells among fetters and chains, under the rod, under the yoke or in an iron cage, when the evildoer begins his sufferings instead of terminating them... Were one to say that perpetual slavery is as painful as death and therefore equally cruel I would reply that... the former would be even worse.⁶⁶

Sir Thomas More had written two centuries earlier "that it is unwise to execute offenders since their labor is more profitable than their death,"⁶⁷ but Beccaria warned rulers that frequent use of the death penalty would also encourage revolution. Instead of protecting propertied interests, frequent executions encouraged direct attacks against the rich. Beccaria's analysis emphasized the practicality of diluting punishment to prevent social revolution and preserve existing power relations.⁶⁸

Although Beccaria can be credited with voicing some humanitarian concerns, he wrote for a privileged audience who wished to protect their own wealth and whose best interest lay in preserving the status quo. Attributing equal value to property and liberty, he considered that invasion of property deserved enslavement. In defending the privileges of his own class, Beccaria wrote that, "leisure attending riches [is] acquired by industry."⁶⁹ He tolerated the "industrious" pauper but encouraged punishment of vagrants - an attitude which prevails today

towards persons on welfare. Beccaria believed that the rich as well as the poor should be bound by justice and based his ideas on the supremacy of laws derived from the social contract, the theoretical agreement of all members of a society to live by certain rules in order to ensure peace and harmony.

Like Beccaria and his contemporaries, Thomas Jefferson failed to consider the implications of laws which secure the privileged by prosecuting anyone, rich or poor, for villain-like crimes. The inherent injustice was best captured by Anatole France when he described "the majestic egalitarianism of the law, which forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal bread."⁷⁰

Beccaria's theories became American law, to a considerable degree through Thomas Jefferson's influence on American criminal justice. "The principle of Beccaria is sound," said Jefferson. "Let the legislators be merciful, but the executors of the law inexorable."⁷¹

In a proposed "Bill for Proportioning Crimes and Punishments" for Virginia, Jefferson held that punishment should be "proportioned to the injury so that men would feel it their inclination as well as their duty, to see the laws observed." This 1779 bill called for transportation of offending slaves to another land to continue there in slavery, the identical maiming of a person who had maimed another as well as forfeiture of half of the offender's estate to the victim, castration for sex crimes and hard labor at public works for most property crimes. Like Beccaria, Jefferson would have limited the scope of the death penalty and hastened executions: death would be punishment for the crimes of treason and murder and offenders would be executed the day after conviction.⁷²

In his *Commonplace Book*, primarily notes for his own study, Jefferson quoted Beccaria at length. His advocacy of Beccaria's "punishment worse than death" found reflection in his plan to have convicts work at "hard labor on roads, canals, and other public works," reforming the criminals while making them "long continued spectacles to deter others from committing like offenses."⁷³

Many of Jefferson's Virginia colleagues thought his proposals too permissive, favoring instead a policy of *lex talionis*, "an eye for an eye, a tooth for a tooth." As an acceptable daily condition for African slaves and European indentures, slavery probably did not seem a punishment severe enough for convicted "villains." Although he had trouble gaining support for the 1779 bill, Virginia adopted most of his bills concerning crime and punishment by 1796. After recidivism increased in other states which displayed convicts at hard labor on public works, Jefferson turned his attention to the European model of confined convict slavery and designed a prison for Virginia which received its first prisoner in 1800.⁷⁴

Convict slavery, which had victimized the homeless poor in Europe and helped colonize the New World, became law in the Northwest Territory Ordinance of 1787. The precedent-shaping exception for prison

slavery in Article 6 was written by men adhering to social contract theory and to Cesare Beccaria's ideas on punishment, and it found its way into the Thirteenth Constitutional Amendment of 1865 and the jails and prisons of America.

Notes

1. Philip S. Foner, *Frederick Douglass* (New York: Citadel Press, 1969; International Publishers, Co., Inc., 1964), p. 127.

2. Albert Bushnell Hart, *Slavery and Abolition, 1831-1841* (New York: Negro University Press, 1968; reprint ed. Harper & Brothers, 1906), p. 50.

3. James Curtis Ballagh, *White Servitude in the Colony of Virginia* (New York: Burt Franklin, 1969; reprint ed. 1895), p. 65; Sellin, pp. 133-134.

4. William Christie MacLeod, *The American Indian Frontier* (New York: Alfred A. Knopf, 1928), pp. 295-296.

5. *Ibid.*

6. *Ibid.*, p. 308.

7. *Ibid.*, p. 303.

8. *Ibid.*, p. 313, quoting Lauber in Ross, *South of Panama* (n.p., n.d.). While MacLeod criticizes Lauber's "naive" generalization of history, we also disagree with MacLeod's interpretation of history, especially the following example found on page 311:

The facts observable [in the history of Native Americans] on the Pacific Coast make it plain that a forced-labour system, not free labour, is the thing needed for backward peoples. Forced-labour systems make possible the protection of the natives under some paternal scheme during the period when they are learning to accommodate themselves to a new economic and social environment.

9. Shaw, p. 23.

10. *Ibid.*, p. 18.

11. *Ibid.*, pp. 23-24.

12. *Ibid.*, p. 24.

13. *Ibid.*

14. *Ibid.*, pp. 24-25. On page 34 Shaw explains:

During the Seven Years War, 1756-1763, fewer were transported, for many convicts were sent to the army, the navy and the dockyards. For example, out of 154 who were sentenced to death or transportation at the Old Bailey between November 1760 and January 1762, while twelve were pardoned unconditionally and thirty-four on the condition of transportation, five were pardoned on the condition of serving in the navy, and sixty-three in the army. Other somewhat curious reasons for reprieve were that a criminal submit to have a limb amputated 'to test the styptic medicines discovered by

Mr. Thomas Price', and because it would help a member's electioneering in the boroughs of Launceston and Newport.

15. John Lauson, *The Felon's Account of His Transportation at Virginia in America*, reprinted and edited from original by J. Stevens Cox (Mount Durant, St. Peter Port, Guernsey, C.I. via Britain: Toucan Press, 1969), p. 6. The passages quoted from Lauson's *Account* are from pp. 9-12 of this 12-page booklet.

While the original date of Lauson's *Account* is unknown, the original work was sold by an English press which did business during the mid-eighteenth century (Cox, p. 4). Cox also reports that Lauson was shipped to Essex County, Virginia. "Wicowoco" was a hundred miles up the Essex River (p. 2).

16. Philip S. Foner, *Labor and the American Revolution* (Westport, Ct.: Greenwood Press, 1976), p. 7; Ballagh, pp. 38-39. Foner states: "An estimated 80 percent of all immigrants who came to the colonies, whether voluntary or in chains, were either white indentured servants or black slaves. . . . Not less than 50 percent, and probably closer to 65 percent, of all white immigrants in America before 1776 were indentured servants."

17. Karl Frederick Geiser, *Redemptioners and Indentured Servants in the Colony and Commonwealth of Pennsylvania* (New Haven: Tuttle, Morehouse & Taylor Co., supplement to *Yale Review*, 10, 1901), pp. 18-19. The letter was published in the German newspaper *Hallischen Nachrichten*.

18. Abbot Emerson Smith, *Colonists In Bondage: White Servitude and Convict Labor in America 1607-1776* (New York: W.W. Norton & Company, Inc., 1971; reprint ed. University of North Carolina Press, 1947), p. 28.

19. Shaw, p. 35.

20. DePauw, p. 50.

21. Shaw, p. 32 quotes from "Letter from Elizabeth Sprigs to her Father from Maryland" dated September 22, 1756.

22. Cheesman A. Herrick, *White Servitude in Pennsylvania: Indentured and Redemption Labor in the Colony and Commonwealth* (Freeport, N.Y.: Books for Libraries Press, 1970; reprint ed. 1926), p. 3.

23. *Ibid.*

24. W.E.B. DuBois, *The Suppression of the African Slave-Trade to the United States of America, 1638-1870*, intro. by Philip S. Foner (New York: Dover Publications, Inc., 1970; reprint ed., Harvard University Press, 1896), pp. 2-3; Sellin, p. 134 for quotation on slavery in the South.

25. DuBois, p. 5.

26. Sellin, p. 133, says that the first Africans brought to Virginia may have been treated like indentures; Herrick, p. 11, for quotation on slaves becoming an important substitute for short supply of indentured servants; Ballagh, p. 68, says that indentured servitude prepared "the way both legally and practically for the institution of slavery as it existed in Virginia."

27. Marcus Jernegan, *Laboring and the Dependent Classes in Colonial America, 1607-1783*, (New York: Frederick Ungar Publishing Co., American Classic Series; reprint ed. 1931) pp. 7-11, 55; Herrick, p. 22. Jernegan also reports that slaves occupied many skilled trades. "In the files of the *South Carolina Gazettes*, 1732-76, we find evidence of slaves trained in and practicing at least twenty-eight different trades specifically so named." (p. 13) Wood,

leather and craftspeople, ship builders, silver and blacksmiths, navigators, pilots, and house builders are among the broad range of occupations occupied by slaves. (See Jernegan, pp. 13-23.)

28. Samuel McKee, Jr., *Labor in Colonial New York, 1644-1776* (Port Washington, New York: Ira J. Friedman, Inc., 1963; reprint ed. Columbia University Press, 1935), pp. 110-112.

29. See Herrick, pp. 21-22.

30. DuBois, pp. 27-29.

31. *Ibid.*, p. 6.

32. *Ibid.*, pp. 48-49.

33. *Ibid.*, p. 49.

34. Benjamin Quarles, "Lord Dunmore as Liberator," *William and Mary Quarterly*, 5 (1958): 494. This article is reprinted in *The American Revolution: Whose Revolution?*, op. cit.

35. *Ibid.*, p. 497, quoting an October 28, 1775, letter from a Norfolk resident to a friend in England.

36. DuBois, p. 49.

37. John Todd White, "The Truth About Molly Pitcher," *The American Revolution: Whose Revolution?* (This article is a reprint of White's same titled paper presented at the Conference on Women in the Era of the American Revolution, Washington, D.C., 1975), p. 105. White quotes the eyewitness record of Joseph Plum Martin.

38. *Ibid.*, p. 105.

39. Quoted from a letter dated March 31, 1776, L.H. Butterfield, Marc Friedlaender, and Mary-Jo Kline, eds., *The Book of Abigail and John*, (Cambridge: Harvard University Press, 1975), p. 121.

40. DePauw, p. 360.

41. James Kirby Martin, *Men in Rebellion: Higher Governmental Leaders and the Coming of the American Revolution* (New Brunswick: Rutgers University Press, 1973), p. 189. Also in article of same title by Martin in *The American Revolution: Whose Revolution?*, p. 45.

42. See Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan Company, 1929).

43. Staughton Lind, "Beyond Beard," Barton J. Bernstein, ed., *Towards a New Past: Dissenting Essays in American History* (London: Chatto & Windus, 1970), p. 59.

44. Beard, p. 176.

45. DePauw, pp. 358-365, states that black slaves comprised 20 percent of the colonial population, with a very small and unmentioned number of free blacks who enjoyed almost no legal distinction from slaves; the white servant population was about half as large as the black slave population; and disenfranchised white men made up 5-10 percent of the population. The remaining disenfranchised were women (half of the adult population) and children, including males between the ages of 16 and 21 who were taxable and liable for military duty and made up one-quarter of the male population.

46. Beard, pp. 324-325.

47. *Ibid.*, pp. 217-299, especially 250-252. On pp. 294-295 Beard wrote:

Perhaps the spirit of the battle over ratification is best reflected in the creed ironically attributed to each of the contending parties by its opponents. The recipe for an Anti-Federalist essay which indicates in a very concise way the class-bias that actuated the opponents of the Constitution, ran in this manner: "Wellborn, nine times - Aristocracy, eighteen times - Liberty of the Press, thirteen times repeated - Liberty of Conscience, once - Negro slavery, once mentioned - Trial by jury, seven times - Great Men, six times repeated - Mr. Wilson, forty times. . . . put them all together and dish them up at pleasure."

To this sarcastic statement of their doctrines, the Anti-Federalists replied by formulating the "Political Creed of Every Federalist" as follows: "I believe in the infallibility, all-sufficient wisdom, and infinite goodness of the late convention; or in other words, I believe that some men are of so perfect a nature that it is absolutely impossible for them to commit errors or design villainy. I believe that the great body of the people are incapable of judging in their nearest concerns, and that, therefore, they ought to be guided by the opinions of their superiors. . . . I believe that aristocracy is the best form of government. . . . I believe that the new constitution will prove the bulwark of liberty - the balm of misery - the essence of justice - and the astonishment of all mankind. In short, I believe that it is the best form of government which has ever been offered to the world. I believe that to speak, write, read, think, or hear any thing against the proposed government is damnable heresy, execrable rebellion, and high treason against the sovereign majesty of the convention - And lastly I believe that every person who differs from me in belief is an infernal villain. Amen."

48. *Ibid.*, pp. 324-325.

49. DuBois, p. 54.

50. *Ibid.*, p. 55.

51. *Ibid.*, p. 54.

52. *Ibid.*, p. 56.

53. *Ibid.*, p. 61; Richard Kluger, *Simple Justice* (New York: Alfred A. Knopf, 1976), pp. 32-34.

54. Kluger, p. 34.

55. DuBois, pp. 61-62.

56. *Ibid.*, p. 63.

57. "The Northwest Territory Ordinance, July 13, 1787," Henry Steele Commager, ed., *Documents of American History*, 5th ed. (New York: Appleton-Century-Crofts, Inc., 1949), p. 128.

58. C.B. Galbreath, "The Ordinance of 1787, its Origin and Authorship," *Ohio Archaeological and Historical Publications*, 33 (1924): 118.

59. Edward Coles, *History of the Ordinance of 1787* (Philadelphia: Historical Society of Pennsylvania, 1856), pp. 16-18.

60. Galbreath, pp. 112-113, 116, 176; W.E. Gilmore, "The Ordinance of 1787," *Ohio Archaeological and Historical Publications*, 14 (1905): 157.

The authorship of Article 6 is credited to several men. C.B. Galbreath says that Nathan Dane was primarily responsible for passing Article 6 and that Dane mentioned Melancton Smith of New York and R.H. Lee of Virginia to be committee members who were "in hearty sympathy with him and very materially assisted in the preparation of the Northwest Territory Ordinance." (p. 176) W.E. Gilmore concludes that "the great ordinance, like almost every important and permanent legislative enactment, grew [over its four-year process of finalizing]; gradually accreting the best suggestions of Jefferson, King, Dane; and doubtless also Grayson [Virginia], Carrington [Virginia], R.H. Lee [Virginia], Pickering, and other grand men of the day. . ." (p. 157)

While Nathan Dane, Rufus King, and Richard Henry Lee are mentioned frequently by both Gilmore and Galbreath, we have also credited Timothy Pickering. Pickering's 1783 "Proposition for Settling a New State. . ." was apparently the first plan offered to draft a government for a new state in the Ohio Valley (Galbreath, pp. 112-113). Section 11 of his proposal required "total exclusion of slavery from the State to form an essential and irrevocable part of the Constitution." (Galbreath, p. 116)

61. Commager, p. 129.

62. Galbreath, p. 167, quotes Virginia delegate William Grayson's letter to James Monroe:

The clause respecting slavery was agreed to by the southern members for the purpose of preventing tobacco and indigo being made on the northwest side of the Ohio, as well as for other political reasons.

63. Gilmore, pp. 151-152.

64. Elio Monachesi, "Cesare Beccaria (1738-1794)," *Pioneers in Criminology*, Hermann Mannheim, ed. (Montclair, N.J.: Patterson Smith, 1972), pp. 36-47.

65. Cesare Beccaria, *An Essay on Crimes and Punishments*, translation and commentary by de Voltaire (London: E. Hodson, 1801), "Of Suicide," pp. 126-129.

66. Sellin, p. 66, quotes Beccaria.

67. Rusche and Kirchheimer, p. 53.

68. *Ibid.*, p. 76.

69. Beccaria, "Of Idleness," pp. 84-85.

70. *The Oxford Dictionary of Quotations*, 3rd ed. (New York: Oxford University Press, 1979), s.v. "Anatole France," p. 217 as quoted from *Le Lys Rouge* (1894), ch. 7.

71. "Answers to Questions Propounded by M. De Meusnier," Saul K. Padover, ed., *The Complete Jefferson* (Freeport, N.Y.: Books for Library Press, 1969), p. 61.

72. *Ibid.*, "A Bill for Proportioning Crimes and Punishments," pp. 90-102.

73. C. Randolph Benson, *Thomas Jefferson as Social Scientist* (Rutherford, N.J.: Fairleigh Dickenson University Press, 1971), pp. 145-148 for Jefferson quotation on keeping convicts at hard labor; Padover, p. 91 for Jefferson's comment on the spectacle of prisoners at hard labor serving to deter others from crime.

74. Benson, pp. 145-148; Orlando F. Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Montclair, N.J.: Patterson Smith, 1967; reprint ed. Prison Association of New York, 1922), p. 210.