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UNIVERSITY OF CALIFORNIA, SAN DIEGO

The Penitentiary at Richmond: Slavery, State Building, and Labor in the
South's First State Prison

A dissertation submitted in partial satisfaction of the requirements for
the degree Doctor of Philosophy

in

History

by

Hilary Louise Coulson

Committee in charge:

Professor Rebecca Jo Plant, Chair
Professor Stephen D. Cox
Professor Mark Hanna
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Professor Rachel Klein

2016

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Chair

University of California, San Diego

2016

DEDICATION

For my parents, Richard and Laura Coulson who always believed I could, and for my husband, Frank Fernandez, who helped me prove it.

EPIGRAPH

“You know we don’t have our prisons like yours of the North, like grand palaces with flower-yards.” –Keeper of the Virginia Penitentiary, c. 1866

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ABSTRACT OF THE DISSERTATION

The Penitentiary at Richmond: Slavery, State Building, and Labor in the
South's First State Prison

by

Hilary Louise Coulson

Doctor of Philosophy in History

University of California, San Diego, 2016

Professor Rebecca Jo Plant, Chair

This dissertation explores the genesis of the United States' penal system through the lens of one of America's first prisons, the Virginia Penitentiary. The penitentiary in Richmond was built by Benjamin Henry Latrobe in 1797 and opened for operation in 1800. Because the institution was founded and operated in a slave society, bondage

directly impacted the function of the prison system in ways not yet explored by historians.

Legislators never intended the institution to be used for the confinement of slaves, but as the judicial system expanded, citizens demanded the apprehension of convict slaves due to growing fears of revolt. For the first several decades of operation, the penitentiary was a pillar for the growing state government and the imbedded slave system. When the penitentiary first opened, the immense Virginia countryside spread westward toward modern day Ohio. There were no railroads, only sparsely useable routes on horseback, and just a small number of people lived sporadically across the largely undeveloped land. The transport of prisoners required infrastructure and the penitentiary system was one state entity that encouraged growth and organization.

By apprehending free citizens as well as slaves, residents began to depend on the penitentiary to dispense justice to offenders. The penitentiary became a staple in the state government, and when slaves were convicted of a crime, the state worked with slave owners to compensate them for their loss of property. The state then took ownership of convict slaves and sold them in states further south in the cotton empire.

Most literature on American prisons focuses on moral reform institutions found in Northern facilities, but historians have yet to analyze the importance of the Southern penitentiary model, founded in Virginia. While both regions implemented forced labor for convicts, attitudes toward labor differed in each region and transformed the goals of each system. While moral reform efforts prevailed in Northern penitentiaries, the Virginia system remained punitive. Despite the monetary difficulties of running the penitentiary, the state prison system worked in conjunction with the deeply rooted channels of slave society in order to expand and gain power. Eventually, the penitentiary acted as a pillar for the propagation of slavery in Virginia.

Introduction

After the Civil War, Virginia's state penitentiary was poised to act as a proxy for the outlawed institution of slavery. A century before, the penitentiary did not even exist, nor did a state government. In this dissertation, I examine how state power matured within the rooted channels of a slave society. That is, how the budding penal system functioned in a region dominated by slavery and how this, in turn, created a strong state government that would eventually replace bondage through the imprisonment and enslavement of thousands of freed blacks in the wake of the Civil War. The amendment of Virginia's penal laws in the late 18th century and cooperative efforts on behalf of legislators and planters allowed for the construction of the Virginia Penitentiary and, consequently, offered the state a small amount of power that grew over time. Moreover, plantation owners began to rely on the state penitentiary system to convict, hold, and eventually transport convict slaves out of the state.

This dissertation examines the interplay between the institution of slavery and the formation of state government through the lens of the Virginia Penitentiary and what role this institution played as the pioneer of Southern penology. The plantation and penitentiary worked in conjunction for over six decades, all the while growing the influence of

the state government. When slavery ended, incarceration rates in the state increased by over 400%, and the state-operated penitentiary system stepped in as a new source of involuntary servitude in the Commonwealth. The state, now responsible for the mass incarceration of former slaves, commandeered the most economically lucrative and racially oppressive system in the New South, while fortifying systems of racial hierarchy forged in the Colonial era. Within a half century, a once non-existent institution emerged as an essential pillar in the propagation of slave society.

For decades, historians have studied the rise of the penitentiary system in order to explore the origins of imprisonment. Yet little work has been done to explore the function of the penitentiary system in the South prior to the Civil War. Indeed, most scholarship on Southern incarceration focuses on convict leasing programs implemented after the War. In 1858, the state of Virginia, was the first to experiment with such a system prior to the abolition of slavery, but dismantled its program prior to 1865. Whereas other states picked up the method in reaction to emancipation, Virginia pursued a different course after the

Civil War.¹ Instead of leasing convicts out to private entities, the state used convict labor to rebuild the state's war-torn infrastructure during the Reconstruction Era.

In addition to the sparse literature on the function of Southern penitentiary systems in the 19th century, the breadth of work examining Northern prison systems—namely the Eastern State Penitentiary and Auburn Prison system—commonly contribute to our understanding of early prisons in one region. Yet, exclusive focus on the Northern penitentiary systems only tells a small part of the story. I argue the roots of mass incarceration in the United States exist in the Southern penitentiary model. Virginia was the first penitentiary built south of the Mason-Dixon line, was constructed in 1796, and opened in 1800. Indeed, it pre-dates Auburn by two decades and Eastern State by three.

¹ Calling Virginia "atypical to the rest of the region," Matthew Mancini focuses his study of convict leasing on every other Southern state in the wake of the Civil War. Paul Keve discusses convict leasing and its role in the Virginia Penitentiary's history as well, but he notes that the state of Virginia did not participate in the leasing system in the same ways or at the same time as other states. Though convicts worked outside the walls of the penitentiary as populations increased, the prisoners were never leased to private contractors after 1865; they instead always worked for the state on state-sanctioned projects, such as railroad and canal construction. For more see: Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: University of South Carolina Press, 1996), 6-7; Paul Keve, *A History of Corrections in Virginia* (Charlottesville: University of Virginia Press, 1986), 72.

Though the silent system at Auburn is closer to a modern prison system with forced labor during the daytime and confinement at night, the Quaker reform sentiments of the Eastern State Penitentiary have no place in modern penology. Actually, it is the Virginia system that provides the roots for the modern prison industrial complex, particularly in regard to racial demographics and systems of oppression. While the Auburn prison and the Eastern State Penitentiary models offer historians some answers about the penitentiary systems of the mid-Atlantic and Northeast regions, these institutions are only a piece of the puzzle. Exclusive focus on these two institutions dates back to the early 19th century and became a systemic issue in the study of penology.

The absence of work on the Virginia penitentiary derives from a longstanding indifference toward the institution that dates back to Alexis de Tocqueville and Gustave de Beaumont, who toured the United States' penitentiary systems in 1831. They visited prisons in Connecticut, New York, and Pennsylvania. Despite their trek South, de Tocqueville and de Beaumont never visited the Virginia Penitentiary in Richmond, which had been in operation since 1800. Built by Benjamin Henry Latrobe, a famous architect responsible for some of the nation's most iconic buildings, the Virginia Penitentiary was widely considered

to be a failure. Although de Tocqueville and de Beaumont mentioned it in their report, they never surveyed the facility and dismissed it as a “one of the bad prisons.”²

Though the pair chose not to travel to the penitentiary in Richmond, they wrote a little about Southern crime and justice and the reasons for the high crime rate in the region. According to the writers, manumission allowed for the existence of a penitentiary system in the South. De Beaumont and de Tocqueville maintained freeing slaves from bondage increased the crime rate because newly freed persons were unable to care for themselves, thus thrust into a life of crime for self-preservation. They reported that slaves were hardly

² Alexis de Tocqueville and Gustave de Beaumont, *On the Penitentiary System in the United States and Its Application in France*, trans. Francis Lieber (Philadelphia: Carey, Lea & Blanchard, 1833), 29. De Tocqueville and de Beaumont toured penitentiaries in the Northern non-slave holding United States in 1831. They wrote a report on the penitentiary system and how it could be helpful in France. They came to the conclusion that its implementation was owed to Quaker reformers in the state of Pennsylvania. Some of their most interesting work was about women and crime in the United States. This work is cited hundreds of times in books and articles about the prison system in the United States and often serves as a foundation for understanding the 19th century penitentiary system. For more see: Nicole Hahn Rafter, *Partial Justice: Women, Prisons, and Social Control* (New Brunswick: Transaction Publishers, 2004), 269-279; David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Transaction Publishers, 1971), 81. Additionally, several books have been written about their pair's tour of America and their contribution to philosophical thought and their contributions to American society. For more see: Alexis de Tocqueville, Olivier Zunz, Arthur Goldhammer, Gustave de Beaumont, Alexis de Tocqueville and Gustave de Beaumont in America: *Their Friendship and Their Travels* (Charlottesville: University of Virginia Press, 2010); George Wilson Pierson, *Tocqueville in America* (Baltimore: The Johns Hopkins University Press, 1938); Matthew Mancini, *Alexis de Tocqueville and American Intellectuals: From His Times to Ours* (New York: Rowman & Littlefield Publishers, Inc., 2006).

imprisoned and commented on the effectiveness of the justice system for slaves. This consisted of corporal punishment for misdemeanors, a death sentence for a felony offence, or transportation out of the state if they received a reprieve. The report made no mention of the role of the penitentiary in the transportation process, nor did they acknowledge the crucial role slavery played in the Southern justice system as a whole. Additionally, the writers focused primarily on the free and enslaved black population in the South and their relation to crime. They maintained that Southern crime rested primarily on black perpetrators, stating, "the coloured women commit more crimes than the white women" and continually referring to the increase in crime in regions with a larger black population arguing, "The states which have more negroes must therefore produce more crimes."³ The two focused more attention on the introduction of crime into society after freeing slaves, arguing, "To manumit a slave, therefore, actually amounts to introducing into society a new element of crime."⁴ Their focus throughout the report is the operation of Northern penitentiary systems and the punishment of free, mainly white, members of society.

³ Ibid, 253; 62.

⁴ Ibid, 264.

De Tocqueville and de Beaumont's observations on the American system of penology were influential to their contemporaries and remain important for studies of nineteenth century penitentiary systems. The dismissal of Southern penitentiary models as primitive, or unworthy of study is a recurring problem in prison literature. This dismissal causes a dichotomous understanding of penology in American history. Indeed, the two most prominently studied nineteenth century prison systems are the silent and solitary systems. The false idea that the American penal system stemmed from just two facilities (Auburn Prison and Eastern State Penitentiary) has clouded historians' understanding of the penitentiary system, and dismissed the role of the Virginia Penitentiary in shaping the American justice system.

De Tocqueville and de Beaumont found the penitentiary system in the United States to be motivated by religious sentiments and the desire to reform criminals through moral instruction. Indeed, historians continue to examine reform sentiment and Quaker influence on the Pennsylvania penitentiary system as the central factor to their function and operation. This dissertation challenges preconceived notions about the nature of the American penitentiary system by examining the Virginia Penitentiary, a facility with little focus on moral reform which operated in a slave society for over sixty years. Though more is

written on Northern penitentiaries, from the contemporaries who surveyed the facilities, to the dozens of historians who have analyzed their importance in the United States, their existence is somewhat of an anomaly in the grander scheme of American penology and purpose. Indeed, the roots of modern prison systems in the United States should not be traced to these religious and moral reform institutions. Rather, the Southern penitentiary models—pioneered by Virginia—with high incarceration rates of black offenders, a profit driven system reliant on forced labor, and a lack of moral reform sentiment serve as better models for the roots of incarceration in American society.

Upon his death in 1922, Orlando Faulkland Lewis' book *The Development of American Prisons and Prison Customs, 1776-1845* was released posthumously by the Prison Association of New York. Lewis, the late General Secretary of the Prison Associations of New York, wrote the definitive guide to early American penology with short chapters devoted to each early prison within the United States. The exhaustive research presented in his last manuscript included praise of the Pennsylvania, New York, and Connecticut systems of penology, with especially glowing acclaim reserved for the Auburn system. His effusive praise of the Auburn System, undoubtedly biased, stands in

sharp contrast to his denouncement of the Virginia Penitentiary in Richmond. Lewis contended:

The Virginia Penitentiary seems to have had little influence upon other States. Indeed, it had little to suggest, save that which should be avoided. Its architecture was faulty. No other prison built upon its design. It was not self-supporting. It made no feature of reformation. It could not successfully conduct a silent system, because of the construction of the prison. Its death rate was abnormal. Its solitary cells and dungeons were places of horror. It maintained no chaplain no Sunday School. Its Sabbath chapel was at best intermittent. Its location was unsanitary. In comparison with Auburn, Wethersfield, or the Eastern State Penitentiary, it presented but a sorry figure for the State prison of the leading State of the South.⁵

Lewis's description of what he considered to be an abhorrent system of incarceration could serve as a description of modern-day imprisonment models. The lineage of prisons in the United States is undoubtedly shaped by several factors, yet examining the roots of the penitentiary system only from the perspective of 19th century Northern reform ideology is misguided. The penitentiary at Richmond does not serve as a model of enlightenment ideology that was prevalent in the late 18th century, or the philosophies of liberalism. However, its emergence during that same time period begs questions about its function. To understand the desire of historians to criticize the Virginia

⁵ Orlando Faulkland Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany: J.B. Lyon Company, Printers, 1922), 216.

Penitentiary in relation to Northern penal institutions, an analysis and understanding of the pillars of research in Western penology is crucial.

Methodology

Unearthing the history of Virginia Penitentiary is complicated. Multiple fires—both small and large—in the first 65 years of the prison's operation rendered insurmountable damage to the records. Prison registers, descriptive roles, commitment orders, punishment logs, and various daily report books were destroyed by two large fires—one in 1823, and another in 1865 when panicked Confederates set fire to the city, released all of the convicts in the penitentiary, and fled pending the arrival of Union troops and Lee's surrender. The Library of Virginia separated the remaining penitentiary papers into two series: one prior to 1865 and another after. The records prior to 1865 are sparse, but rich. A few board of visitor's logbooks survived, papers concerning the appointment of a first penitentiary keeper, and architectural drawings of Latrobe's original design.

The genesis of this project considered primarily female prisoners and used Eastern State Penitentiary and Auburn prison as comparative models. In this dissertation, I will use these two institutions as signposts and comparisons, but decided to focus almost exclusively on the penitentiary at Richmond due to the lack of literature or

analysis of the institution. Additionally, the centrality of slavery to the operation of the Virginia Penitentiary offered an analytical route that required a different approach. As a result of the initial direction of the project, I created spreadsheets with the information of every female prisoner incarcerated in the Eastern State Penitentiary between its opening in 1826 and I left off in 1890. I collected medical records, administrative reports, legislative reports, outsider visitor reports, warden's journals, prisoner's letters, and convict's poems. Moreover, I collected moral reform reports, and surveyed the journals of some of the leading visitors and chaplains to the penitentiary. Though I chose not to use these records as the basis for the analysis in this project, my understanding of Quaker and Northern reform ideology is shaped by the hundreds of hours and countless documents I collected, transcribed, and analyzed about the system. This database formed the course of this project and continues to inform my analysis.

I attempted the same data collection process for the Virginia Penitentiary but was forced to take alternate routes and dig deeper into alternative sources of information to uncover the history of the institution. Records for the Virginia Penitentiary are thorough and rich starting in 1863. I formed a prisoner database for every woman incarcerated in the penitentiary between 1863 and 1890, collected

commitment orders, and unearthed superintendent reports of the penitentiary. This data is useful in the last chapter of the dissertation, where the study culminates in an exploration of the impact of the Civil War on the penitentiary's operations. Prior to 1865, documents related to the Virginia Penitentiary can be found in unlikely sources, scattered throughout libraries and archives across the states. This dissertation uses information found in Governor's reports, legislative documents, superintendent communications, and yearly institutional surveys. I've found more unusual sources of information in the personal papers of every Governor in the state between 1796 and 1865. Additionally, journals of visitors, obscure diaries with scant mentions of the facility, and the papers of Benjamin Henry Latrobe, all serve to paint a picture of Virginia and the penitentiary on the James River.

The data collection was vast. After the several visits to archives, thousands of photographs, many hours in front of the microfilm machines, and hundreds of pages of transcription, an important story emerged. The story of the penitentiary is not just that of an obscure institution, for it also sheds light on Virginian society and the emergence of a state government. Not only is the Virginia penitentiary the first institution of its kind in the South, it was also one of the first in the nation and serves as an important and missing piece of the

American penal history's puzzle. The rise of the penitentiary system in Virginia is inextricably linked to the institution of slavery—one that operated for centuries on the notion of a racialized hierarchy and this story emerges in the pages of this dissertation.

Structure

In the first chapter, I examine the ideological origins of the penitentiary in Richmond through the journals of the architect, Benjamin Henry Latrobe. A clear sense the physical and social landscape of Virginia in the late 18th century is foundational for understanding the state's rapid growth and development over the course of the 19th century. In this chapter, I focus on visitors' perceptions of Virginia's people, places, and institutions. The lack of roads, functioning government, connection of major cities, and poverty stricken country folk who lived in the region are all central for setting the stage to discuss the environment in which the penitentiary was conceived of and built. Additionally, Latrobe's original conception for the facility was found while dissecting a wasp's nest and plays a vital role in understanding his intentions for the facility. A student of famous prison reformer Thomas Eddy, Latrobe envisioned a benevolent system of confinement. His examination of a wasp's nest in a cabin in rural Virginia, served as a model for his drawings and

reflected a more humane and enlightened style of imprisonment—one that reflected solitary models of confinement found in the Walnut Street Jail of Philadelphia. Indeed, Latrobe visited the facility. This chapter sets the stage for discussing the divergence of Southern practice from Northern reform ideology. When Latrobe left the project, the penitentiary design was altered, and the actual operation of the facility stood in stark contrast to the architect's original intentions.

In the second chapter, I survey the first 20 years of the penitentiary's operation and how the incarceration of slaves became a central part of its mission. Diverging from the original intent for the institution, the sale and transportation of slaves occurred for the first 65 years of the penitentiary's operation. The sale and transportation of convict slaves required infrastructure and the new state relied on the penitentiary system to provide a level of organization and groundwork for moving slaves across and sometimes out of the state. Nearly half of the state budget was dedicated to the operation of the penitentiary, and it served as a hub that connected the many far-flung, small county jails. Chapter two explores the early years of operation and investigates the chasm between the original intention for the penitentiary—a perceived humane alternative to corporal

punishment for white citizens—and the emerging reality, in which the prison functioned to reinforce the slave system.

In the third chapter, I focus on the debate that took place in the 1820's over the conditions in the penitentiary, the fire that destroyed the facility in 1823, the use of solitary confinement, and the new law that went into effect subjugating free black citizens guilty of a crime to sale and transportation into slavery. By the 1820's, the prison was overcrowded. Legislators responded to the overcrowding of the penitentiary by enacting a new law that sentenced free black convicts to slavery. Thereafter, an intense debate took place over the course of several years that eventually led to the overturning of the law, which was perceived as a draconian punishment, even by Southern standards. This chapter investigates the increasing importance of the penitentiary and institution through which the fledgling state could exert its authority and regulate slavery.

In the fourth chapter, I outline the main differences between the penitentiaries at Auburn, Eastern State, and Richmond by examining the requirements and purposes of labor in each facility. This chapter offers a lens into Southern society through the eyes of Northern reformers and I use the writings of the Boston Prison Discipline Society, the writings of William Crawford, a British surveyor of the American

Penal system, and the more famous reports of Alexis de Tocqueville and Gustave de Beaumont, which offer a perspective on American society and the American prison system. Ultimately, this chapter argues that labor was perceived and utilized differently in the two regions—North and South. While Northern prison reformers viewed labor as reformatory for prisoners, labor in the South was understood as a means of punishing prisoners and lowering taxpayers' burdens. This chapter fleshes out the nuances of American penitentiaries and challenges the notion that an American penal "system" existed in any cohesive form during the 19th century, and that institutions like Auburn and Eastern Penn established models adopted throughout the nation.

In the fifth and final chapter, I explore the ramifications of the collapse of slavery in the state and discuss Virginia's role as the first state to practice convict leasing. But first, the chapter begins with a lengthy discussion of reprieves granted by the Governor to slaves convicted of a felony. The longstanding practice of the state compensating slave owners if their slaves were taken into custody after the commission of a crime became unsustainable. During the 1840's and 1850's, Virginia's governors began to reprieve convict slaves and sell them further south to the more demanding cotton regions in order to recoup some of the state's monetary losses. This

system greatly displeased some Virginian citizens—who wanted the penitentiary to be financially solvent, but also expected it to punish convict slaves and prevent them from engendering the public—two tasks the state was never able to balance.

The fifth chapter also fleshes out the consequences of the penitentiary system's growth and the development of state infrastructure. After the collapse of the Confederacy, the penitentiary was the only entity allowed to enslave people, according to the 13th Amendment, which banned slavery and involuntary servitude "except as a punishment for crime whereof the party shall have been duly convicted." The need for labor increased during the Civil War, and the state managed to coerce labor out of citizens in multiple ways—one being through the use of the state penitentiary's population. Ultimately, hundreds of slave convicts labored on war fortifications and on the state's infrastructure.

In the conclusion, the dissertation comes full circle with the end of traditional enslavement and the beginning of mass incarceration, amounting to state-sanctioned slavery. In the conclusion, I present prisoner demographics and the dramatic increase of prisoners after the Civil War as evidence of this transition. Over the course of 65 years, the penitentiary gained enough power and designed a system strong

enough to uphold the institution of slavery, albeit in a different form and on a much smaller scale. Since Virginia did not operate as a convict leasing state, all of the labor done outside the penitentiary was for the government. This chapter demonstrates the power the state acquired over the course of the 19th century and how a system of racially oppressive servitude persisted well after emancipation. Ultimately, this dissertation investigates the interconnectedness of two institutions—slavery and the penitentiary—that allowed for the government to thrive over the course of the 19th century.

Historiography

Historians have studied the history of incarceration in the United States from a number of angles, looking at the origins of prisons, what systems of government created the penitentiary, where the penitentiary system was most prominent, how the institution worked most effectively, and what sort of impact imprisonment had on society. This literature contextualizes and explains the popularity of mass incarceration, but most studies are regionally focused in the reform-centric and Enlightenment-inspired Northern region of the United States. A common thread in each work is an agreement that the penitentiary system emerged in the late 18th and early 19th centuries and has been the mode of control implemented by the

Western World ever since. Seminal works in the field include David Rothman's classic study, *Discovery of the Asylum: Social Order and Disorder in the New Republic*, Michael Ignatieff's *A Just Measure of Pain: The Penitentiary and the Industrial Revolution, 1750-1850*, and of course, Michel Foucault's *Discipline and Punish: The Birth of the Prison*.⁶

These studies make arguments about society at large, the role of religion and Enlightenment ideology in penal reform, and the

⁶ Rothman's *Discovery of the Asylum*, published in 1971, is foundational for any study about the rise of prisons or asylums in American society. Rothman posits that the rise of institutions in the 19th century directly relates to the desire of enlightenment thinkers to alleviate the perceived "ills" of society. As the population grew, Americans observed an increase in crime and poverty and felt a need to contain the outbreak. Jacksonian Americans believed they could control crime, poverty, mental illness, and delinquency by containing it all in four walls. Ignatieff explores reform and enlightenment thinkers who devised imprisonment instead of death or torture as punishment for a crime. Ignatieff's *A Just Measure of Pain* explores the rise of the penitentiary system in England by examining the intentions of reformers in 18th century Europe like John Howard, Jeremy Bentham, and Cesare Beccaria who brought issues of crime and punishment to the fore. Enlightenment ideology, religious philosophies, and nonconformist attitudes circulated in late 18th century intellectual circles, and reformers sought to improve criminals instead of inflict violence or even death sentences. Penalties shifted from a physical assault directed at the body to a system of punishment meant to impact the mind. Ignatieff concludes by labeling the reform efforts of the late 18th century as a paradox. Foucault's polarizing study, *Discipline and Punish*, is difficult to categorize. Combining history, sociology, and philosophy, Foucault argues that prisons should be viewed as hegemonic institutions designed to create disciplined, or "docile," bodies. For Foucault, the emergence of the prison system in the 19th century was a concrete manifestation of the planned domination and control of modern society by an elite few. Late 18th century notions of liberty and freedom made incarceration a more potent mode of punishment than corporal abuse. Foucault suggests the government used incarceration to control and repress the people it governed by abusing their very essence. Through their work of creating "docile bodies" by physically and psychologically punishing citizens, the government was better able to manipulate its people in the long term. For more see: Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1977); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978); David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Transaction Publishers, 1971).

importance of power structures to maintain social order. All published in the 1970's, these three works invited further exploration of the role of prisons in the Western world.

This dissertation engages with the work of Foucault but argues that Southern society in the United States did not subscribe to the same structure or evolution of institutions presented in *Discipline and Punish*. In a society already dominated by slavery and the general absence of liberty for a vast majority of the population, the Virginia Penitentiary did not offer a new kind of punishment or threat to the masses, but rather, built on an already existing system of repression and forced servitude. Foucault's arguments about liberty has little bearing on the conditions of free or enslaved blacks in the South whose experiences with liberty differed so greatly from their white counterparts.

Most work in the field of prison or institutional history engages with Rothman, Ignatieff, and Foucault. More recent literature pushes back explanations for the rise of the penitentiary posited by these foundational authors. Adam Hirsch's, *The Rise of the Penitentiary: Prisons and Punishment in Early America* and Michael Meranze's, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835*, both published in the 1990's, resist the

framework theorized by the pioneers of the 1970's.⁷ In *The Rise of the Penitentiary*, Hirsch rejects the notion that the rise of the penitentiary was rooted in the United States and contends that the penitentiary's ideological roots are European.⁸ For Meranze, punishment or alienation of the individual from society was not the main objective of the penitentiary; rather, rehabilitation of the soul reigned supreme in the Pennsylvania system, dominated by Quaker ideology.⁹

⁷ Adam Jay Hirsch, *The Rise of the Penitentiary: Prisons, and Punishment in Early America* (New Haven: Yale University Press, 1992), 116. Hirsch traces the rise of the penitentiary to the centuries-old tradition of housing criminals or vagrants in workhouses. The penitentiary remained the next logical step in punishing offenders, because reformers conceptualized it as a reaction to a shift in structure of society. As cities and towns grew, the threat of banishment or public humiliation did not impact the offender as it once had. The breakdown of small communities made small town justice less menacing or useful for shaming criminals into compliance. Prisons offered a more threatening punishment for criminals and isolated offenders with no intention of reintegration into society. While corporal punishment and shaming were utilized for centuries and allowed for the immediate return of the offender to the community, the penitentiary "built a wall instead of a bridge between offenders and society." Hirsch combats the idea that prisons or correctional institutions existed as a means for reformation and suggests the penitentiary worked to stigmatize and alienate criminals rather than integrate them back into society.

⁸ For a broader discussion of European models of incarceration and their impact on the Western world see: Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Verso, 2003), 3; and Michael Ignatieff, "State, Civil Society, and Total Institutions: A Critique of Recent Social Histories of Punishment," in Stanley Cohen and Andrew Scull, eds., *Social Control and the State: Historical and Comparative Essays* (Oxford: Blackwell, 1983), 75-105.

⁹ Meranze explores the penitentiary system in Philadelphia, which started at the Walnut Street Jail, and discusses the impact of reform efforts on prisoners. The shift from corporal punishment to long term and mass incarceration was a concerted effort on behalf of philanthropic Quakers and various Christian based religious sects to rehabilitate the soul in order for the individual to re-enter society. Meranze argues the purpose of these institutions was rooted in a deep desire to advance society through improvement of the soul. Meranze analyzes the context of the state in the late 18th century and advances religious and moral reform ideology as the driving forces behind the liberal ideas that surrounded the desire to incarcerate and rehabilitate instead of physically maim offenders. Meranze recognizes the failure in

The philosophies and conclusions of these authors inform much of the work done on prisons, crime, and punishment. Yet, none of these works consider the development of the penitentiary in the South. Indeed, many works fail to recognize the development of the Virginia Penitentiary in the late 18th century and contain factual inaccuracies about its construction and operation. Even with the publication of later work that contests *Discipline and Punish*, Foucault tends to dominate each discussion. His suggestions of a widespread governmental conspiracy to subvert the masses does not apply to every region in the Western world, or even every region of the United States. To discuss the Virginia Penitentiary as a far-reaching system of state-sponsored coercion in the late 18th century would be giving the nascent organization of the state far too much credit. During the period of the Early Republic, the “state” was weak, ineffectual, and took a backseat to the profitable and effective system of slavery that functioned for over 100 years in the region. Instead, the state rose in conjunction with the penitentiary and depended on the already rooted channels of slavery to lend legitimacy to the institution in the first place. Foucault might say that the hierarchy of slave society

the system and agrees with Foucault in the sense that a deprivation of liberty damaged the very dogma of the enlightenment period, thus condemning confined souls to a failed ideological experiment.

served as a government entity on its own, but his work is clear to point out that slavery and incarceration are two separate institutions.

The existence of a penitentiary in slave society problematizes these seminal works about prisons. The Virginia penitentiary implemented no reform efforts, was not inspired by a distinctive set of religious beliefs, and did not adhere to enlightenment ideology of humane punishment; thus, the existence of a quintessentially Southern penitentiary complicates our understanding of their function and operation in the Early Republic. While this dissertation takes the foundational works of Rothman, Ignatieff, Foucault, Hirsch, and Meranze into account, the studies are most useful in terms of understanding the rise of the penitentiary system in non-slave holding regions. In the context of the American South, each of these works is complicated by the introduction of an additional layer of hegemonic control and hierarchy.

To understand the history of operations at the Virginia Penitentiary, I draw on the work of Paul Keve, a former corrections officer and later professor at Virginia Commonwealth University who wrote a narrative piece called *A History of Corrections in Virginia*.¹⁰ Aside from this work, no scholarship exists that focuses specifically on

¹⁰ Keve, *A History of Corrections in Virginia*.

the Virginia Penitentiary. However, much work has been done on the development and impact of the penitentiary system in the United States, which I outlined above.

The development of slave society in Virginia dates back to the 17th century and plays a vital role in understanding the structure and social formation of the region prior to independence and statehood. In his work *Foul Means: The Formation of Slave Society in Virginia 1660-1740*, Anthony Parent argues that a few elite planters who brought racial slavery to Virginia in the 17th century decided the region's structure and fate for over 200 years.¹¹ This small group of wealthy growers contended with years of societal distress, fear of revolt (which was sometimes realized), and class conflict due to their implementation of racial slavery. Virginia planters structured the land and labor of the region in a manner that yielded the most profit through upholding a system of slave labor. The importance of upholding this system rested in the economic gains of plantation owners. The profit-driven slave society functioned for over 100 years in colonial Virginia. Upon the establishment of independence, the institution of slavery continued to thrive and the establishment of a

¹¹ Anthony S. Parent, *Foul Means: The Formation of Slave Society in Virginia, 1660-1740* (Chapel Hill: University of North Carolina Press, 2003).

new form of government was in its infancy. Enslaved labor was so important to the function of Virginia society that it comes as no surprise that a penitentiary system—one that subjected prisoners to forced labor—would thrive in the region. Though Parent does not address the issue of crime, punishment, and subjugated labor directly, his discussion of the rise and persistence of slavery in Virginia offers necessary context for understanding the rise of state government and institutions in conjunction with the so called “peculiar institution.”¹²

In addition to slavery being an important pillar for the formation of the American penal state, the system was also grounded in the ability of the state to extract labor from convicts—this was true in the Northern and Southern institutions alike. Rebecca McLennan, author of *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941*, offers a sweeping narrative of the importance of labor in the development of the penitentiary system. McLennan argues that from the founding of the nation and well into the 20th century, the state and federal governments of the United States worked to extract labor from convicts. Her work, focused on the state of New York, argues that the impact of the 13th Amendment,

¹² Slavery is often referred to as the “peculiar institution.” This phrase was used in Kenneth Stamp’s 1956 book, *The Peculiar Institution: Slavery in the Ante-Bellum South*, (New York: Vintage Books, 1956).

which banned slavery in cases except for those convicted of a crime, has never been fully explored in regard to its impact on the incarcerated. In the antebellum era, McLennan argues, New York desired a profitable prison labor force, but always struggled to produce it. But while her analyses of labor and incarceration have important implications for the Auburn prison, her claims about the Virginia Penitentiary are wrong. McLennan posits the prison system in New York as the foundation for penal practices in Southern states and even suggests Virginia was built on the Auburn model, which is untrue.¹³ Actually, the Virginia Penitentiary predated Auburn by nearly two decades.¹⁴ Virginia legislators began amending the penal laws of

¹³ Rebecca McLennan. *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (New York: Cambridge University Press, 2008), 63.

¹⁴ Though McLennan's work on Auburn is useful, other inaccuracies about the Southern justice system are present in her analysis. Another example would be her discussion about penitentiary systems in the late 18th century, where she claims Pennsylvania and Vermont were the only states in the late 18th century that radically amended their penal codes to include a penitentiary. McLennan contends: "Just two of the state constitutions—Pennsylvania's and Vermont's—prescribed an alternative punishment: Both mandated the construction of 'houses' in which convicts would be put to 'hard labor.'" She continues: "Entirely absorbed into the battle for independence from the world's mightiest empire, no state fleshed out, in any systematic way, an alternative theory and practice of punishment." She continues: "Entirely absorbed into the battle for independence from the world's mightiest empire, no state fleshed out, in any systematic way, an alternative theory and practice of punishment." The state of Virginia amended its penal codes in 1796. See below.

the state in 1792, and the erection of a penitentiary house was called for in the 1796 session.¹⁵

While understanding the importance of forced labor and Northern penal practices inform this study, work rooted in an examination of Southern justice systems is even more critical. Edward L. Ayers' *Vengeance and Justice: Crime and Punishment in the 19th Century American South* and Philip Schwarz's *Slave Laws in Virginia: Studies of Legal History in the South* are both important for an examination of penal justice in the South. Ayers' study of crime and punishment is regionally focused on the American South and explores corporal punishment and its prominent role in the justice system in the antebellum period. *Vengeance and Justice* traces the evolution of justice in the South from incarceration within a penitentiary to the rise

¹⁵ "An Act to Amend the Penal Laws of this Commonwealth," *The Statutes at Large of Virginia from October Session 1792, to December Session 1806, Inclusive* (Richmond: Samuel Shepherd, 1835), Chapter 2, Part 17. The Resolution passed December 15, 1796 states the following: "The executive of this commonwealth are hereby requested as soon as may be, to cause as much land in or near the city of Richmond, to be purchased for the use of the commonwealth, as will be sufficient for the building of a gaol and penitentiary house, which shall be constructed of brick or stone, upon such plan as will best prevent danger from fire, and sufficient The Statutes at Large of Virginia to contain with convenience two hundred convicts at least, with a yard sufficiently capacious adjoining thereto, for the said convicts occasionally to walk about and labour in, which said yard shall be surrounded by walls of such height, as without unnecessary exclusion of air will be sufficient to prevent the escape of the prisoners."

of chain gangs in the post-bellum period.¹⁶ Because convict leasing played such a central role in the development of justice systems in the South after the war, Ayers devotes the bulk of his study to the state of Georgia and three regions within the state to cover justice from the city to the farm. While Ayers' study is helpful for understanding Southern social practices and the evolution of justice in some regions, however, his focus on Georgia does not help us understand the relationship between Virginian society and the penitentiary in the 19th century. Because Virginia never operated a convict leasing system after 1865, the state is an outlier in a discussion of Southern justice in

¹⁶ The rise of chain gangs in the American South after the Civil War is a topic covered extensively in the historical literature. Most work posits the mass incarceration of blacks and their subsequent forced labor was a new version of slavery, but none trace the practice and its roots to the Early Republic, nor do they discuss how the penitentiary system and state government aided this transition. Convict leasing was prevalent in most Southern states, but the state of the Virginia never practiced a leasing system after the war. For more information on convict leasing, its brutality, and the connection to slavery see: Charles L. Flynn Jr., *White Land, Black Labor: Caste and Class in late Nineteenth-Century Georgia* (Baton Rouge: Louisiana State University Press, 1982); Alex Lichtenstein, *Twice the Work of Labor: The Political Economy of Convict Labor in the New South* (London: Verso, 1996); Matthew J. Mancini: *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: University of South Carolina Press, 1996); David M. Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996); C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1951). See also: Christopher R. Adamson, "Punishment After Slavery: Southern State Penal Systems, 1865-1890," *Social Problems* 30 (July, 1983), 556-566; Elizabeth Bonner Clark, "The Abolition of Convict Lease System in Alabama," M.A. thesis, University of Alabama, 1949, 60; E.T. Hiller, "Development of the Systems of Control of Convict Labor in the United States," *Journal of the American Institute of Criminal Law and Criminology* 5 (July, 1914), 241-69; and Fred Helsabeck, "Convict Labor Systems in Virginia, 1858-1907," M.A. George Peabody College for Teachers, 1932.

the 19th century. The development of Virginia's penitentiary system and its replacement for the institution of slavery in the post-bellum period should be rooted in a study of the Early Republic and the establishment of the state's penitentiary system. Moreover, the formation of laws in Virginia contributes a great deal to understanding the state's unique role in the history of penology.

In conclusion, an examination of laws in Virginia caps the analysis of foundations for this study. Schwarz's *Slave Laws in Virginia* offers an analysis that includes five essays on slave laws, capital punishment, transportation of slaves convicted of a crime, and fugitive laws. Schwarz argues that Virginians responded to slave behavior and passed laws dependent on "whites' perceptions and assumptions about that behavior."¹⁷ Schwarz's study is rooted in the passage of bylaws in the state as a reaction to the enslaved black population, and postulates slave-master relations influenced law making and shaped the legal system in Virginia. Schwarz's chapter about slave execution and transportation is the most salient for this study because of his exhaustive research on transportation, sales, and executions that took place in the antebellum period. Schwarz's argument about the

¹⁷ Philip Schwarz, *Slave Laws in Virginia: Studies of Legal History in the South* (Athens: University of Georgia Press, 1996), 1.

Virginia legal code and punishment of slaves supports my argument by proving the strong relationship between the institution of slavery and law in Virginia. Though Schwarz's study is not wholly rooted in the rise of state government, but rather the implementation of legal codes, my work builds on *Slave Laws in Virginia* by examining a state institution and its impact on expanding state government.

Schwarz's work is a good starting point, but begs several questions about how slavery informed the rise of state government in the first place. Though Schwarz makes the case that the institution of slavery had a strong impact on Virginia's laws, his analysis does not explore the rise of the institution designed for the implementation of the laws he examines. This dissertation seeks to explore these questions by examining interplay between the institution of slavery and the formation of state government through the lens of the penitentiary system. The success of the penitentiary depended on the state's ability to establish and wield power in order to rise to prominence. The state-sponsored project of the penitentiary acted as an essential pillar for the perpetuation of slavery while simultaneously consolidating authority in the region.

This dissertation tells the story of how one institution encouraged the growth of state government, shaped the carceral system, and

impacted not only the lives of tens of thousands of prisoners who labored in and outside its walls—but impacted American society as a whole.

Chapter I:

The Wasp Nest: Benjamin Henry Latrobe and the Construction of the Virginia Penitentiary, 1797-1800

In the summer of 1796, architect Benjamin Henry Latrobe observed a colony of wasps at Rippon Lodge in Prince William County, Virginia. Some wasps constructed a nest behind a painting in his drawing room, while others patrolled the premises. After days of watching, Latrobe removed the painting from the wall. He detached the nest, dissected it, and examined the contents. He admired the ingenuity of the design and the practical application of nearby materials to construct the walls. He noticed the wasps worked with their surroundings to complete construction of the nest. As he continued to disassemble it, Latrobe detected that each nest contained cells, all perfectly even and smooth. He found each compartment housed imprisoned occupants—spiders crowded into each cell without light, air, food, or water to face certain death. In his journal, Latrobe reflected on their imprisonment: "I have been often shocked and distressed at the Scenes of cruelty and misery that seem to form part of the System of nature; but I scarce ever saw so dreadful

a contrivance of torment as appears to be employed by the Masons [wasps] against the poor Spiders."¹⁸

This particular entry could easily be overlooked when surveying the many volumes of Latrobe's journals, which span 25 years. But it is important when one considers the position Latrobe accepted a year later as the architect of the prison in Richmond—Virginia's first penitentiary.¹⁹ Years after his initial inspection of the wasps in Virginia, Latrobe penned a paper which compared them with wasps he witnessed in Pennsylvania.²⁰ His comments on the two systems of imprisonment employed by the wasps mirrored the systems of incarceration between the two states. Virginia and Pennsylvania developed different styles of imprisonment—a difference Latrobe perceived as reflective of the natural world.

¹⁸ Benjamin Henry Latrobe, *The Virginia Journals of Benjamin Henry Latrobe, 1795-1798*, ed. Edward C. Carter and Angeline Polites (New Haven: Yale University Press, 1978), 159.

¹⁹ Although imprisonment had long been practiced, the Virginia Penitentiary was the first building commissioned in the United States for the purpose of solitary and long-term confinement. While the Walnut Street Jail in Philadelphia was experimenting with the penitentiary system, the jail was originally built without that intention. In contrast, the penitentiary in Richmond was the first institution commissioned for the purpose of reformative confinement. The facility was built from scratch with the intention of confining criminals for a prescribed time period and re-releasing them back into society as reformed citizens. The blueprints were the first to incorporate reform sentiments and new ideas of proper confinement, and the facility was the first to be built with these intentions from the outset.

²⁰ B. Henry Latrobe, "On Two Species of SpheX, Inhabiting Virginia and Pennsylvania, and Probably Extending through the United States," *Transactions of the American Philosophical Society* 6 (1809).

Latrobe boasted experience with prison design in England, and his comments on the cruelty of overcrowding in the wasp nest informed his reflections on human confinement. In his design scheme for the Virginia Penitentiary, Latrobe sketched rows of cells that were connected, but partitioned into individual quarters. His design intended space for solitary confinement, distinct accommodations for women, and workshop areas for convict labor.²¹ The sleeping quarters Latrobe envisioned housed one prisoner each to avoid the overcrowding he witnessed in nature. Over time, his vision for the building crumbled due funding problems, design sustainability, and disagreements with the builders. These problems cropped up incessantly during the construction of the penitentiary. Indeed, the difficulties Latrobe faced during the building phase of the prison foreshadowed issues the facility would encounter over the course of the 19th century. Chronic underfunding, space limitations, and poor oversight plagued the prison for years. The state's refusal to repair the

²¹ Blueprints for the penitentiary design are housed at the Library of Virginia in Richmond. See: Benjamin Henry Latrobe, *Elevations and Drawings for the Virginia "Penitentiary House,"* No. 1. Special Collections, State Records Collection, The Library of Virginia, Richmond, Virginia.

building and or address sanitation problems spawned filth, disease, and high death rates.²²

The Virginia Penitentiary operated nearly two centuries and remains unexplored by the academic community.²³ More broadly, the developments of the carceral systems in the South remain unknown. An examination of the divergence in regional systems of incarceration between the bustling northern cities in the Early Republic versus the “back country of the slave States below the mountains,” as Latrobe described the South, generate a better understand the development of American prisons.²⁴ In order to study the origins of this institution, an analysis of the architect, his design, and the lasting implications of the building’s problematic construction are essential.

Latrobe recorded various life experiences in his journal. Entries covered topics such as geological surveys of the land, maps,

²² “William Berkeley and Philip Norborne Nicholas to Governor of Virginia” October 26, 1800. Records of the Virginia Penitentiary, Series 1, 1796-1865, Accession 37539, Penitentiary Construction Papers, 1797-1799; “Board of Inspectors Proceedings,” July 23, 1801, Accession 37489, Papers Concerning Board of Visitors, prisoners, prison conditions and investigations, and penitentiary finances, 1798-1824, State Records Collection, The Library of Virginia, Richmond, Virginia; *Reports of the Prison Discipline Society, Boston* (Press of T.R. Marvin, 1855), 128.

²³ Paul Keve, a criminal justice professional and corrections administrator, wrote a history of the Virginia Penitentiary that was published in 1986. The book is an excellent source for a comprehensive overview of the evolution of the prison, but it lacks any analysis of the historical implications for the penitentiary. For more information see: Paul W. Keve *The History of Corrections in Virginia* (Charlottesville: University of Virginia Press, 1986).

²⁴ Benjamin Henry Latrobe, *The Journal of Latrobe*. (New York: D. Appleton and Company, 1905), 34.

architectural drawings, musings on the environment and biology, philosophical treatises, ancestry data, personal anecdotes, and various business dealings. Though Latrobe was best known for his architectural work in Philadelphia, Washington D.C., Baltimore, and New Orleans, his first major building commission in the United States, the Virginia Penitentiary, is often overlooked.²⁵

Latrobe offered his viewpoints regarding Southern culture in the late 18th century, and his comments provide context for understanding the development of the carceral system and the state in the Early Republic. Latrobe's journal entries deliver background on the institution's troubles during the building phase. These problems anticipated the ultimate failure of the institution in the minds of prison reformers and historians. His journal entries and correspondence thus provide the foundation for examining the Virginia Penitentiary and its role in society more broadly.

Latrobe's designs impacted the lives of thousands for better or worse. Before he began overseeing the project, he visited several towns in the state. His desire to start fresh in the United States helps to explain some of his first work choices in the remote South. Latrobe had

²⁵ Some of Latrobe's best known structures include the Bank of Pennsylvania in Philadelphia, work on the Philadelphia Water Works, the Roman Catholic Cathedral of Baltimore, and most significant, the United States Capitol in Washington, DC.

prior experience in surveying and constructing of jails and police headquarters in England, which he drew on in constructing the penitentiary house in Richmond. His relocation to Virginia also allowed him to escape the distress he faced in his homeland after the death of his wife.²⁶ Although geographically removed, his new endeavor allowed him a level of comfort while working on a familiar concept.

When Latrobe travelled to the United States in 1796 he left his two young children in the care of his sister. Virginians extended a warm welcome to the new transplant because the fledgling union required an experienced architect like Latrobe. According to the ruling Federalist Party, remote regions of the United States required establishments to function. The vast and remote swaths of land in the backcountries lacked the basic infrastructure required to govern and the perceived threat of chaos required organization to secure the region. Latrobe intended to spend a short time in the American South before making his trek to Philadelphia, where several members of his extended family resided. Despite attempts to relocate, he remained sidetracked in Richmond for the first two and a half years of his time in

²⁶ In a letter written to his uncle on April 8, 1798, Latrobe explained his departure from Britain: "The loss of my wife made business irksome to me, and I therefore resolved to leave the country where everything reminded me of how happy I had been and how miserable I was." For more, see: Latrobe, *The Virginia Journals*, 368.

the United States due to a desperate need for infrastructure in the American South.

Society in Virginia

Latrobe's journals paint a picture of Virginian society in the Early Republic and offer an alternate take on the region from the perspective of a new transplant. Latrobe's perspective is crucial, because his voice stands apart from the sea of warden's journals, annual reports, legislative action, and various government organizations advocating the importance of a penitentiary. Even though he was accepted as an elite member of the community from the time of his arrival, Latrobe's observations reflected a foreigner's perspective. Not only was Latrobe welcomed into circles of Virginia's most influential men, they sought his expertise toward structuring and maintaining order in the region. Men such as lawyer and land speculator Henry Banks, Governor James Wood and future President of the United States and Virginia native Thomas Jefferson befriended Latrobe.²⁷ In his dealings with the political elite, Latrobe noted many

²⁷ Upon arriving in Virginia, Latrobe had the good fortune of befriending important figures in society. In a letter to Thomas Jefferson dated March 28, 1798, Latrobe admitted his popularity among Virginia's elite: "I am guilty of the crime of enjoying the friendship of many of the most independent and virtuous men in Virginia, and even was seen at a dinner given to Mr. Monroe." He goes on to request an audience with Jefferson because he was a fan of his work. Latrobe and Jefferson maintained a business relationship throughout the former's working life in the United States.

similarities with his homeland, noting “In spite of the unpopularity of which politics will annex to the? assertion, the politics of Virginia are English.”²⁸

Although welcomed into the upper crust, Latrobe was aware of inequities that existed in the state. In 1796, he traversed a large region of Virginia on horseback. He spoke with slaves on plantations to ask for directions, and at one point, he lost his way in the deeply wooded and undeveloped backcountry. During his travels, Latrobe noticed the remote nature of each plantation. On this journey, he surveyed a town near a rock quarry and noted the indigence of rural Virginians. He described the conditions of some of the poorest Virginians in his journal. Latrobe contemplated their houses, which had “dripping roofs” and commented on the “open state of their log walls; which admit the winter’s blast from every quarter.” As he rode through the land along the Potomac River, he discovered that most families lived in abject poverty, subsisting on “their wretched food, often scanty, never certain.” He described their “constant fighting and quarreling with each other; the poverty, the disease!” Indeed, Latrobe was alarmed to find the Virginia backcountry to be ridden with disease

²⁸ Latrobe, *The Journal of Latrobe*, 45.

and malnourishment.²⁹ The rampant alcoholism received his most scathing criticism. Regardless of the societal position he attained, Latrobe remained astutely aware his status was privileged and atypical in the American countryside.

Even so, Latrobe's interactions with the well-to-do members of society left him bewildered at times. After attending the horseraces in Petersburg, a favorite past time and social event for residents, he found little common ground for dialogue amongst his comrades and remarked: "Everybody here is so engaged in talking of Lamplighter, the Shark mare, the Carolina horse, etc., that I am as much at a loss for conversation as if I were among the Hottentots."³⁰ His strong English manners and traditions were not a perfect fit in Virginia, even though he admitted many of their customs, manners, demeanors, and traditions were British in origin.

Latrobe was also struck, however, by the stark differences in culture Americans cultivated over the years, which partly reflected the

²⁹ Ibid.

³⁰ Latrobe often felt ill at ease amongst his company in the United States, and this situation at the horse track is a good example of that. His comparison of the men to "Hottentots," a tribe of South Africans discovered by Europeans in the 16th century displays Latrobe's knowledge of history and foreign affairs while simultaneously insulting the Virginia backcountry men as no more civilized than the South African tribes of Hottentots. For more see: Latrobe, *The Virginia Journals*, 101; For a nuanced discussion of the culture in Petersburg around the turn of the 19th century see also; Suzanne Lebsack, *The Free Women of Petersburg: Status and Culture in a Southern Town 1784-1860* (New York: Norton, W. W. & Company, 1985), 5.

extreme isolation in which many rural Virginians lived.³¹ In one encounter, he interacted with a family who lived on a remote plantation outside Petersburg. A woman sat on her front porch cradling her husband's head. Hours away from succumbing to consumption, the man sought solace in his wife's lap with his children flanking his sides. Latrobe happened upon a dying man who would expire any second, and in that moment, he understood the crisis of American isolation. He understood the importance of collective effort, infrastructure, and lamented for the man who would die in obscurity. During a separate trip along the Potomac he noticed: "...the hundreds of half-starved, miserably lodged, idle, besotted, and fever-smitten families that inhabit the country on the Potomac, and indeed all of the back country..."³² The American countryside presented a distinct type of remoteness that was foreign to Latrobe, particularly in contrast to London where he recalled: "the crowded inhabitants are forced to trample upon each other's sufferings."³³ His visits to these remote regions and encounters with the people who lived there were startling experiences—remarkable enough that he took the time to

³¹ For an astute discussion of cultural refinement in the new republic, see: Richard L. Bushman, *The Refinement of America: Persons, Houses, Cities* (New York: Vintage Books, 1993).

³² Latrobe, *The Journal of Latrobe*, 36.

³³ Latrobe, *The Journal of Latrobe*, 4.

write of these experiences at length in his journal. Latrobe realized that upheaval in remote regions created rifts and challenged the formation of an American identity. His experiences in the backcountry informed a lifelong desire to work on projects that supported the establishment of a firmer sense of national identity.³⁴

Identity played a key role in Early American efforts to cultivate unstable regions. In later journal entries, Latrobe referred to Virginian's behavior as "American." In the same entry, Latrobe used the term "we" to signal his acceptance of a new identity. Moreover, he codified a sense of distinct national persona. The emergence of American identity served a key function for the rise of state power and established authority. The formation of a centralized power functioned as a steadying force in the more wayward regions of Virginia. Government institutions, such as the Virginia Penitentiary, manifested the state's existence and ability to govern and maintain order.

Latrobe's observations of the people and landscape in Virginia demonstrate the struggle that existed in Virginian society. The divide plagued the state for much of the 19th century. The sense of

³⁴ His desire to work on more important projects for establishing an infrastructure can be seen in his work on the Philadelphia Water Works right after he left Richmond. Latrobe became somewhat obsessive over the Yellow Fever epidemic that hit Philadelphia in the late 18th century. Indeed, he lost his good friend Dr. Giambattista Scandella to the sickness in 1798. His work on the providing a cleaner water supply for the city of Philadelphia reflects his urgent desire to assist societal ills. Ironically, Latrobe himself died of Yellow Fever in 1820.

lawlessness and isolation that Virginians experienced slowly coming to diminished as the state became more powerful and invested in maintaining order. Meanwhile, Southern planters wielded power and served as the wealthiest and most influential members of society.³⁵ Planters' involvement in centralizing government made the rise of the penitentiary system possible. Their hold on power influenced the formation and enforcement of laws throughout the state. Planters functioned as government officials and remained invested in a stable society to secure their economic strongholds in the South.

Latrobe's Background

The story of the Virginia Penitentiary uncovers the history of the thousands of downtrodden prisoners who were shut into the architectural wonder. Moreover, the man commissioned to build the fortress, emerged as an intriguing character from its inception. Conceivably the first penitentiary in the nation, the Virginia

³⁵ Planters ruled Virginia's society from the early colonial period until Reconstruction. For more specific literature on this demographic see: Charlene M. Boyer Lewis, *Ladies and Gentleman on Display: Planter Society at the Virginia Springs, 1790-1860* (Charlottesville: University of Virginia Press, 2001); Anthony S. Parent, Jr. *Foul Means: Formation of a Slave Society in Virginia, 1660-1740* (Chapel Hill: University of North Carolina Press, 2003).

Penitentiary did not emerge from a void.³⁶ While the practice of imprisonment had of course persisted for centuries, the penitentiary was a novel concept because it was not intended as short-term holding grounds for offenders awaiting corporal punishment. Rather, the confinement itself was the punishment.³⁷ Architects, legislators, and builders considered new design concepts to accommodate long-term sentences for a variety of offenders.

Latrobe mentioned his advanced knowledge of British prisons and architecture in a letter he wrote to Virginia's Governor James Wood in March of 1798. Latrobe's familiarity with the design and structure of European prisons provided a starting point for the structure. Yet European institutions lacked elements of compassion

³⁶ For more information on the penitentiary system and its emergence in the United States see: Harry Elmer Barnes, *The Evolution of Penology in Pennsylvania: A Study in American Social History* (Indianapolis: The Bobbs-Merill Company, 1972); Mark E. Kann, *Punishment, Prisons, and Patriarchy: Liberty and Power in the Early American Republic* (New York: New York University Press, 2005); Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: University of North Carolina Press, 1996); Kathryn Preyer, "Penal Measures in the American Colonies: An Overview," *The American Journal of Legal History* 26 (1982), 50; Louis Robinson, *Penology in the United States* (Philadelphia: John C. Winston Company, 1922).

³⁷ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995).

Latrobe sought in his new design.³⁸ In a letter to his friend Dr. Giambattista Scandella in January of 1798, he mentioned his relationship with London prison reformer John Howard.³⁹ Latrobe explained: "I had the happiness to inherit from my father the friendship of the great Mr. John Howard whom I knew during the last years of his stay in England." He went on to discuss their acquaintance and how Howard taught him "what is good, secure, and [a] humane mode of confinement..."⁴⁰ Although John Howard remained actively involved in reforming prisons, Latrobe sought to distance his concept from those adopted across the Atlantic. In the late-18th century, prisons in Great Britain were notorious for overcrowding, a lack of sanitation,

³⁸ Latrobe served as an architect to the Police of Middlesex and Westminster and was friends with prison reformer John Howard. In a letter to his uncle, Henry Antes dated April 8, 1798, he explains his experience working on carceral and security systems in London and this gave him the experience he felt qualified him to work on the Virginia Penitentiary in Richmond. Additionally, his friendship with Howard gave him ideas for making a penitentiary safe, wholesome, and humane. Latrobe's journals reveal his strong desire to make the penitentiary progressive and reform centric. Although Howard was invested in prison reform in Europe, the system was already ingrained and had little opportunity or money to improve. Latrobe saw the project of creating a system of incarceration from the ground up as an opportunity to implement that humane system he learned of from his friendship with John Howard. For more information, see; Latrobe, *The Virginia Journals*, 367.

³⁹ Dr. Giambattista Scandella (d. 1798) was born in Venice and studied Medicine in London before moving to the United States around the same time as Latrobe (1796). He met Latrobe while traveling through Virginia and the two became close friends, often corresponding. Upon his return trip to Europe, passing through the State of New York, Scandella became ill with Yellow Fever and died that September. For more, see: Latrobe, *The Virginia Journals*, 343; Talbot Hamlin, *Benjamin Henry Latrobe* (Oxford: Oxford University Press, 1955), 80, 127, 133; Harry R. Warfel, *Charles Brockden Brown: American Gothic Novelist* (Gainesville: Florida: University of Florida Press, 1949), 118-120.

⁴⁰ Latrobe, *The Virginia Journals*, 343.

and limited activity for prisoners.⁴¹ His reference to the “cruelty of nature” described earlier in reference to the wasp nest, paralleled the inhumanity prisoners faced in European jails. Although he admired the design of the nests, the function was limited. Latrobe blended his respect for nature’s design with his knowledge of humane confinement. The result was the sketch for a structure that reflected the ingenuity of nature, with the infusion of merciful elements.

When Latrobe opened the “cells” contained in the wasp nest, he marveled at the precise construction and smoothness of each cell wall.⁴² Undeniably, the wasps crafted the structure with precision. Horrified by the dozens of spiders overcrowded in each cell, he commented: “The poor Devils are crammed in with unrelenting cruelty, as tight as possible.”⁴³ He described them as “miserable creatures,” and denounced the treatment they received at the hands of their captors. Latrobe reflected on the inhumane treatment of the spiders and wondered if “we may reason upon their feelings from our own.” He felt sympathy for the spiders “crammed” into the cells with “unrelenting cruelty.” Latrobe’s journal entries allowed him a period of

⁴¹ Prisons in Europe were notoriously filthy, poorly constructed, and high mortality rates. See William Hepworth Dixon, *John Howard and the Prison-World of Europe* (New York: Robert Carter & Brothers. 1850); Michel Foucault, *Discipline & Punish: The Birth of the Prison* (New York: Vintage Books; 2nd Edition, 1995); Barbara Kanner, *Women in English Social History, 1800-1914* (Ann Arbor: University of Michigan, 1990).

⁴² Latrobe, *The Virginia Journals*, 159-160.

⁴³ Ibid.

reflection concerning human confinement. He wished to avoid such cruelties when tasked to build a new structure on the James River.

Unlike the spiders jammed in the cells as tight as possible, Latrobe's first design for the Virginia Penitentiary allotted prisoners ample spaces to live, breathe, eat, and work.⁴⁴ He created a system in which confinement persisted; yet convicts remained active. In contrast to the spiders who were "so languid they could barely move," prisoners in Richmond retained workspaces that existed outside of the cells.⁴⁵

In addition to his prior knowledge and reflections on the wasp nest, Latrobe also visited the Walnut Street Jail in Philadelphia in 1798.⁴⁶ He asked the Governor of Virginia to fund the trip and admitted he was most interested in visiting family. At this point, construction on the penitentiary was well underway.⁴⁷ When he petitioned the Governor in March of 1798 for support, he claimed "well acquainted with everything that has been done in Europe to

⁴⁴ "Benjamin Henry Latrobe and Thomas Callis to James Wood", November 28, 1798. See: Benjamin Henry Latrobe, *Correspondences and Miscellaneous Papers of Benjamin Henry Latrobe, Series 1*, ed. John C. Van Horne and Lee. W. Formwalt (New Haven: Yale University Press, 1988).

⁴⁵ Latrobe, *The Virginia Journals*, 159-160.

⁴⁶ Latrobe's observations of the Walnut Street Jail are lost. His journal entries for the duration of his trip to Philadelphia never made it into his official papers.

⁴⁷ Latrobe had extended family members in Philadelphia and wrote to an uncle often. He was concerned letters were not reaching him and set out to write to him "as often as possible." For more, see Latrobe, *The Virginia Journals*, 368.

render a prison safe, convenient, and wholesome," but he argued a trip to Philadelphia was necessary to examine the incarceration system in the nation's largest city.⁴⁸ Construction of the penitentiary persisted during his absence.⁴⁹

Latrobe corresponded with reformers and jail superintendents in Philadelphia, but it is important to note that his drawings and designs were implemented prior to his visit to the city. His notions of confinement remained unique to Richmond.⁵⁰ Amendments to the criminal codes occurred in Philadelphia for over a decade by the time Latrobe visited. The process was well known in other states, but not implemented until much later.⁵¹ In the midst of these amendments, the Walnut Street Jail attempted a brand of solitary confinement. The original function of the jail was for short-term imprisonment and based on a British-style prison. The dilapidated Walnut Street Jail never served as a model for the penitentiary system in Virginia.

⁴⁸ Latrobe, *The Virginia Journals*, 365.

⁴⁹ Latrobe reported on the progress of the penitentiary in a co-authored letter to Governor Wood on November 28, 1798. See: Latrobe, *Correspondences and Miscellaneous Papers*.

⁵⁰ Keve, 18-27.

⁵¹ On the penal reform in Pennsylvania see: Mark E. Kann, *Punishment, Prison, and Patriarchy: Liberty and Power in the Early American Republic* (New York: Oxford University Press, 2005), 5; Michael Meranze, *Laboratories of Virtue*, 21; and Michael Welch, *Punishment in America: Social Control and the Ironies of Imprisonment* (Thousand Oaks: Sage Publications, Inc., 1999).

Reformers in Philadelphia attempted a solitary confinement experiment in an effort to restructure the traditional English workhouse. In the late 18th century, the overcrowded nature of the city's jails created an environment where prisoners worked amongst the community or in crowded workhouses. In an attempt to restructure the city's jails, reformers sought a system that sequestered prisoners to work in solitude. This model implemented by Quaker prison reformers, emerged by the last decade of the 18th century.

The system in Pennsylvania was unique due to the religious undertones of the penitentiary system. Reform organizations not only sought to separate criminals from society, but also stressed the importance of moral improvement.⁵² The experimental model in the Walnut Street Jail emphasized moral reform, but the scheme was never realized until three decades later when the Eastern State Penitentiary was built a few miles north of the city. The penitentiary founded in Virginia never served moral reform purposes. But rather, it established an authority in an otherwise unregulated region. The religious fervor and reform sentiments motivating Philadelphians by no means inspired those responsible for the penitentiary in Richmond.

⁵² Meranze, *Laboratories of Virtue*.

The desired outcome for the Walnut Street Jail remained stagnant. Reform efforts persisted but remained unsuccessful because the infrastructure was insufficient to support the plan. The small jail hindered efforts to house a large number of prisoners for long periods of time. The previous system worked to confine criminals on a short-term basis, and made no attempt to improve the morals of offenders. When corporal punishment ceased, small jails or holding centers restricted the state's ability to confine criminals for longer periods of time.

Although the idea of solitary confinement remained in places like the Walnut Street Jail, the concept was not fully realized until almost three decades later. Reformers from different states argued for years about proper methods of confinement. In some cases, arguments remained religiously motivated and agitators disagreed over techniques.⁵³ Quakers who believed in reform ideology fought for decades to obtain a solitary system of imprisonment. They spent hundreds of thousands of dollars building and maintaining structures.

⁵³ Pennsylvania Quakers were at the forefront of several reform movements in the state. The reformation of the criminal justice system was no different. Quakers founded societies in Philadelphia to address prison reform needs. Known as the Philadelphia Society for Alleviating the Miseries of Public Prisons, later known as, the Pennsylvania Prison Society. For more information, see: Margaret H. Bacon, *The Quiet Rebels: The Story of the Quakers in America* (New York: Basic Books, Inc., 1969); Negley K. Teeters, *They Were in Prison: A History of the Pennsylvania Prison Society, 1787-1937, Formerly the Philadelphia Society for Alleviating the Misery of Public Prisons*. (Philadelphia: John C. Winston Company, 1937).

By 1826, they arranged for prisoners to labor in solitude while they reflected on their crimes.⁵⁴ In Virginia, legislators believed in a communal imprisonment setting. Similar to that of a European jail, Virginians lobbied for labor-intensive collective work projects. Additionally, legislators avoided investment in the structure or prisoners, instead aiming to make a profit.⁵⁵

When Pennsylvanians implemented a system of solitary confinement in the Eastern State Penitentiary, wasps in the area simultaneously constructed self-contained cells for their prisoners, a process they executed for centuries. Latrobe explained the self-contained modules: "Instead of a series of long tubes divided into separate cells, the former builds separate horizontal apartments close to each other." His commentaries concerning wasps in Virginia and Pennsylvania correlated to the systems of human incarceration employed by each state. The *Sphex Pennsylvanica* (Pennsylvania) built separate apartments or cells for each cache of spiders. The

⁵⁴ This style of imprisonment, known as the "Pennsylvania System" started in the Walnut Street Jail in Philadelphia and was eventually fully realized at the Eastern State Penitentiary in Philadelphia in the 19th century and the Western State Penitentiary in Pittsburgh in the same century.

⁵⁵ The Virginia Penitentiary never accomplished this feat. Although annual reports fudged numbers to offer the appearance of profit margins, prisons were never able to be self-sufficient or profitable ventures. This trend is apparent throughout the nineteenth and twentieth centuries in annual reports. For more see: Stephen D. Cox, *The Big House: Image and Reality of the American Prison* (New Haven, Yale University Press, 2014), 54-55.

Sphex Coerula (Virginia) provided what Latrobe described as: “separate cells joined to one another in a parallel arrangement.”⁵⁶ His description of each system suggests his fascination originated in the opposing systems of confinement and how they operated. Latrobe’s carceral design in Richmond followed that of the wasps he studied. His reflections demonstrate an interest in the correlation between human behavior and the natural world. Although not a member of the planter class, Latrobe prevailed in Richmond as overseer of the penitentiary. His design and supervision of the construction secured him a position as a stabilizing force in the state.

Old Dominion Reform

The separation between those in power and the impoverished persisted in early criminal records. Male prisoners in the penitentiary were often unschooled laborers guilty of petty theft. Women were frequently illiterate servants prosecuted for stealing, too. Their arrests, detentions, and punishments impacted the legal system and more people were executed in the state of Virginia than any other state in the union.⁵⁷ When the Virginia legislature voted to amend the penal

⁵⁶ Latrobe, *The Virginia Journals*, 159.

⁵⁷ For a breakdown of executions in each state, the most complete collection can be found in the Espy File. For more see; M. Watt, Espy and John Ortiz Smykla, “Executions in the United States, 1608-2002,” 4th ICPSR ed., Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2004. Hereafter referred to as “ESPY File”.

laws in society in the last decade of the 18th century, prisoners avoided corporal punishment altogether.

After the abolition of corporal punishment, the need for long-term holding facilities arose. A spirit of reform swept the Virginia legislature in the late 18th century. The establishment of laws and penal codes was essential for consolidating influence and laws were amended in hopes of establishing a system similar to the one being tested in Philadelphia. When the Eastern State Penitentiary was erected in 1826, the full vision of early Philadelphia reformers was realized in John Haviland's massive gothic structure.⁵⁸ The structural limitations of the Walnut Street Jail thwarted their attempts for reform.⁵⁹ Although Latrobe visited Philadelphia and knew of the experimental

⁵⁸ Latrobe established architecture as a profession in the United States. Architect John Haviland arrived in Philadelphia over a decade after Latrobe (1816) and tried to emulate Latrobe's practice. By this time, Latrobe moved from the city and Haviland was widely considered his successor as architect in Philadelphia. Haviland was influenced by Latrobe, it was not the other way around. For more see: John Marter, ed. *The Grove Encyclopedia of American Art Vol. 1* (Oxford: Oxford University Press, 2011), 471-472.

⁵⁹ Several works on the Walnut Street Jail cite it as the country's first penitentiary because it was the first facility where prisoners stayed for a long period of time in order to re-enter society. Yet the facility was built and operated as a jail since 1784. A simple restatement of its mission after the amendments to the penal laws in the early 1790's did not transform the jail into a penitentiary. It was not until the Eastern State Penitentiary was built several decades later that their vision for penitent long-term confinement was realized. The structural and design limitations of the Walnut Street Jail halted attempts on behalf of reformers to implement solitary or reform-centric confinement. For a more comprehensive examination of the Walnut Street Jail and its function as an early detention facility see: Erica Rhodes Hayden, *Plunged into a Vortex of Iniquity: Female Criminality and Punishment in Pennsylvania, 1820-1860*. Ph.D. diss., Vanderbilt University, 2011; Negley K. Teeters. *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773-1835* (Philadelphia: Sponsored by the Prison Society, 1955).

carceral system being tested, his design of the Virginia Penitentiary was already well under way. His new building emerged as the first penitentiary in the nation constructed with the intention of long-term solitary confinement.⁶⁰

On December 15, 1796, an act to amend the penal laws of the state of Virginia passed in Richmond.⁶¹ Prior to the passage of the new laws, the Virginia Colony had abided by the English code of law, often referred to as the “bloody code.” A sentence of death could be carried out for over two hundred different offenses ranging from murder to petty larceny.⁶² Executions for minor lapses occurred sporadically, but the laws on the books permitted death sentences for misdemeanors like petty theft. The bloody code of English law carried into the new republic for several decades. The codes underwent years of revisions before a new code passed at the end of the century. By 1796, only one crime endured punishable by death: first-degree

⁶⁰ Library of Virginia, Special Collections photos.

⁶¹ Although this amendment to the laws was considered enlightened, it should be noted that these amendments did not apply to enslaved peoples and slaves were frequently put to death in the state of Virginia for a wide range of crimes. See: ESPY file.

⁶² For more detailed accounts of the bloody codes and English Criminal Law in the 18th century, see: David Lemmings, *The British and Their Laws in the Eighteenth Century* (Woodbridge: The Boydell Press, 2005), 86; L. Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (London: Stevens & Sons, 1948).

murder.⁶³ This was the first time murder was referred to in “degrees” and the revision of the criminal code tasked jurors with determining the severity and degree of murders.⁶⁴

Additionally, the revision of the criminal code carried an act to erect a penitentiary house in order to house criminals. Because death sentences were abolished for crimes less than first-degree murder, legislators and penal reformers suggested periods of confinement instead. Forced labor in a state-run prisons or jails emerged as a result of the new legislation. An explanation for Virginia's high death sentence rate rested in the sustained practice of executions for enslaved Virginians. Jails existed for centuries and minor offenders abounded. Typically reserved for debtors or trivial offenders, the British workhouse model was extended to hardened criminals in hopes of reform and re-entrance into society⁶⁵. The notion of reform after a period of removal from society provided a novel concept after years of corporal punishment, but the emergence of penal reform sentiment came from a likely source: Quaker Pennsylvania.

⁶³ “An Act to Amend the Penal Laws of this Commonwealth,” *The Statutes at Large of Virginia from October Session 1792, to December Session 1806, Inclusive* (Richmond: Samuel Shepherd, 1835).

⁶⁴ *Ibid.*

⁶⁵ Michele Lise Tarter and Richard Bell, “Introduction,” in *Buried Lives: Incarcerated in Early America*, ed. Michele Lise Tarter and Richard Bell (Athens: University of Georgia Press, 2012), 11.

Enlightenment reform sentiment moved many legislators and philosophers of the Early Republic. Pennsylvania led the way in early efforts to curtail physical or corporal punishment for criminals. Reformers substituted a period of confinement and work, which they hoped would result in a remorseful and reformed citizen.⁶⁶ Virginia adopted similar policies deemed innovative. This was particularly apparent in regard to their exceptionally harsh history in the implementation of death sentences.

During construction of the Virginia Penitentiary, reformers faced challenges to their conceptualization of the system. Because Latrobe occupied the position of first architect for a penitentiary in the United States, he turned to nature for answers. Latrobe dissected the wasp nest and his vision for the design of the new penitentiary was not a coincidence. Although curiosity drove his discovery of the nest, it was ultimately his passion for architecture, his tutelage on prison reform from the great John Howard, his interaction with Virginians, and sympathy for those confined that informed his later design.

The Impact of Reform Sentiment

⁶⁶ Literature on reformers in Pennsylvania is extensive. Michael Meranze argues Pennsylvania reformers attempted to remove punishment from the public eye and make it a private, moral journey for those imprisoned. He shows how reformers were invested in the soul of the prisoner and sought to control the body and habits of people in order to fix their character. See Michael Meranze, *Laboratories of Virtue*, 174, 293.

A few months before Virginia legislators abolished the bloody codes, Latrobe hoped the laws would be amended in such a way as to abolish the death penalty in Virginia.⁶⁷ His sentiments concerning crime and punishment emerge throughout his writings. One entry in particular, dated August 20, 1796, recalled the events leading up to the execution of an enslaved man for larceny. Latrobe not only denounced the hanging as immoral, but wrote: "If the philosophical principles, upon which the American Revolution proceeded be true, the law that inflicts the punishment of death for any other crimes [other than murder], is directly contrary to them."⁶⁸ He considered the immorality of capital punishment for theft and suggested systems of restitution as a fair punishment for the crime. Latrobe's ideas were out of step with Virginian society, however, particularly in relation to slaves. His writings and opinions on matters of crime and punishment foreshadow his move and settlement in the reform state of Pennsylvania.

On the day of the slave's hanging, Latrobe attempted to avoid seeing or hearing about the grisly "exhibition," but he found himself forced to endure people discussing the man's death in detail.⁶⁹ His

⁶⁷ Latrobe, *The Virginia Journals*, 191-192.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

vision for the penitentiary served as an alternative to such a display. He considered the death penalty an injustice to humanity and God, especially in circumstances of larceny or other petty crimes. In his mind, a man condemned to death who received the word of God and the benefit of clergy was rewarded with “consummate virtue” instead of a punishment on earth.⁷⁰ His solution rested in the humane confinement of such individuals instead of execution. Yet, contrary to those reformers in Philadelphia, Latrobe’s design intended punishment rather than moral reforms for the imprisoned. He reasoned confinement exonerated the executioner from his ghastly duty, forced the prisoner to face a punishment for his crime, and provided society an alternative to the violent system of corporal punishment.⁷¹

Latrobe examined the role executioners played and compared them to the “mason” responsible for the construction of the wasp nest. The wasp moved back and forth between supplies and the building site to carry out his duty assigned by nature. While watching the wasps, he wondered if wasps could have reason or emotion like our own.⁷² After he reflected on the role of the executioner, Latrobe revealed a similar sentiment and questions about the executioners’

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Latrobe, *The Virginia Journals*, 159.

function and duty in nature. He noted the executioner did not carry out his responsibility with elation or excitement, but rather as an obligation to the state and the people of Richmond. Latrobe doubted the utility in executing prisoners for crimes other than murder. Moreover, he never subscribed to the idea of building structures that contributed to a prisoner's death. Indeed, Latrobe found imprisonment a far greater punishment than death.

The religious implications of hanging a thief perplexed Latrobe. He reasoned: "it appears absurd that by some mental chemistry, the polluted soul of a thief should at once be regenerated and entitled to the reward of consummate virtue." To Latrobe, the idea of a guilty man receiving absolution or approval from God before his death appeared absurd. Indeed, the man responsible for the death of the convict emerged as the guilty party and lived as a prisoner of his own conscience for eternity. Latrobe's sentiment surrounding the death penalty remains evocative when one considers the mass death tolls and torturous conditions prisoners endured throughout the operation of the Virginia Penitentiary. Yet, the man behind the idea was complicated in his sentiment toward proper punishment. While

Latrobe never intended to design a structure that would sicken, kill, or torture thousands, the result of his original concept did just that.⁷³

Building the Virginia Penitentiary

Latrobe combined elements from the English workhouses, the solitary system, John Howard's concepts of humane imprisonment, and observations from nature to design the penitentiary in Richmond. Virginia Governor James Wood selected his plans over those of Thomas Jefferson. Jefferson twice submitted architectural drawings for a state penitentiary—once in 1786 and again in 1797—but they were rejected.⁷⁴ Governor Wood wrote to Latrobe on June 22, 1797, and announced the decision to adopt his plan. He asked Latrobe to begin work on the penitentiary at once, informing him that “two hundred

⁷³ One of the main reasons Richmond is discussed in prison literature or reformers' reports is to denounce it as a failure. Indeed, the solitary model implemented in Richmond was flawed. The solitary cells leaked, the prisoners were exposed to extreme temperatures; one prisoner's feet froze to the floor. When Eastern State Penitentiary and Western State Penitentiary were seeking funds and support for their new model of confinement, Virginia's Penitentiary was cited in the report as a failed attempt at solitary confinement. Pennsylvania reformers, however, condemned the methods in Richmond and claimed to learn from their shortcomings in order to implement a more successful model of imprisonment. Successful is a loaded term, but the reformers considered a limited number of deaths to be a successful model. For more see: George W. Smith, *A Defence of the System of Solitary Confinement of Prisoners Adopted by the State of Pennsylvania With Remarks on the Origins, Progress, and Extension of this species of Prison Discipline* (Philadelphia: Republished by Order of the Philadelphia Society for Alleviating the Miseries in Public Prisons, 1833).

⁷⁴ Historical scholarship has often mistakenly credited Jefferson for a role in the development of the penitentiary system. Keve claims this misinformation is due to a journal entry Jefferson wrote late in his life claiming involvement in the penitentiary. For more, see: Keve, *History of Corrections in Virginia*, 20-21.

thousand Bricks" were ready for use, and that crews should "begin digging the foundation without loss of time."⁷⁵

When Latrobe surveyed the building grounds for the penitentiary, he noticed the land was on a "steep gravelly knoll" and challenged laborers tasked with digging the foundation.⁷⁶ Latrobe maintained an interest in the project early in the construction phase. Much like the wasps that built the nest, he surveyed the grounds to find supplies, design ideas, and solutions to various issues. Just like the masons, he found nearby supplies and found the stone they would use for construction at a quarry about twenty miles downriver from Richmond. Latrobe represented the project during the first building season, but his enthusiasm began to dwindle after several personality conflicts with his laborers. Moreover, Latrobe's contentious relationship with Thomas Callis, the first keeper of the penitentiary, served as a nail in the coffin for his investment in the development.

The first phase of construction began in 1797 and moved along efficiently. In July of that year, Latrobe shared the inscription that would appear on the cornerstone of the penitentiary house. It read:

The Legislature

⁷⁵ Governor Wood to Benjamin Henry Latrobe, June 22, 1797, in Latrobe, *Correspondences and Miscellaneous Papers*.

⁷⁶ Latrobe, *The Virginia Journals*, 243-244.

Of the Commonwealth of Virginia
 having abolished the ancient sanguinary criminal Code
 This first Stone of an Edifice
 The Monument of that Wisdom
 which would reform while it punishes the Criminal
 was laid on the 7th day of August
 in the Year 1797, and of American Independence the 22d
 by Jn. Wood Esq Governor
 Council _____ Gr. Master of Masons
 Deputy ditto
 Lodges No. 10, 19.

Latrobe commented on the inscription in his journal and hinted at his first bout of disagreement he and the legislators endured. He wanted the inscription to appear on the cornerstone in Latin, but the board voted it to be inscribed in English. Latrobe complained: "I think this is a very inhuman, and barbarous vote. They had their choice of burying a *dead* or *living* language, and they chose to inter that which was *living*."⁷⁷ His language concerning the internment of a living language is intriguing considering the function of the penitentiary itself. A number of Latrobe's journal hint at his distaste for the perceived

⁷⁷ Latrobe, *The Virginia Journals*, 272.

cruelty of humanity and the criminal justice system as a whole. Nevertheless, he understood the imperative nature of infrastructure for the nation. The first year of construction prevailed a success. It wasn't until the winter approached that production on the site stopped. It was scheduled to resume in the spring of the following year.

The conflicts which emerged during the initial phases of the penitentiary's construction reveal disagreements which occurred during the building phase and illuminate Latrobe's reasons for seeking employment elsewhere. Many of Latrobe's early letters and correspondences to the Governor praised him for his generosity; they were polite and genteel. Yet, as the climate of the project became tenser, so did Latrobe's letter to Governor Wood. In October of 1798, Latrobe described conflicts that had arisen between the marble mason and the smith, Mr. Brady and Mr. Featherstone, respectively. It seems the men got into an altercation about money owed to each. Words were exchanged and Featherstone knocked Brady down causing a much larger fight to erupt amongst other workers. Several laborers lingered "very much hurt" in the fray.⁷⁸ Featherstone proceeded to attack Brady with an iron bar and "nearly killed him." Latrobe explained the events and confessed: "I believe he is a little

⁷⁸ Latrobe, *The Virginia Journals*, 440-441.

insane."⁷⁹ As much as he regretted the loss of a good smith, Latrobe called for Featherstone's dismissal from the project immediately. His letter to the Governor was a mixture of exasperation at the situation and reluctance to report it. Frustrated and in a dead lock with many of those employed to construct the penitentiary house, Latrobe's visits to the site lessened.⁸⁰

After his trip to Philadelphia in 1798, Latrobe became restless in Richmond. He made connections during his visit and proposed a design for a new structure. His next commission, the Bank of Pennsylvania, paid well, and he considered it a more prestigious project in a more desirable location. Latrobe's design for the bank was selected in 1798. The new undertaking numbered his days in Richmond, even though the penitentiary was incomplete.⁸¹ Richmond's provincial nature, his pining for family, and personality conflicts with workers on the penitentiary house served as motivating factors for Latrobe to leave the project in 1798 and move to Philadelphia permanently. He occasionally visited the project in Richmond to find it in disarray. He wrote to the Governor and informed

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Keve, 18-22.

him of the gaffs committed in his absence.⁸² Once he left the project, his original vision crumbled and the construction team worked in haste to complete the building.⁸³

For Latrobe, the most difficult aspect of construction existed in the power structure implemented by Governor Wood. After choosing Latrobe's design, Virginia legislators appointed Callis as the first superintendent of the penitentiary. Callis was tasked with overseeing the construction and worked closely with Latrobe. The situation between the two men persisted in a tense manner. Initially, the two worked well together, cordially reporting to the Governor in joint letters. Yet Latrobe's personal journal entries revealed the tense relationship that emerged.⁸⁴

Constantly bewildered and contemptuous of Callis' old age, idiosyncrasies, and what Latrobe considered incompetence; Callis earned a place in several of Latrobe's more colorful journal entries

⁸² Latrobe, *Correspondences and Miscellaneous Papers*.

⁸³ Governor Wood often rushed the construction of the penitentiary, and after Latrobe's exit from the project, he pushed even harder for it to be finished and open. When it was opened for operation in 1800, the building was unfinished and caused many problems for the first set of prisoners, particularly the fact that the windows were not installed and the winter was fast approaching. For more information see: "William Berkeley and Philip Norborne Nicholas to Governor of Virginia" October 26, 1800. Records of the Virginia Penitentiary, Series 1, 1796-1865, Accession 37539, Penitentiary Construction Papers, 1797-1799; "Board of Inspectors Proceedings," July 23, 1801, Accession 37489, Papers Concerning Board of Visitors, prisoners, prison conditions and investigations, and penitentiary finances, 1798-1824, State Records Collection, The Library of Virginia, Richmond, Virginia; *Reports of the Prison Discipline Society, Boston* (Press of T.R. Marvin, 1855), 128.

⁸⁴ Keve, 18-20.

between 1797 and 1798.⁸⁵ Latrobe mocked his partner's age, level of superstition, religious fervor, and inability to properly conduct business. This all came to a head in a letter Latrobe penned to the Governor of Virginia in 1799 asking for Callis' removal from the project due to incompetence.⁸⁶

In his letter, Latrobe reminded the Governor he recommended removing Callis early in the process and stated: "The necessity of employing an active and intelligent Clerk of the Works, or superintendent, I took the liberty of pointing out very early."⁸⁷ The letter described instances of Callis' incompetence and how his blunders resulted in a loss of materials and capital. His forceful letter to the Governor claimed: "The age and infirmities of Mr. Thos. Callis, rendered his integrity of less avail, and embarrassed a little the progress of the building."⁸⁸

By 1799, Latrobe lived in Philadelphia and abandoned all physical presence at the building site in Richmond. Only a couple of years after construction began, Latrobe remained exhausted by the project and the drama that emerged from it. Regardless of his early

⁸⁵ *Ibid.*

⁸⁶ A letter to Governor James Wood from Benjamin Henry Latrobe who was living in Philadelphia dated February 23, 1799. See Latrobe, *Correspondences and Miscellaneous Papers*.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

efforts to seize power and control of all design decisions related to the construction, Latrobe took the opportunity to move to Philadelphia and begin other projects.

Although he perceived a necessity for order, Latrobe's frustrated interactions with Virginians ultimately led to his decision to leave the state. Regardless of his claim that Virginians were British, Latrobe realized that Southern politics, culture, and ideals were distinct. Even with the reform attempts of Virginians to improve the legal system, landscape, and infrastructure, Latrobe still sought refuge in Philadelphia. In just two years' time, after repeated and failed attempts to establish order, Latrobe moved north.

While the wasp nest stands as an enticing anecdote, the manner in which the penitentiary emerged and operated is complex. The climate in Virginia in the late 18th century endured rife with chaos. Native peoples dispossessed of their lands, poor backcountry white settlers, and slaves working on plantations dotted the landscape. A need for order prevailed to quell internal strife throughout the region. The amendments of penal codes and the erection of a penitentiary served as state building exercise that centralized state power and discouraged lawlessness. Latrobe's observations offer context for the rise of the carceral system in Virginia and provide a foundation for

understanding the operation of the penitentiary throughout the 19th century. The issues Latrobe lamented in his journal entries continued. Disagreements, attempts to establish order, and refusal to invest in proper state building endeavors continuously plagued the state of Virginia as well as the penitentiary in Richmond.

Latrobe's journals signal the crisis of the late 18th century in Virginia. The legislature rushed the opening of the penitentiary before it was finished and chaos marked the first three decades of its existence. Escape, fraternization between the sexes, mass turnover of staff, and disagreements over the housing of slaves characterize the initial proceedings of the penitentiary. By the time Eastern State Penitentiary opened in Philadelphia, Richmond had earned its reputation as "one of the bad prisons."⁸⁹ The facility would be dogged with this reputation as it fell further and further into disrepair.

⁸⁹ Alexis de Tocqueville and Gustave de Beaumont, *On the Penitentiary System in The United States and Its Application in France*, trans. Francis Lieber (Philadelphia: Carey, Lea & Blanchard, 1833), 29.

Chapter II:

Another Spoke in the Wheel of Slavery: The Penitentiary as a Means of Control for Slaves and Protection for White Virginians, 1800-1820

In September of 1800, just a few months after the penitentiary started receiving prisoners, district court judges began sentencing criminals to stints in the new facility. Three men in Alexandria—Green Jackson, Leonard Wright, and Thomas Field—faced trials for horse stealing, forgery, and manslaughter, respectively. The District Court in Alexandria, which had a small jail attached to the courthouse for criminals awaiting trial to reside, met on the first Monday of every month.⁹⁰ During sentencing on September 1, Jackson received a two-year sentence, Wright one for twenty months, and Field was acquitted. The next step in the judicial process was to release Field and hold Jackson and Wright in the local jail while they awaited transportation to the not yet finished, penitentiary house in Richmond.⁹¹

Options for transportation were limited. Latrobe lamented the primitive and oftentimes non-existent roadways throughout the state in

⁹⁰ The Virginia Almanack for 1800. (Richmond: Thomas Nicolson, 1799). The only copy of 1800 almanac is held at the Virginia State Library, but does not include a title page. The title of the work is implied based on prints for other years.

⁹¹ "No Headline," *The Times and District of Columbia Daily Advertiser*, September 25, 1800.

his journal entries, suggesting that manner of passage from Alexandria to Richmond likely happened by water. Indeed, most businesses utilized the Tidewater for the transit and importation of goods.⁹² In this particular case, a transport of criminals from Alexandria to Richmond would traverse the Potomac River, heading southeast into the mouth of the Chesapeake, turning west onto the James River, and finally taking a northwestern route along the banks of the Piedmont region to the penitentiary house. Built on a hill in the middle of Richmond, the penitentiary stood approximately one mile southwest of the state house, and about 2 miles up from the tide—a familiar and easy trek for constables responsible for the safe passage of criminals.⁹³ Throughout the 19th century, this process happened often. Criminals tried and convicted by their local magistrates would face a stint in their local jail, undergo transportation to the penitentiary, serve their sentence, and later be released back into society—if they survived their time in prison.

⁹² Claudia L. Bushman, *In Old Virginia: Slavery, Farming, and Society in the Journal of John Walker* (Baltimore: The John Hopkins University Press, 2002), 45.

⁹³ Details concerning the location of the penitentiary were mentioned in several reports. For this particular description see: *The First Annual Report of the Board of Managers of the Prison Discipline Society* (Boston: Press of T.R. Marvin, 1826), 80.

When Jackson and Wright made their southwesterly journey from Alexandria to Richmond in September of 1800, another convict by the name of Gabriel Prosser was also en route to Richmond from the Tidewater region of Norfolk. Traveling from opposite directions to the same institution, Jackson, Wright, and Prosser all awaited different fates once they arrived. While Jackson and Wright would be released after serving their sentences, Prosser's stint in the institution would result in death by hanging.

Gabriel Prosser, a slave belonging to Thomas Prosser and the famous leader of "Gabriel's Revolt" or "Gabriel's Insurrection," planned an outright takeover of the entire state of Virginia, starting with the penitentiary. The plan, widely reported in newspapers across the state, was for over one thousand enslaved people to enter the town of Richmond from three directions, take over the penitentiary building with fire and sword, move to the treasury and the mills, and then cross the bridge over the James River. The idea behind the first phase of the attack was to secure arms and ammunition for the insurrection, which happened to be housed in the munitions storage shed at the prison. Upon securing the necessary weapons, they planned to free allies confined in the facility, and next to secure funds

with a takeover of the treasury.⁹⁴ If the plan succeeded, it would have crippled the city of Richmond and white Virginians.

The insurrection failed after fearful slaves divulged the plot to their master in Henrico County. By the time the rebellion was to get underway, the Governor already ordered the militia into the city of Richmond to patrol the streets, the penitentiary, and other important public buildings. Gabriel and other insurgents fled. After hiding in the flooded banks of the James River for several days, Gabriel managed to board a ship heading south to Norfolk, but he was apprehended shortly after it docked. Prosser was immediately transported back up the James River to Richmond, where he waited in the penitentiary to stand trial for insurrection.⁹⁵ Prosser arrived back in Richmond on September 27 and was executed a little over one week later on October 7.⁹⁶ According to the *Baltimore Daily Advertiser*, "He was taken before the governor, and after some interrogations, committed to the Penitentiary, for trial."⁹⁷ Gabriel Prosser along with twenty-four other conspirators, were systematically rounded up, housed in the

⁹⁴ "Insurrection in Virginia," *The Providence Gazette*, October 11, 1800.

⁹⁵ The details of this famous insurrection can be found in many books, but this particular synopsis was paraphrased from; Emilee Hines, *It Happened in Virginia: Remarkable Events that Shaped History* (Kearney: Morris Book Publishing, 2001), 49-52.

⁹⁶ "No Headline," *Federal Gazette & Baltimore Daily Advertiser*, October 6, 1800.; *ESPY File of Executions in the United States*.

⁹⁷ *Ibid*, October 6, 1800.

penitentiary, made to stand trial, and hanged. Twenty-four slaves were executed between September 12 and October 24 of 1800, but none of the enslaved men were mentioned in penitentiary registers.

In the wake of the revolt, white Virginians reeled from the near calamity. The author of the same article describing Prosser's plan, ended with a reflection on the institution of slavery. He warned: "If we will keep a ferocious monster in our country, we must keep him in chains." At this point, it was only a matter of time before the penitentiary system would begin to serve as the state apparatus to keep the "ferocious monster . . . in chains." Six months into the operation of a facility intended for free black or white offenders, the penitentiary acquired the additional task of apprehending slaves. The state penitentiary system became wedded to upholding the institution of slavery.

This chapter explores the multifaceted functions of the penitentiary at Richmond during its first two decades of operation. In addition to serving as a correctional facility for free black and white offenders, the institution also reinforced the already entrenched system of slavery through the apprehension, sale, or execution of criminal or rebellious slaves. The rising state penitentiary system intertwined with the institution of slavery to create a co-dependence

that developed and strengthened throughout the first half of the 19th century. Moreover, this chapter argues how the state penitentiary system remained subjected to the will of taxpayers by confining and selling slaves to offset some of the costs of running the institution. Ultimately, the state penitentiary system was just another spoke in the wheel of slavery.

A Shifting Purpose

Legislators never intended the penitentiary at Richmond for the incarceration of slaves. Yet, over the course of 65 years, the prison housed hundreds of slaves awaiting sale or transportation out of the state. An act to amend the penal laws of the Commonwealth of Virginia, enacted in December of 1796, called for the construction of a gaol and penitentiary house envisioned as a means of confinement for free people, both black and white, but this vision did not plan for enslaved peoples to be housed within the walls.⁹⁸ Though the control of enslaved peoples reigned paramount in the minds of Virginians, and the penitentiary eventually offered an additional means of shoring up slave power, the initial purpose of the institution was to

⁹⁸ "An Act to Amend the Penal Laws of this Commonwealth," *The Statutes at Large of Virginia from October Session 1792, to December Session 1806, Inclusive* (Richmond: Samuel Shepherd, 1835), Chapter 2, Part 17.

provide an alternative form of punishment for citizens deemed guilty of a crime.

In the beginning, founders of the penitentiary were interested in curtailing violent crime and offering an alternative to capital or corporal punishment for free people. Indeed, the main prison population was comprised of white men. Slaves, regardless of their sustained presence, were never considered inmates. The elimination of the death penalty except in cases of first-degree murder reflected the attitudes adopted by the founders of the country, one that included a respect for the lives and prosperity of its citizenry—namely, white men. In an 1810 committee report on the penitentiary, the board of visitors confirmed that the Revolution had a strong impact on the founders of the penitentiary system throughout the country: “The spirit of reform awoke with the Revolution and at last produced a system of Penal Laws which graces the brow of Pennsylvania. From there a sprig was transplanted in '96 to New York. In the same year another sprig struck root in our own soul where it continues to flourish and improve.”⁹⁹ Each state had its own path to the penitentiary, but

⁹⁹ “Committee Report on the State of the Penitentiary”, November 30, 1810. Records of the Virginia Penitentiary, Series 1, 1796-1865, Accession 35184, Virginia Penitentiary, Board of Visitors, 1807-1816. State Records Collection, The Library of Virginia, Richmond, Virginia.

Virginia was the first to construct one based on the concept of solitary confinement. Though designed in Pennsylvania, a penitentiary there was not constructed until 1826. Additionally, Virginia was also the first State to establish a state prison system within a slave society with no abolition efforts underway.

Much like several states in the new union, the seed of reform planted in Virginia encouraged a complete overhaul of society. Leaders in the United States were eager to prove their cause worthy and transformative for the function of the union. Legislators sought to demolish the perceived tyranny of British colonial rule by inventing an entirely new system of government that treated its citizens fairly and humanely. Though the vast majority of residents in the state had no role in this process, every citizen was impacted. Between 1792 and 1806, Virginia legislators met to amend the laws of the commonwealth. The amendments included revisions to the penal codes that eliminated the death penalty for free persons except in cases of first degree murder—that is, the premeditated or planned murder of another person. The elimination of the death penalty proved a complete disruption to the state. During the period of Colonial government, Virginians found guilty of crimes ranging from petty theft to murder could find themselves at the mercy of the

executioner. Though a wide range of capital offences existed, this did not guarantee a death sentence from courts, but rather, some form of corporal punishment, typically lashes. Punishment for criminals occurred in the county they were apprehended and most small town governments autonomously dealt with lapses in social code. When legislators overturned the so-called “bloody codes,” and established a state penitentiary system, this made each previously sovereign entity accountable to a larger state power. Virginia’s society was forever transformed. Some of the issues faced in the New Republic—including debates over the centrality or functions of government—all happened slowly and in small ways throughout the nation. In Virginia, the formation of a state penitentiary system offers one example of the impact of these sweeping government reforms on citizens.

Of all the revolutionary era transformations in Virginia society, the priciest was the implementation of the state penitentiary system. The three-part series of amendments to the penal codes covered topics such as slavery, tax code, education, and crime. In many cases, the amendments required a complete overhaul of infrastructure, government, and societal customs—a tall order to fill in a region as rich with custom and steeped in tradition as Virginia. First a colony and now a state united by a new federal government, the

people of Virginia remained hesitant to accept new laws, codes, or taxes imposed by a growing state government. Historian Alan Taylor contends: "rural Virginians distrusted political decisions made beyond their own county. They could barely tolerate their own elected state legislature, and they dreaded the centralizing power of any government beyond Virginia."¹⁰⁰ Famous New York prisoner reformer, Thomas Eddy also warned of the challenge to implement a new system. In a letter written to James Monroe, then Governor of Virginia, Eddy advised: "Ancient habits and strong prejudices in favor of the old system will require great exertions to establish the propriety of the new one."¹⁰¹ Sweeping reforms required time, structure, and cooperation. Unsurprisingly, these changes also required monies. Taxpayers bore the brunt of the immense overhaul.

When confinement in lieu of a death sentence became an accepted practice, the state needed to build a system to support this change. Solitary confinement mixed with hard labor required the implementation of a large infrastructure—starting with the building

¹⁰⁰ Alan Taylor, *The Internal Enemy: Slavery and War in Virginia, 1772-1832* (New York, NY: W.W. Norton and Company, 2013), p. 19.

¹⁰¹ "Thomas Eddy to Governor James Wood," April 23, 1797. Records of the Virginia Penitentiary, Series 1, 1796-1865, Accession 35182, Virginia Penitentiary. Board of Inspectors, Proceedings, 1800-1803. State Records Collection, The Library of Virginia, Richmond, Virginia.

itself. State legislators, eager to prove the facility's value to the people, described the penitentiary as an institution necessary for their safety. Others described the penitentiary as a public good, designed to help criminals atone for their crimes. One newspaper correspondent observed: "the Penitentiary must be productive of the most happy consequences: for while it restrains the executioner's hand from taking away that which man is unable to give; it affords the unhappy objects, an asylum for atonement, and a preparatory stage for a temporal, and an eternal world."¹⁰² Regardless of the rhetoric, taxpayers remained reluctant to fund the institution.

Though prisoners worked while confined, the public was largely responsible for clothing, feeding, and maintaining the health of the prisoners with their tax dollars. The fruits of prison labor, rarely enough to balance the books, always went back to the state. According to Chapter 2 Part 28 of the act to amend the penal laws: "All such convicts shall, at the public expense, during the terms of their confinement, be cloathed in habits of coarse materials, uniforms in colour and make, and distinguishing them from the good citizens of

¹⁰² "No Headline," *The Virginia Argus in News and Opinion*, December 25, 1802.

this commonwealth."¹⁰³ In an 1807 report from the board of visitors, the writers confronted the issue of the unpopularity of the institution and its cost to taxpayers by claiming that in a few years, the facility would be profitable to the state—a fact not reflected in the legislative expense reports. The author guaranteed: "this institution, so much spoken against, will in a few years, become a source of Revenue to the State, instead of an expence (sic)".¹⁰⁴ While the manufacturing work at the penitentiary oftentimes offset some of the operational costs, the costs associated with each local jail, transportation of criminals, and the employment of authorities, often outweighed any profit margin purported. A report of state expenses from 1821 shows that sixty-four percent of the state's money was allocated for penitentiary related expenses. The remaining thirty-four percent of state money went to civil contingency funds, the military, reimbursements for loans, expenses for the armory and public arsenal, and also funded the state

¹⁰³ "An Act to Amend the Penal Laws of this Commonwealth," *The Statutes at Large of Virginia from October Session 1792, to December Session 1806, Inclusive* (Richmond: Samuel Shepherd, 1835), Chapter 2, Part 28.

¹⁰⁴ "Committee Report on the State of the Penitentiary", November 30, 1810. Records of the Virginia Penitentiary, Series 1, 1796-1865, Accession 35184, Virginia Penitentiary, Board of Visitors, 1807-1816. State Records Collection, The Library of Virginia, Richmond, Virginia.

lunatic hospital.¹⁰⁵ Some penitentiary related costs included salaries for administrators, jail guards, penitentiary rations, and most costly, the passage of criminals from local jails to the penitentiary. Without a doubt, the transportation of criminals from all corners of the state carried the heaviest price to tax paying citizens.

In the earliest years, rural Virginians resisted the idea of transporting convicts to the penitentiary for minor lapses and tried to implement corporal punishment again. In several cases, county judiciaries continued older practices of corporal punishment due to the length of time it required to implement a new system, the pressure of the legislature to reduce the number of people in the penitentiary house, and reluctance of Virginians to pay increased taxes for transportation of minor offenders. A report in the *Virginia Argus* surfaced in 1802 that described citizens' disappointment that a bill introduced to the House of Delegates to punish petty offences by moderate whipping was shot down in the Senate. The author of the article summarized: "...free persons accused of sundry petty

¹⁰⁵ Exact figures and breakdowns of costs can be found in the *Journal of the House of Delegates for the State of Virginia*, 1821. Penitentiary related expenses include: officers of the government (including marshals and sheriffs), jail guards, clerks of the circuit courts, penitentiary rations, transportation of criminals to the penitentiary, officers' salaries, public guards, slaves transported and executed, clerks, sheriffs, and marshals' fees.

offences...punish them by moderate whipping instead of putting the commonwealth to the needless expense of their being sent a long distance, and for a short time, to the Penitentiary."¹⁰⁶ Support for the penitentiary remained reliant on the taxpayers' perception of its utility to the order of society. Perceptions of efficacy quickly waned when taxes increased.

Legislators faced an unremitting struggle to uphold the changes implemented. Even as late as 1820, the House of Delegates report on the state of the penitentiary expressed concern that if the penitentiary did not start to turn a profit, citizens would revert to the old justice system. The committee believed that: "The popularity of this mode of punishment (the substitution of confinement and labor for the gallows,) depends much upon its fiscal arrangements." The report went on to discuss how citizens were unwilling to fund the institution and beseeched the keeper to find a way to at least make the system self-sustainable, if not profitable. Otherwise, the author worried: "in some ill-fated moment it may be abandoned, and our former

¹⁰⁶ "January 31, 1802," *The Virginia Argus*, January 31, 1802.

(comparatively) bloody code re-enacted.¹⁰⁷ The reforms of the new state government always teetered on the edge of failure, and the power of the newly established infrastructure could only reach so far. Indeed, the number of prisoners confined for the first two decades of operation always remained under 200. This tiny fraction of the incarcerated population indicates that smaller jails or local town justice systems continued to function in violation of the new penal codes. Since the facility would overcrowd when it reached 201 prisoners, the penitentiary at Richmond was certainly not the only solution to the state's criminal population, but it served as the hub to the spokes of the jail system that stretched across the state and continued to hold prisoners. The special limitations of the penitentiary building itself continually posed a problem, but the implementation of a penitentiary system connected local jails, courts, and constables to a central state authority.

The initial plan for the penitentiary included a minimum of 200 individual cells designed for the long term housing of offenders. Legislators suggested the building be constructed using brick or stone

¹⁰⁷ "Friday, December 15, 1820," *Journal of the House of Delegates of the Commonwealth of Virginia, Begun and Held at the Capitol, in the City of Richmond, on the Monday the Fourth Day of December, One Thousand Eight Hundred and Twenty*. (Richmond: Thomas Ritchie, 1820).

in order to prevent damage by fire—a costly and destructive hazard, which later occurred due to the wide use of wood to construct the building. The structure needed security, outdoors spaces, individual cells, workshops, bathing facilities, a kitchen, keepers' quarters, and designated intake zones. The penitentiary needed walls surrounding it in order to lock in the offenders and block out external communication, but not so tall or molded to block out sunlight. The facility required planning, manpower, money, and time. The burgeoning state government struggled with the high cost of building and operating the institution that was only designed to hold a couple hundred people.

Yet the importance of the penitentiary lay not with the number of offenders it could hold, but with the threat of government imposed confinement, hard labor, and solitude that the building represented. In the first half of the 19th century, the facility never housed more than a few hundred prisoners at a time, a number dwarfed by the overall population of the state which subsisted at a little over one million inhabitants—both enslaved and free.¹⁰⁸ Nevertheless, this small facility transformed the judicial system in counties across the state, forced the

¹⁰⁸ "Selected Historical Decennial Census Population and Housing Counts," *U.S. Census Bureau*, www.census.gov/population/www/censusdata/hiscendata.html.

implementation of infrastructure, and employed thousands. Each prisoner who entered the penitentiary filtered through an evolving justice system. In the abstract, the implementation of a state penitentiary system transformed Virginian society and connected previously autonomous justice systems to a central state authority. Many prisoners sentenced to the penitentiary experienced a long journey through newly established channels to arrive at the physical building, but the true challenges they would face existed within the walls.

Operations 1800-1815

When the facility opened for operation in 1800, the building itself was as unfinished as the ideas concerning how it would operate. The windows were missing, leaving prisoners “much exposed to the ensuing winter.” A “large bank of excrement” began to accumulate outside one of the workshops, causing a concern for the “health of the prisoners.” The solitary cells leaked, causing the ground inside to freeze. And in terms of security, the cells had no grating on the windows through which guards could peer in.¹⁰⁹ The lack of climate

¹⁰⁹ “William Berkeley and Philip Norborne Nicholas to Governor of Virginia,” October 26, 1800. Records of the Virginia Penitentiary, Series 1, 1796-1865, Accession 35182, Virginia Penitentiary, Board of Inspectors, Proceedings, 1800-1803. State Records

control, the smell from human excrement piling up, and the leakiness of each cell are small indicators of the conditions a prisoner endured if confined in the institution. Later reports point to the solitary cells as having no light, prisoners being chained in the dark, and peoples' feet freezing to the floor of cells. Since the first six months of every prisoner's term was spent in solitary confinement, men and women were subjected to upwards of 180 days with no light, communication, or warmth in the dungeons. Since slaves reprieved for sale and transportation were not listed as working, they also lived in these conditions as they lingered in the facility waiting to be transported out of the state. Slaves not offered a reprieve waited to be tried and sentenced to death and spent the last weeks of their life in the leaky, dismal chambers.

In the early 19th century, the penitentiary at Richmond served as a detention facility for the correction of predominately white men. Out of the 653 listed inmates, 74% were listed as "white males." Interlaced in the records were the names of a much smaller percentage of free black women and men, and around a dozen white women.

Suspiciously missing from the penitentiary records between 1800 and 1815 are the figures representing slaves confined in the facility who were awaiting sale and transportation, or the gallows. On first glance, it would seem slaves simply were not incarcerated during those years. Indeed, legislative minutes, annual reports, and the logbook for the board of visitors never mention the presence of slaves in the facility; annual reports did not even acknowledge their presence until 1815. Yet, newspaper advertisements and messages from the Executive printed in Virginia newspapers indicate slaves were regularly present in the penitentiary. Convicted slaves are absent from penitentiary records for the first decades of operation, but free black and white criminals underwent extensive booking procedures and their presence is well documented.

When a free black or white criminal arrived after facing trials and waiting periods in their local county jails, each was subjected to a booking process. Jailers would record their name, crime, sentence, and date received. Next, new inmates would strip to bare nakedness to undergo an examination for any identifying marks; their personal clothing was collected and stored. Then, intake personnel shaved the inmates' heads and beards—a humiliating process designed both for cleanliness and as easy means of identifying recent convicts upon

their release. Additionally, shaved heads served as a means of identification should they happen to escape. Once they were booked, examined, and shaved, administrators allocated the clothing and supplies they would require for the duration of their sentence—which started in solitary.

Comforts were removed from prisoners starting with their clothing. Prisoner clothing was made of a stiff fabric called osnaburg, typically made from jute yarns and often the fabric used for the production of slave clothing.¹¹⁰ Upon entrance, men were issued two shirt jackets, two pair of overalls, and two shirts made of osnaburg for summer. Women were dispensed two short gowns, two petticoats, and two shifts made of osnaburg for the summer months. Both were supplied with two pair of shoes and two pair of stockings each year, and one “suit of coarse woolen for the winter.”¹¹¹ In a persistent attempt to create a self-sustaining institution—the female prisoners

¹¹⁰ Osnaburg was named for the city in Germany where the fabric was thought to originate. Typically made from coarse tow fibers from vegetable plants, the material was often homespun and cheap to use. The rough fabric was bought in large quantities by slave owners throughout the 19th century and offered to slaves to make clothing. For more, see: Claudia L. Bushman, *In Old Virginia: Slavery, Farming, and Society in the Journal of John Walker* (Baltimore: The John Hopkins University Press, 2002), 101; James Benson Sellers. *Slavery in Alabama* (Tuscaloosa: The University of Alabama Press, 1950), 102-104.

¹¹¹ “Miscellaneous Papers” May 12, 1800 Resolutions. Records of the Virginia Penitentiary, Series I, 1798-1820. Accession 41588. State Records Collection. The Library of Virginia.

were responsible for spinning and spooling thread. In the first two decades of operation, a small but consistent number of women worked in the shops reeling, spinning, and making socks.

The clothing issued to prisoners did not resemble the popular black and white striped uniform typically worn by prisoners on a chain gang later in the century, but it did have a particular appearance. When the penitentiary first opened, the first keeper, Martin Mims, issued a statement to the *Virginia Argus* warning citizens to remain alert in case a prisoner escaped and how to identify them. In addition to the obvious lack of hair, Mims described the appearance of an inmate: "In case any of the convicts confined in the jail and penitentiary house should make their escape, I have to notify the public that the uniform work by them, consists of a short jacket, waistcoat, and overalls of cloth." He went on: "The jacket, breast of drab, the backs blue; the front of the sleeves (sic) blue, the under part drab; the waistcoat, the fronts and backs one half brown, the other blue; overalls, fronts blue and back parts drab—shirts of brown linen."¹¹² The repetition of the word "drab" exhibits the quest on behalf of the keeper to emphasize the lack of luxury prisoners confined in the

¹¹² "Richmond, January 30," *Alexandria Times*, published as *The Times and District of Columbia Daily Advertiser*, February 4, 1801.

penitentiary experienced. Taxpayers certainly would not stand for a convict to live well dressed at their expense.

After prisoners were issued their clothes, administrators provided them with a straw mattress, one blanket, a chest, a tin pan, and a water bucket. With their hands full of newly issued supplies, prisoners were led by torch to the damp, cheerless, cell they where they would spend their first 180 days lodged.¹¹³ While prisoners spent their first 6 months of imprisonment chained in solitary confinement, they proved little trouble to administrators—except in the case of their deaths, which proved more of a common occurrence than desired. The problem of rampant deaths in solitary confinement was addressed in later years, but for the first two decades of operation, a total of 77 people died in prison. This figure steadily increased with the population of the prison and worsened as sicknesses spread in the 1820's.

Maintaining Order

In the earliest days of operation, the Virginia Penitentiary's administration had no need to establish a classification system for prisoners, but once the population began multiplying, issues of mixing

¹¹³ This description of the cells, their lack of light, and dampness comes from *the Ninth Annual Report of the Board of Managers of the Prison Discipline Society* (Boston: Perkins, Marvin, & Co., 1834), 63-67.

convicts became a concern. The board of visitors, a group of twelve men who visited the penitentiary on a weekly basis, devised a plan to separate or “class” the prisoners based on a number of factors. Once classed, the prisoners were only allowed to associate with those in the same class. They were encouraged to improve their behavior to receive a promotion to a better class and to gain special privileges, different work assignments, and the ability to communicate with prison administrators. In the minds of penitentiary administrators, the task of controlling a population of convicts required a strong organization that implemented standards, procedures, and modes of control. Oftentimes, the system of classification implemented by early board members was the topic of written reports from the first decade of the penitentiary's existence. Control of convicts in a concentrated space was gradually achieved by instituting a hierarchy that operated on the level of the administration and trickled down to the inmates. The system was not constructed based on research or experience; rather, it was created as a reactionary system to combat inmates' undesirable behaviors.

The penitentiary, based on the notion of imprisoning a range of offenders for long-term sentences, was a new social experiment. In a society largely reliant on the control and persistence of productive

slave labor, an institution solely designed for the confinement and punishment of white Virginians was a hard sell to taxpayers. The institution of slavery, which reigned supreme in Virginian society, created a unique set of circumstances for lawmakers because it created a slight power struggle between the state and the plantation. A great deal of power rested in the hands of plantation owners and the wealthiest members of society tended to have a large slave holding. Because the South utilized slave labor well into the 19th century, the notion of a state penitentiary designed to confine and discipline lawbreakers conflicted with the deeply entrenched methods of punishment developed in townships and counties across the state. Though the state penitentiary system sought to punish and confine white Virginians guilty of crimes, the large majority of lawbreakers tended to be enslaved peoples. The idea of a state entity intervening in the implementation of punishment for slaves conflicted with the deep-rooted tradition of "plantation justice." Therefore, the penitentiary was pitched as an institution exclusively designed for the confinement and punishment of free men and women. Yet, overtime, the role of the state prison system evolved to wield power over all branches and members of society.

The Virginia Penitentiary blended a labor-driven style of confinement, with some emphasis on solitary confinement. Beginning in 1800, prisoners processed in Richmond experienced a mix of solitary confinement and silent arrangements in workshops. When convicts entered the facility, they spent six months in solitary confinement in dark, damp, and often flooded cells.¹¹⁴ Once their six months of solitary confinement ended, they joined the labor force within the penitentiary's workshops and were either taught a trade or continued to practice a skill they had acquired outside of prison. Inmates worked on a strict schedule once released from solitary, and prisoners at the Virginia Penitentiary manufactured goods that ranged from clothing and shoes to nails and equestrian tackle throughout the years of their sentences. The administration acknowledged the benefit of a well regulated and controlled prison labor force and required prisoners to practice a trade while incarcerated. The reports usually described the prisoners laboring diligently and without complaint in their designated workshops.

In order for the new penitentiary system to survive, reformers and penologist had to implement policies and establish institutional mores that would stabilize the practice of incarceration and legitimize the

¹¹⁴ Ibid.

facility for the taxpaying public. The heavy concentration of criminals in one location for a period of several years required a regimented reward-based system that routinized prisoners and praised them for their good behavior and severely punished them for behavioral lapses. For example, according to initial reports, it was the prisoners' "employment in the workshops which presented the most serious obstacles to this classification and division."¹¹⁵ Because inmates in the Virginia system labored in workshops, the workdays were the longest time period when they were in close quarters with one another, so the administration enforced strict codes of silence during work hours. Those who broke the code of silence were "inflexibly punished with the gag, to be worn for the offence throughout the succeeding day, except while taking food, or necessary drink."¹¹⁶ This device pried prisoners' jaws open, causing extreme discomfort and preventing them from closing their mouths, eating, and drinking, and even limiting their ability to breathe. Early administrators implemented policies that instilled fear in the inmate population and controlled prisoners by

¹¹⁵ 14th May 1808. Records of the Virginia Penitentiary, Series 1, 1796-1865, Accession 35182, Virginia Penitentiary, Board of Inspectors, Proceedings, 1800-1803. State Records Collection, The Library of Virginia, Richmond, Virginia

¹¹⁶ House of Delegates, Committee Reports 9 February 1824. Records of the Virginia Penitentiary, Series 1, 1796-1865, Accession 35182, Virginia Penitentiary, Board of Inspectors, Proceedings, 1800-1803. State Records Collection, The Library of Virginia, Richmond, Virginia.

publicly carrying out punishments on inmates guilty of violating class separation orders and codes of silence throughout the day. Board of visitor reports lauded the classification and silent systems of labor in weekly reports and described the prisoners as “cheerful” under the newly implemented system.¹¹⁷

Much like systems of control implemented on large plantations, overseers at the Virginia Penitentiary used methods of torture and instilled trepidation to regulate a population of men and women that outnumbered them. Though the persons confined in the penitentiary were classified as “free persons” upon entrance, their conviction relegated them to the status of slave. Prisoners were forced to work and behave. Inmates were threatened with lashes, solitary confinement, humiliation, or reduced meal rations which served as motivations for their subservience. Though lauded as a more humane system, the state penitentiary system offered multiple opportunities for government personnel to wield power. The state subjugated prisoners by the dozens on a daily basis, in turn, generating its own plantation inside the walls of the penitentiary. With the passage of time, the state government slowly gained enough power and influence to override

¹¹⁷ “23 November 1807”. Records of the Virginia Penitentiary, Series 1, 1796-1865, Accession 35182, Virginia Penitentiary, Board of Inspectors, Proceedings, 1800-1803. State Records Collection, The Library of Virginia, Richmond, Virginia.

the system of plantation justice that had reigned for centuries. With the eventual requirement for enslaved peoples to pass through the state prison system after the conviction of a crime, the state slowly replaced the system of slavery as the most powerful entity. However, in the first 15 years of the penitentiary's operation, slaves confined in the institution were never mentioned.

Conclusion

In 1815, penitentiary turnkeys started to list the number of slaves housed in the penitentiary awaiting sale and transportation. Though plenty of other evidence exists to prove the presence of slaves in the penitentiary from the beginning, this transition toward keeping records of in transit slave convicts serves as an important moment in the evolution of state power. Regardless of the original intentions of the legislature to institute a judicial system for the correction of free black and white citizens, the purpose of system gradually expanded.

The number of convicts admitted to the penitentiary increased every year and the number of inmates who served several year sentences remained in the building. In a committee report to the Virginia House of Delegates, those entrusted with examining the penitentiary testified that the number of convicts confined was over the maximum capacity of 200 prisoners. The population in 1820 stood

at 208 prisoners and continued to rise. Although the committee was pleased to report on the cleanliness of the convicts and the order that reigned within the system, concern was raised for the overcrowding—a seemingly inevitable circumstance based on the limited capabilities of the small facility and an expanding population. While the committee admitted the inmate population was miniscule in proportion to the population of Virginia at large, overcrowding remained an issue that needed to be addressed should the facility continue to operate in an orderly and safe manner.

By the time of the 1820 report, the Virginia Penitentiary had begun to resemble the wasp nest studied by the original architect. Though Latrobe sought to avoid the cruelties of nature by providing solitary confinement and space for those imprisoned, the space constraints of the building did not allow for that. Just like the spiders in the crux of the wasp's lair—the prisoners of the penitentiary at Richmond were crammed into their cells. Fifty prisoners toiled in small workshops with limited mobility during their workday. In the nighttime, their conditions worsened. Wedged into a twelve foot by fourteen-foot cell—originally intended for the confinement of one individual—up to a dozen men slept. Twenty years after the facility opened,

monthly inspectors deemed it inadequate and called for an enlargement to accommodate the ever-growing number of prisoners.

Successive legislators grappled with the growing number of persons in the penitentiary in a number of ways. The first was to call for the enlargement of the penitentiary building, which routinely fell on deaf ears. The second, and perhaps more productive means of limiting the number of people in the penitentiary was to implement new standards for the length of any one sentence. When the penitentiary was built, legislators assigned sentences of years instead of months and often limited the sentence of first time offenders to less than ten years. Setting these parameters limited the number of convicts sentenced to the facility, instead imposing a fine or “punishment in some other mode” for lesser offences. By 1821, legislators “resolved, as the opinions of this committee, that confinement in the public jail or penitentiary, for a less period than two years, ought to be abolished by law; and that all minor offences, not meriting such confinement for at least two years, ought to be punishment in some other mode.”¹¹⁸ Routinely, these punishments

¹¹⁸ “Report of the Committee to Examine the State of the Penitentiary,” *Journal of the House of Delegates of the Commonwealth of Virginia Begun and Held at the Capitol, in the City of Richmond on Monday the Third Day of December, One Thousand Eight Hundred and Twenty One* (1821). (Richmond: Thomas Ritchie, 1821).

were left to the discretion of local judiciaries and rural people who tended to oppose transporting criminals all the way to Richmond—which proved a heavy expense to the citizenry.

Hamstrung by the will of taxpayers, the state penitentiary system caved to the demands of citizens to make the penitentiary profitable and to offer an additional means of protection from the looming possibility of slave insurrection. Ever since Prosser's plan to take over the penitentiary house was revealed a few months after the penitentiary opened, the purpose of the institution was tainted. The state penitentiary system was inextricably bound to the institution of slavery, and the two institutions gained strength by reinforcing one another. In addition to the sale and transportation of slaves offering an economic opportunity to the state, and in turn the taxpayers, confining and "disposing of slaves as the law directed" offered Virginians one more layer of protection.¹¹⁹ Though the sale and transportation of criminals was not always profitable, the fundamental process of removing a troublemaking slave from society served as an

¹¹⁹ This phrase was often used in advertisements in local newspapers announcing the presence of slaves in the jails or penitentiary house. Owners were advised that if they did not retrieve runaways, their slaves would be "disposed of as the law directs," meaning they would be sold and transported out of the state. See: "No Headline." *The Columbia Mirror and Alexandria Gazette*, October 18, 1800.

abstract gain to taxpayers.¹²⁰ The multifaceted functions of the penitentiary in its first two decades of operation stem from the original intentions of legislators as well as the frightening slave revolt attempt that occurred shortly after the opening of the facility. When the penitentiary reached capacity in 1820, legislators were forced to reconsider the purpose, operation, and function of the facility for the coming decades.

¹²⁰ According to historian Jeff Forret, the sale and transportation of slaves reprieved from the gallows was a risky business, sometimes profitable and other times resulting in huge losses to the state. For more see: Jeff Forret, *Slave Against Slave: Plantation Violence in the Old South* (Baton Rouge: Louisiana State University Press, 2015), 128-150.

Chapter III:

“Killing by Inches”: Solitary, Re-Enslavement, and Rebellion, 1820-1832

When the seat of government in Virginia shifted from Williamsburg to Richmond during the Revolutionary War, the intentions were twofold. The first was to create a capital distant from British attack, which proved futile. The second was to create a seat of government more central to the ever-expanding territory of Virginia. Ironically, Richmond did not represent a particularly central location in a state that expanded from the Atlantic coast all the way to the Northwest Territory, now modern day Ohio. Nonetheless, the penitentiary in Richmond, hundreds of miles away from the most distant county, embodied state power and influenced law and order in the most rural outposts.

In addition to acting as a symbol of power, the penitentiary was also a physical structure designed for the confinement and rehabilitation of up to 200 convicts. The first year the penitentiary opened, the system processed 21 criminals. For the first two decades of operation, the penitentiary at Richmond never received more than 100 prisoners in any given year, and the building seemed adequate in terms of capacity. Convicts and slaves awaiting sale and

transportation passed in and out of the institution. Yet as the years passed those serving lengthy or lifetime sentences multiplied, and the building seemed smaller and less sufficient. As more counties participated in the statewide justice system and the population of the state continued to grow, overcrowding was the inevitable outcome. The government had several options to address the problem, but it ultimately adopted unsustainable, draconian policies.

In this chapter I explore the hasty actions taken by penitentiary keepers to halt the growing prison population, the impact this had on the citizenry, and the rising influence the penitentiary attained as a central state entity. Through the implementation of stricter sentencing laws, rules requiring longer solitary confinement, and the passage of a law that subjected free blacks convicted of felonies to enslavement, state legislators and penitentiary keepers drastically impacted the lives of many Virginians in the 1820's. Regardless of counsel given by penitentiary inspectors, the state refused to invest in the expansion of the penitentiary and instead implemented measures resulting in corporal punishment, enslavement, or death for convicted felons.

The Fire

Despite repeated warnings from inspectors, the state of Virginia never funded the necessary repairs or expansion suggested for the

penitentiary at Richmond. The roofs, covered in shingles, and the workshops, filled with combustible materials, were tinderboxes waiting to be set ablaze. And indeed, one night in August of 1823, the state penitentiary was destroyed by fire. At half past 2 in the morning, an alarm was sounded and the sky glowed from the light of the fire emitting from the raging blaze. According to multiple reports, “the extensive range of buildings constituting the State rapidly exhibited a tremendous sheet of flames.”¹²¹ City folk poured from their homes at the sound of the alarm and looked to the bright sky to the west to see the penitentiary engulfed. Citizens managed to save the lives of all 240 convicts and the turnkeys at great risk to their own safety. It was a race to unlock each cell, release the prisoners to safety, and reach each portion of the penitentiary in time to release those imprisoned in the inferno. Men cut through walls and windows and dragged prisoners to safety—a harrowing episode recounted in newspapers across the nation.¹²²

After hauling them from the inferno, citizens grouped the convicts together and monitored them as they trekked down the hill to the capitol, where they remained confined under guard waiting for

¹²¹ See, for example, “Fire at Richmond,” August 14, 1823, *The National Advocate* (New York), 1823.

¹²² *Ibid.*

the fire to be extinguished. The armory, banks, capitol, and penitentiary house occupied a few city blocks, all within a mile of one another, and each supported the still fledgling state government. The penitentiary itself, overcrowded, poorly maintained, and now burned to the ground, held little influence. Rather, the ideology of justice, the threat of confinement, and the perceptions of authority that the penitentiary represented dominated the minds of citizens throughout the state. The penitentiary symbolized an authoritative force that spanned across municipalities and united Virginians under the umbrella of state power. Though the building itself was destined to burn, the abstract notion of governance it signified remained and prospered.

Repairs on the structure started the following day, and convicts toiled to rebuild their own prison. The government suffered extreme monetary losses, but the flames did little to interrupt the thriving justice system throughout the state, and business continued as usual.¹²³ In just a little over two decades, the once non-existent concept of a penitentiary was described as an institution that represented “the State.” Over the course of two decades, the penitentiary system solidified the power of the state by connecting nearly 75 counties

¹²³ Ibid.

under one penal system. Though commercial channels functioned in the region since the Colonial period, it took several decades for state influence to impact those distant or particularly rural counties. The penitentiary building only housed 200 criminals, but the laws and resolutions passed by the legislature reached to every corner of the state and encouraged the use of jails in local municipalities.

Though the penitentiary system and state laws had an impact on counties throughout Virginia, many counties functioned according to old principles and used the state laws to their advantage only when it was convenient. Because Richmond was so far away, many counties persisted according to their own systems and continued corporal punishment for misdemeanor offenses—a practice the state wavered in sanctioning or denouncing depending on the year. This lack of uniformity slowly transformed over the course of several decades because change was implemented slowly. Since the laws of the state benefitted citizens and slave owners, some counties were quicker to exercise the new statutes. The institution of slavery and Virginia's penal system worked hand in hand to regulate Virginians—both enslaved and free. Because the state offered the service of imprisoning, convicting, and sentencing convict slaves while offering compensation to their owners; a sort of dependency arose on behalf

of free Virginians who relied on the state to handle business they themselves would have attended to some thirty years prior.

One example of this symbiotic relationship arises from Madison County, Virginia. In February of 1820, two slaves were executed for the attempted murder of Eliza Barnes. Moses, a slave belonging to Richard Henry Field of the county of Culpepper, was charged with conspiring with Chaney Barnes, property of Henry Barnes of Madison County. According transcripts from execution and transportation records, the court unanimously agreed that both Moses and Chaney were guilty of conspiracy and attempted murder. The man and woman, though separated by a county, worked on neighboring plantations and may have had a relationship. After their failed conspiracy to kill Chaney's mistress, both slaves were tried in their respective counties and sentenced to hang for their crimes. In return, the state compensated Henry Barnes with \$400 for the loss of his property, and the state paid \$600 to Richard Henry Field for the loss of his property. The \$200 difference in compensation reflected prices allotted for male and female slaves. The Sheriffs in each county were responsible for the executions, which took place shortly after sentencing. Not only did the state offer Henry Barnes justice for the attempted murder of his wife, the auditor of public accounts also compensated him and Field for

the losses of their respective property. Though the convicts never made the over 100-mile journey down to Richmond to meet their fate, the judicial apparatus in Richmond ordered justice served in their individual counties and the state compensated each owner.¹²⁴

By 1820, executions were on the decline, but they were not entirely uncommon. Perhaps more common was a sentence of death and later a reprieve from the Governor. The rate of executions steadily decreased over the course of the century and virtually disappeared after the Civil War. Instead, the government found more value in maintaining the judicial system's ties to slavery as well as the acquisition of free labor. Although the state made a concerted effort to move away from capital punishment at the turn of the century with the establishment of a penitentiary system, this new reform sentiment did not extend to enslaved people. Indeed, slave executions persisted even with the opening of the state penitentiary. However, executions did decrease and, in many cases, sale and transportation rose in capital punishment's stead. Reprieve, sale, and transportation required an enormous infrastructure that included high-level government officials down to men hired and paid to transport slaves

¹²⁴ "Condemned Blacks Executed or Transported," Virginia Auditor of Public Accounts, Records of Condemned Blacks Executed or Transported, 1810-1822, Microfilm Miscellaneous Reel 2551, State Records Collection, The Library of Virginia, Richmond, Virginia.

to the penitentiary on a case-by-case basis. This process strengthened the relationship between the government and slave owners, sometimes synonymous.

Committee to Inspect the Penitentiary

The state of Virginia was heavily invested—financially and ideologically—in the penitentiary system. Due to the heavy financial investment in the system, Virginia's House of Delegates appointed a special committee to examine into and report on the state of the penitentiary. The committee visited the facility in 1820 and recommended various resolutions to improve the building, which would, in turn, fortify the justice system. The committee members reported positively on the health, cleanliness, and industrious nature of the convicts, but were alarmed to find outrageous levels of congestion in the cells designed for one convict. According to the report there were "fifty in one room in the day and twelve lodged in a small room only 12 by 14 feet" as they slept.¹²⁵ Though the population report only stated 208 prisoners were confined, the vast amount of overcrowding in the individual cells suggests slaves awaiting sale and transportation took up a great deal of space. We know from multiple

¹²⁵ "Committee to Examine into and Report on the state of the Public Jail and Penitentiary House," *Journal of the House of Delegates of the Commonwealth of Virginia* (Richmond: Thomas Ritchie, 1820) 43.

reports that slaves filtered in and out of the penitentiary, but their numbers were rarely included in the overall penitentiary population.

The committee recommended that the state allocate funds for the expansion of the building, which they deemed “inadequate.”¹²⁶ The report went unheeded. Additionally, the committee suggested the house nearby used for storage of gunpowder to be destroyed in case of a fire—a timely recommendation considering the devastating blaze that engulfed the facility just a few years later. Fortunately, journalists who reported on the fire noted the absence of additional buildings outside the penitentiary, suggesting the gunpowder storage facility was torn down per the committee’s suggestion. Had the structure caught fire, the penitentiary would have “tumbled in ruins” and prisoners would have been “buried under its walls.”¹²⁷ The state invested in a committee to consult on behalf of the penitentiary, but refused to heed their suggestions for an expansion of the building. Instead, legislators explored other options to decrease the population of the prison rather than expand its walls.

The penitentiary overcrowded for many reasons. The facility was unable to hold the number of offenders passing through and state, but legislators hesitated to turn criminals away because notions of

¹²⁶ Ibid.

¹²⁷ Ibid, 44.

reform and “humane” punishment through confinement lingered as an important aspect to the penal system. Indeed, inspectors of the penitentiary cautioned that the lash could never produce a positive result. Inspectors argued: “Ingenuity is very little likely to be excited, skill acquired, or industrious habits established, by violent means...” and went on to suggest that seclusion and privation were the best means of reforming criminal behavior.¹²⁸ The spatial limitations of the building and the lack of state funds to expand it resulted in drastic measures on behalf of the state to curtail the prison's population. As the population of the state grew, the penitentiary, only designed for the confinement of 200 convicts, continued to thwart efforts on behalf of the state to punish criminals in the manners prescribed.

“Killing by Inches”: Solitary Confinement Laws

With the help of state legislators, the keeper of the penitentiary implemented several extreme measures to diminish the prison population. By 1824, the prison was too crowded to house convicts in a safe and effective manner. In an attempt to further deter crime, a law was passed on March 9, 1824 that required prisoners to spend the first six months of their sentence in solitary confinement. The laws requiring solitary confinement evolved over the course of 9 years and

¹²⁸ Ibid.

went unchecked until members from the Boston Prison Discipline Society toured the facility and worked to overturn the requirement along with the penitentiary keeper who realized the deadly impact of the practice. Between 1824 and 1826, prisoners spent the first six months of their sentence in solitary confinement, and between 1826 and 1829, they spent the first three months and the last three months of their sentence in solitary, in an attempt to break up the required six. Eventually, the solitary requirement was reduced to three months total and prisoners spent one week every month in solitary and the sentence was broken up over the course of their term. In the nine years these laws were in place, 212 prisoners died. According to the Boston Prison Discipline Society report, the law was repealed in March of 1833, and “the frightful mortality immediately ceased.”¹²⁹

Though deaths happened in the prison every year, the steady rate in which they increased over the nine-year period of forced solitary confinement led to a mortality that was considered appalling. The inspectors from Boston found the practice merciless and maintained that many convicts were likely killed directly or indirectly due to the confinement procedures. The solitary confinement

¹²⁹ *Ninth Annual Report of the Board of Managers of the Prison Discipline Society* (Boston: Perkins, Marvin, & Co., 1834), 63.

measures amounted to a form of execution, but inspectors believed it was unintentional. However, due to the increases in the prison population combined with the methods used to decrease the population, the high number of deaths seemed welcomed or necessary for the institution's persistence. The writer of the report shared his disgust with the conditions in solitary confinement and described the space as a dungeon. In order to tour the solitary confinement accommodations, he was led down a hallway by torchlight in the winter months. The space had no heating capabilities, no natural or artificial light. The scenario was made even more dismal because each prisoner was held in chains within the dark, damp, freezing cells.

In the year 1824, 64 new prisoners were received into the penitentiary, and each was forced into the dungeon on a diet of bread and water only. These men and women were chained to the floors, unable to see the light of day, and had no occupation or entertainment. They could not speak to or see another human being for upwards of 180 days. Death was likely a welcomed option for prisoners experiencing the torturous conditions. If they survived the six-month sentence, prisoners emerged malnourished, atrophied, and prone to diseases due to their weakened immune systems. Because

bouts of cholera flowed through the prison walls so often, these men and women were more susceptible to the disease and succumbed to illnesses, they occasionally died as a result.

The Boston Prison Discipline Society inspector, shocked and appalled by his discovery of torture in the supposed humane penitentiary system, sought answers to the abominations he witnessed in Virginia. In the final paragraphs of his report, the inspector surmised that the abuse went unreported and neglected for so long out of ignorance on behalf of the citizenry. Indeed, a tour like he had been granted was never allowed, and had the public seen the horrors the institution posed, the practice would have been dismantled. He observed:

At a time the visit above described was made, --and it is supposed that the same was true afterwards, --it was not customary to let visitors see, except in extraordinary cases, the prisoners in the solitary cells. If it had been, and the public had thus become acquainted with the slow and consuming fires of these dungeons, it is not possible, that the people of the Old Dominion would have suffered them to burn and consume their living, dying victims, for nine years.¹³⁰

The penitentiary system in the South did not include the level of checks and balances, or nor did it reflect the reformist desires of institutions in the North. In fact, around the time of this inspection, the

¹³⁰ Ibid, 65.

Eastern State Penitentiary in Philadelphia implemented a system that solely consisted of solitary confinement, but it functioned in a completely different manner. The correspondent closed his report with a scathing observation about the system in Virginia due to the lack of religious instruction available in the penitentiary. The penitentiary system in the North was founded on the idea that convicts' souls had to be reformed in order for them to reenter society. This idea did not translate in the Southern penitentiary system, and the two systems were constantly at odds because of this. Though the death toll decreased significantly after solitary confinement laws were relaxed, the Northern observer still denounced the system and claimed evil still reigned due to the lack of religious instruction—a central component to the penitentiary systems in places like Philadelphia and Boston. The report ended with this melancholy observation:

Should the question now arise, whether any evil remains unalleviated in the Virginia Penitentiary, that does not now, or ever will, appear like the one above described, the answer is, that the one which comes nearest to it is this, that, while moral and religious instruction is allowed, but not provided, no more Christians and Christian ministers should be found, from Richmond, and Petersburg, and Hampden Sidney, communicating such instruction from Sabbath to Sabbath, within the walls of the Penitentiary.¹³¹

¹³¹ Ibid.

The author surmised no evil could surpass the solitary confinement situation he observed, but he felt the lack of religious instruction in the institution came close. This fundamental difference in philosophy haunted Southern prisons and their reputation for decades. Sporadic visits from Northern organizations like the Boston Prison Discipline Society caused a ripple effect that impacted people's perceptions of the facility for over two centuries. European reformers and penologists regularly ignored the Virginia Penitentiary based on rumors of misconduct and negligence. The keepers at the Virginia Penitentiary became increasingly hesitant to allow outsiders to observe their system. As a result, historians have had little to work with in comparison to the volumes of records and observations on prisons in places like Philadelphia or Auburn.¹³²

Superintendent Reports

Samuel P. Parsons served as the superintendent of the Virginia Penitentiary the first time it reached capacity. Parsons worked in the prison since it opened in 1800 and held various roles in the administration for over 3 decades. Originally a voluntary member working on the Board of Visitors, Parsons was one of a dozen men responsible for creating prison codes, operational procedures, rules

¹³² For a more detailed analysis of the differences of Northern and Southern penology, see Chapter 4.

outlining the expectations of prisoners and keepers, and understood the history, purpose, and importance of the system. By 1820, Parsons was one of the highest paid and ranking appointees of Virginia's government, making an annual salary of \$1500.¹³³ Parsons was appointed as keeper of the penitentiary by the General Assembly in 1816 and served in multiple capacities until 1836. Parsons advocated for more humane laws and less solitary confinement. He opposed the laws passed to limit the number of prisoners in the facility, and he continuously lobbied for the building to be expanded to meet the growing need. One of Parsons' biggest contributions to the system was outlining expectations of guards and prisoners. His plans set the stage for professionalizing the vocation and set standards for the expected behavior of both guards and prisons.

Parsons became the superintendent of the penitentiary in 1816, the same year the Auburn Prison in New York opened. The Auburn system is often credited with providing a new style of penology and

¹³³ The Virginia Almanack was a yearly publication. Contents included astrological information, short stories, poems, and government information. The legislators and House of Delegates Representatives were each listed according to county, and the salaries of some of the most prominent appointed men for state posts. In 1820, Samuel P. Parsons was listed as the keeper of the penitentiary with an annual salary of \$1500 along with the Attorney General, The Treasurer of the State, The Auditor of Public Accounts (who worked closely with the penitentiary keeper and judicial system), the Register of the Land Office, The Superintendent of the Manufactory of Arms, the Adjutant General, the Master Armorer, the Assistant Armorer, The Commissioner of Loans, and the U.S. Attorney for the Virginia District. For more see: Joshua Sharp, *Virginia Almanack, For The Year of Our Lord, 1820* (Richmond: Benjamin Warner, 1820), G.

recognized as the system other institutions attempted to duplicate. Indeed, many prisons were based off of the Auburn model of work in the daytime and solitary confinement to sleep. Yet the Virginia Penitentiary operated on a similar model for close to two decades. This is not to say that other prison systems did not impact operational procedures in Virginia, even if they developed at different times. As more prisons opened, the streams of communication widened between superintendents in different states, and penitentiary keepers often penned letters to one another regarding the operations at their own institutions.

When Virginia first opened, the Governor corresponded with one of the leading prison reformers, Thomas Eddy. Eddy provided the Governor with advice on how to run the prison and the importance of rehabilitation. These relationships continued with various reformers, Governors, superintendents, and organizations throughout the United States. However, by the 1820's and 1830's, these relationships became more strained as clear differences divided Northern and Southern customs and practices. The most prominent differences between Northern and Southern penal systems sprang from the existence of slavery.

In 1822, six years into Parsons' tenure as penitentiary keeper and the year before the penitentiary burned, overcrowding persisted. In addition to the congestion, guards acted negligently and prisoners repeatedly disobeyed posted rules and regulations. With the population steadily rising, guards faced an increasingly hostile and disobedient population of prisoners who greatly outnumbered them. The law requiring inmates to spend their first six months in solitary confinement became more difficult to maintain and more inmates had to be crowded into sleeping cells at night to sustain the practice. Additionally, sentences of hard labor were difficult to supervise because workrooms were heavily impacted. The tone of the 1821 reports on behalf of the committee, the superintendent, and legislators was one of chaos, particularly in regard to upholding order and supervising the inmates. In his 1822 report, Parsons reported on two incidents that sounded an alarm that the penitentiary was slowly evolving into an unruly condition: the escape of a convict slave, and the violation of sex segregation rules that resulted in the impregnation of a convict and the subsequent birth of a new prisoner. Consequently, Parsons drafted a report concerning the duties of guards and inmates and the punishments that would result in cases of malfeasance.

Parsons' report about the escaped slave downplayed the seriousness of the situation to David Garland, the chairman of the committee appointed to examine the Jail and Penitentiary House. In his letter, he admitted there was an escape but pointed out that no convicts had escaped—only a slave reprieved for sale and transportation. He reported: "No convict has escaped from here within the period mentioned; nor, has there been but one, since I have had charge of the institution, and that one was retaken and brought back."¹³⁴ He defended his position as keeper and superintendent of the facility in an attempt to put the committee's apprehension to rest. Richmond residents feared the prospect of convicts escaping into the city, and Parsons knew the importance of characterizing the incident as an isolated one. Parsons described the escape of the slave convict as a "great risk" and described the trouble the fugitive went through in order to leave the grounds undetected by sentries.

Parsons used the occasion—one that obviously posed a grave threat to the city of Richmond—to once again plead for improvements and an expansion of the facility, but he balanced his sense of urgency with a tone of control that assured the board that he had the situation under control. Parsons described:

¹³⁴ "Report of the Superintendent," *Journal of the House of Delegates*, (Richmond: Thomas Ritchie, 1820) 22.

A slave reprieved for sale and transportation, sent here for safe keeping, escaped (with great risk,) by going over the wall and spikes in front of the building, and within a few feet of the guard, if he was at his post, at the time. This escape, I consider owing to two causes, viz:--the insufficiency of the building, by the facility given to ascend the wall and spikes on the side, and the negligence of the guard on the outside of the building.¹³⁵

Though Parsons maintained a nonchalant tone in his letter to the board, his subsequent action of outlining new laws and regulations for prisoners and convicts suggest the sense of alarm he felt due to the prison overcrowding. In addition to the fugitive slave who escaped from the penitentiary, chaotic events occurred within the walls that Parsons was unable to conceal from the committee. According to the keeper's report, "the law requiring the male and female convicts to be kept separate and apart, was, in one instance, violated during last winter." Parsons reported, "several male convicts" broke into the apartment of a female inmate "with her assistance" and as a result, "added one to the number confined in the penitentiary."¹³⁶

Since it opened at the beginning of the century, the Virginia Penitentiary received male and female convicts. Latrobe's original design for the building included facilities for both men and women.

¹³⁵ Ibid.

¹³⁶ "Committee to Examine into and Report on the state of the Public Jail and Penitentiary House," *Journal of the House of Delegates of the Commonwealth of Virginia* (Richmond: Thomas Ritchie, 1821).

This indicates the state expected women to face criminal charges and serve time in the penitentiary and was an innovative ideology. Indeed, Virginia was the first penitentiary that included facilities for both men and women. Though the cells were separated by the keeper's quarters and both women and men were locked away at night, the law requiring that male and female convicts be kept separate and apart was violated on multiple occasions throughout the 19th century. This is apparent in penitentiary records that customarily list the number of inmates in the penitentiary. Though Parsons wanted to maintain the façade of control to the board and committee appointed to check up on him, it is clear control was slipping out of his hands as the penitentiary reached and surpassed prisoner capacity.

The language Parsons used to describe the intercourse between convicts is vague. He points out that the men broke into the cell of a female convict with her help, indicating this was not a violent rape scenario, yet he also indicated that "several" men broke in. His ambiguity describing the events leaves several possibilities open for what happened, one being that the woman was gang raped by multiple men. However, it was also possible that the liaisons were welcomed by all involved. Regardless of the circumstances involving

the breach in prison protocol, a child was born into imprisonment as a result. Other than mentioning the increase in population, Parsons made no further comment on the child's health or experiences within the walls of the prison.

As a result of these breaches in protocol, Parsons mapped out a strict new set of rules, regulations, and consequences for prisoners and guards. Though rules were always in place, this new set of policies mandated stricter consequences that included multiple lashes, food deprivation, and solitary confinement for extended periods. Parsons realized the danger of disorder and was forced to work with a building that was inadequate to host and control more than 200 inmates. One aspect of the new regulations created scenarios that compounded punishments and exponentially increased penalties. For example, inmates caught conversing with one another would face 24 hours of solitary confinement for the first offense and for the second offense, ten lashes and 48 hours of solitary confinement.¹³⁷ Another layer to the system revolved around the classification system that rewarded good behavior with promotions to higher classes, and conversely punished poor behavior with demotions. The class system allowed prisoners certain privileges in workshops, access to raw materials, and

¹³⁷ Samuel Parsons, "Report of the Superintendent," *Journal of the House of Delegates*, (Richmond: Thomas Ritchie, 1820) 23.

communication privileges with administrators. Additionally, good behavior allowed prisoners to forego shaving their heads and beards for the last six weeks of confinement in order to return to society without the appearance of a convict.

Though the convicts seemed to pose the most salient threat to Parsons and other prison overseers, the guards also proved challenging and unmanageable. Guards neglected their responsibilities and job requirements for many reasons. Some of these included the paltry allowances allotted, the poor hours they worked, the massive population they were expected to harness, and the conditions of the facility they labored in. Parsons outlined the duties of police of the penitentiary in the following manner: "It is his duty to inspect the moral conduct of the convict; examine the work; direct its execution; draw draughts; suggest and put in operation new employments for the convicts; hear and decide all violations of the rules; inspect the health of the convicts &c."¹³⁸ Officers were disbursed throughout four wards and an assistant keeper supervised each ward. The assistant keeper was also required to oversee the work of convicts and report violations of the rules. Additionally, assistant keepers were tasked with receiving and disseminating raw materials for prisoners to

¹³⁸ Ibid, 24.

work with, delivering manufactured good to the agent, writing invoices for good manufactured to the superintendent, and reporting on material necessities for each ward. The chain of command in the building ended with Parsons whose duty it was to report to the House of Delegates and State Legislators.

Drastic Measures

In 1821, the committee reconvened and resolved “that the punishment of free negroes and mulattoes, by confinement in the public jail and penitentiary, ought to be abolished; and, that some other mode of punishment for offences committed by them, should be provided by law.” Additionally, the committee resolved that “confinement in the public jail or penitentiary, for a less period than two years, ought to be abolished by law; and, that all minor offenses, not meriting such confinement for at least two years, ought to be punished in some other mode.”¹³⁹ The “other modes” referred to by the committee resulted in the reinstatement of corporal punishment for all misdemeanor offenses, and the sale and transportation of free blacks for felonies. Due to their increasing numbers in the penitentiary, legislators decided jail or penitentiary sentences were not enough of a

¹³⁹ “Committee to Examine into and Report on the state of the Public Jail and Penitentiary House,” *Journal of the House of Delegates of the Commonwealth of Virginia* (Richmond: Thomas Ritchie, 1821).

deterrent for black offenders. But in fact, the increases in their population numbers in the institution reflected the growing number of freed blacks in the state of Virginia as a whole.

For a total of four years, the laws in Virginia changed in a dramatic way for free black people. In the years of 1825, 1826, 1827, and 1828, free black men and women convicted of any offense worthy of confinement in the penitentiary were held temporarily in the institution and later sold and transported into slavery. This turn of events ultimately consigned 30 free people to enslavement for penitentiary offenses and further punished their transgression with transportation out of their home state. As a result, the number of free blacks sentenced to the penitentiary dramatically decreased—a phenomenon legislators attributed to the deterrent created by the new punishment. Some lawmakers argued that crime decreased due to fear of enslavement, others argued that sentences for free blacks were lightened to corporal or economic punishments in lieu of sale and transportation, a new and particularly harsh law, even by Virginia's standards. Regardless of the reason for decrease, the result was hardly enough to warrant the continuation of this policy, which only reduced the number of prisoners in the penitentiary by 30 people when the institution was overcrowding so rapidly. Just one year after

the call for a new sentence for free black and mulatto offenders, 40 people overcrowded the penitentiary. This number did not include slaves detained for sale or transportation.

Occasionally, prison registers and reports displayed the number of slaves confined in the penitentiary for sale and transportation. The keeper counted the number of slaves confined and tallied it with the total number of long-term prisoners, but their numbers were mentioned after the calculations for free black men and women or white men and women. Since they were not employed in the workshops, slaves awaiting sale and transportation idly waited for slave traders to make their offers to the Governor. Once a slave was purchased from the Commonwealth, that trader was tasked with transporting the slave out of the state to be sold further south or outside of the United States. If a slave convicted of a felony and reprieved for sale or transportation was found back in the state of Virginia after exoneration, they would be hanged as if the reprieve never occurred.

Slaves passed through the penitentiary system, as mentioned in the case of Gabriel Prosser. This continued to occur over the years, but became more problematic as the population of the penitentiary reached capacity. In 1820, white, black, enslaved, free, men, and

women, occupied cells in the Virginia Penitentiary. Lawmakers and penitentiary officials discussed issues of overcrowding in several penitentiary reports. As legislators mulled over their options for keeping the prison population at bay, the subject of the rise in prison population—chiefly, free black offenders, became “a subject of painful reflection.”¹⁴⁰ After examining population records and superintendent reports, Virginia legislators came to the conclusion that there were too many black convicts in the penitentiary, and too many convicts who were serving sentences for less than two years. The original intention of the penitentiary was to curtail capital or corporal punishment for criminals. As the facility overcrowded, Virginians devolved back into the draconian practice of corporal punishment when the small facility couldn’t deal with the influx of criminals from across the state.

Curiously, the “painful reflections” of inspectors and policymakers on the prison population were misguided in key respects. Though the population of free black offenders was on the rise in the penitentiary, free black men and women did not outnumber white offenders in the 1820’s. Although this dramatically shifted in the years leading up to and after the Civil War, in the first half of the 19th

¹⁴⁰ *Journal of the House of Delegates of the Commonwealth of Virginia* (Richmond: Thomas Ritchie, 1820) 9.

century, white criminals far outnumbered black convicts—both enslaved and free. A Mr. Lee, a lawyer in Alexandria, wrote to the legislature in 1830 contending: “I have been long satisfied that the lower class of the white population is much more vicious, and more apt to be guilty of offences, than either the slave or the free persons of color.”¹⁴¹ In his lengthy treatise on crime in Alexandria, Lee wrote to the legislature explaining that black offenders committed crimes less often than white offenders, but were more likely than slaves, who he argued: “are generally well treated, well clothes and fed; therefore have not the same motive: that of supplying the necessaries wants for becoming rogues.”¹⁴² Lee praised slavery as a means of upholding civil society and lamented over the increase in crimes by free people. The state penitentiary system was invested in upholding and abetting the institution of slavery for its own advantage.

“A punishment of the Highest Order”

Though the new laws calling for the sale and transportation of black criminals and corporal punishment for white criminals found guilty of misdemeanors temporarily curtailed incoming inmates, these changes did not go unchallenged. The new laws clearly represented

¹⁴¹ “Mr. Powers; New York; Mr. Wickliffe; Kentucky; Columbia,” *Alexandria Gazette*, May 30, 1830.

¹⁴² *Ibid.*

a short-term solution to a growing problem. Moreover, Governor William Branch Giles, along with some lawmakers, strongly opposed the revival of whipping posts and enslavement of free peoples.

In 1827, his first year in office, Governor Giles addressed Virginia's House of Delegates, asking them to consider overturning the law subjecting free black criminal offenders to be sold into slavery. Though he recognized the penitentiary had become overcrowded, he questioned whether the law would remedy the persistent problem. Governor Giles acknowledged that criminals should be punished with the forfeiture of liberty, but he maintained that slavery was "a punishment of the highest order" that not be used as a punishment for free people.¹⁴³ He considered Virginia an example for the rest of the United States and felt the policy was "incompatible with every principle of morality, justice, and directly repugnant to the just, humane, and liberal policy of Virginia, in the dispensation of criminal justice upon every other occasion."¹⁴⁴ Though hardly known for progressive penal laws and penitentiary practices, it was true that Virginia was the forbearer of several penitentiary systems in different states and that its practices were well known throughout the United

¹⁴³ *Journal of the House of Delegates of the Commonwealth of Virginia* (Richmond: Thomas Ritchie, 1827) 9-11.

¹⁴⁴ *Ibid.*

States. Governor Giles, well aware of the reputation the state needed to uphold, abhorred the practice of enslaving free black citizens convicted of a felony.

Governor Giles advanced several arguments to the House of Delegates in order to discredit the legitimacy of enslaving black criminals, but he focused special attention on the plight of women sentenced to enslavement. Governor Giles found this practice particularly unjust, because a woman's enslavement meant that all of her offspring were also destined to lives in chains. He argued:

In the case of male offenders, the punishment dies with the offender. In the case of a female offender, it does not; but it lives, and is visited upon the offspring, throughout all generations...that the innocent is punished with the guilty. The unoffending offspring is made to participate deeply in the punishment of the offending mother, whilst it participated in nothing in her guilt.¹⁴⁵

Giles called the practice of enslaving free black women “repugnant” and questioned the justification for practice, which he found to be “directly inconsistent with the mild and humane spirit which characterized every other part of the system.”¹⁴⁶

Not only did the procedure make the state look bad, it was also ineffective. Enacted in 1824, the policy had after three years only decreased the number of prisoners in the prison by 44. Some argued it

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

was a deterrent for crime, to which Giles pointed out that the numbers were unchanged.

Meanwhile, the penitentiary still continued to overcrowd with white offenders. Congestion would continue to plague the penitentiary unless the enterprise expanded, but legislators refused to make the necessary improvements and expansions for the system. The facility continually lingered in a state of overcrowding, disrepair, and mismanagement. However, the penitentiary and court systems throughout the state thrived and continued sentencing criminals. Governor Giles pleaded with the General Assembly, "I earnestly recommend a review of those provisions of the penal laws...and confidently rely upon its [General Assembly's] wisdom, justice, humanity, for remedying the evils, as I think them."¹⁴⁷ After review, re-enslavement of free black criminals ceased in the state of Virginia after the four year experiment ceased.

Though enslavement as a punishment for crime only happened for a few years, the practice further solidified the growing power of the state to dispense justice and work in conjunction with the institution of slavery. By the mid-1820's, the penitentiary system in Virginia was a powerful state entity. The growing importance of the institution in

¹⁴⁷ Ibid.

regard to control of the slave population became more apparent in the summer of 1831 after the Southampton Massacre, also known as Nat Turner's rebellion.¹⁴⁸ In the wake of the rebellion, Virginians again revisited the question of slavery and its role in society, particularly in regard to the growing judicial system in the state of Virginia. Though the practice of enslaving free black citizens to slavery after conviction of a felony had been abolished, the Nat Turner rebellion again brought questions to the fore about the place of free blacks in Virginian society. Many feared their presence, and much of the great slave debates of 1831 and 1832 centered on removal of black citizens from the state through re-enslavement, colonization, or deportation.¹⁴⁹ The penitentiary offered one solution to what was considered the growing problem of free blacks and slaves bent on revolt.

¹⁴⁸ In the summer of 1831, Nat Turner, a preacher in Southampton, Virginia led a slave revolt which resulted in the deaths of dozens of men, women, and children. Numbers vary based on different accounts, but most agree the number was somewhere between 55-65 people. Virginians were outraged and afraid. Militias gathered, and hundreds of black Virginians died at the hands of vigilantes as a result of the uprising. Turner himself eluded custody for a few months after the revolt. He was eventually apprehended in November and sentenced to hanging in November of 1831. Historians have covered this topic extensively and continue to examine this event as a watershed moment in United States history and race relations. For multiple perspectives and detailed analyses of the Nat Turner rebellion, see: ed. Kenneth S. Greenberg, *Nat Turner: A Slave Rebellion in History and Memory* (New York: Oxford University Press, 2003).

¹⁴⁹ For more information on the Great Slave Debates of 1831-1832, see: ed. Erik S. Root. *Sons of the Fathers: The Virginia Slavery Debates of 1831-1832* (New York: Lexington Books, 2010).

After Gabriel Prosser's failed rebellion at the beginning of the 19th century, the state penitentiary slowly rose to prominence by providing Virginians with an additional form of security in the case of slave insurrection. The armory and militia housed weapons and the penitentiary guards provided additional manpower in the case of insurrection. Additionally, should a plot unfold and the perpetrators caught, the penitentiary was a holding facility for slaves waiting to be hanged on the gallows, which were erected in the penitentiary yard. The penitentiary at Richmond was a staple in Virginia's slave society and legal system.

Around the time of the Nat Turner rebellion, several foreign and domestic visitors toured U.S. penitentiaries. During this time, the state of Virginia experienced profound transformations and upheavals related to the existence of slavery. As the penitentiary came to play a greater role in the functioning of the state, questions about the efficacy of slavery continually cropped up. Virginians found themselves in a quandary about the future of slavery and of their state. A traveler from Liverpool, England, Harriet Martineau, observed these shifts in Southern society related to the shrinking institution of slavery and reported on the impact this phenomenon was having on the South.

In August of 1834, Martineau set sail from Liverpool to New York to begin a multi-year tour of the United States. The 42-day voyage was common for many of the American and British passengers—primarily young merchants, but for Martineau, this was her first time crossing the Atlantic. Martineau was a well-respected British sociologist, feminist, abolitionist, and theorist. Her writing attracted the attention of the most prominent British thinkers as well as the nobility. Her 3-volume series *Society in America* was followed by another sequence of equal length at the great demand of her readers. Published in 1838, *Retrospect in Western Travels* offers readers a detailed description of her experiences in the United States, in both the North and South. Additionally, Martineau wrote of her observations on the American prison system.

During her visit to America, Martineau claimed she “visited almost every kind of institution.” She went to the prisons at Auburn and Philadelphia and spoke with administrators there. She also visited hospitals, insane asylums, “literary and scientific institutions; the factories of the north, plantations of the south; the farms of the west.” She stayed in cabins, mansions, and farmhouses and traveled the American landscape on horseback, by foot, and in stagecoaches, canoes, and steamboats. She watched sales of land and of slaves on

the auction blocks in the South. She observed American government in the Supreme Court, state Senate sessions, and witnessed legislative proceedings. Most importantly, she spent a great deal of time mingling with the American people by joining in on county fairs, attending marriage ceremonies, baptisms, and dining with people from all walks of life. Martineau praised the American people for their hospitality in every stretch of the country she visited. Regardless of political or religious differences, Martineau befriended those she met and felt welcomed in every region.¹⁵⁰ Though her political stances differed greatly from many of those she encountered, this did little to poison her pen regarding the people she encountered.

Instead, Martineau used her travels as an opportunity to understand the different motivations of slaveholders and commented on nuanced circumstances surrounding manumission. An ardent abolitionist herself, Martineau spent time in the Southern states to better understand labor, culture, and the economy to get a better sense of the incentives and justifications for the perpetuation of slavery. She even made friends with those she disagreed.¹⁵¹

¹⁵⁰ Harriet Martineau, *Society in America Volume I* (London: Sanders and Otley, 1839), xv-xvi.

¹⁵¹ *Ibid.*

Martineau's visit coincided with Nat Turner's Rebellion, so she witnessed the upheaval it caused. She reported that white slaveholders felt betrayed. This complicated her understanding of an already convoluted issue—one that she grappled with understanding when examining Southern culture. She observed the complex and unique relationships each slave owner had with his slaves and how this could vary dramatically from one plantation to the next.¹⁵²

She recalled one conversation a master had with his slave regarding the uprising. Martineau referred to this man as a Virginian gentleman who sought to prove to a northern visitor that he was not afraid of his slaves following the revolt. As proof, he summoned his most loyal bondsman to his drawing room to discuss the rebellion. They exchanged some information about the circumstances and the master advised his slave if the revolt came to their doorstep, he would be tasked with defending the family and farm to which the slave replied, "no." Stunned, the master then offered to supply his slaves with arms with which to defend the land and people to which he again replied, "no." The master then asked the damning question: "Do you mean, that if the Southampton negroes come this way, you will join them?" to which the slave replied, "Yes, massa." Martineau

¹⁵² Ibid, 146-149.

reported: "When he went out of his room, his master wept without restraint. He owned that all his hope, all his confidence was gone."¹⁵³

Martineau witnessed this verbal exchange and it helped her come to grips with the extreme influx occurring within slave society. She couldn't imagine the institution of slavery persisting much beyond her visit and felt she watched the system crumbling before her eyes. She observed that the state of Virginia, in particular, seemed to have no need for slavery anymore. There was not enough agricultural labor to be done, and she observed: "The agriculture of Virginia continues to decline; and her revenue is chiefly derived from the rearing of slaves as stock for the southern market."¹⁵⁴ Martineau believed that slavery persisted due to the expansion of the United States to western territories. Because places like Virginia had an overabundance of slaves and not enough labor for them to perform, she argued they needed to be relocated to areas requiring more labor, either south or west. With this reflection, she figured slavery could not persist in the region for long. Yet, she wondered what would happen to society if slavery were abolished.

¹⁵³ Ibid, 149-150.

¹⁵⁴ Harriet Martineau, *Society in America*, vol. II (London: Sanders and Otley, 1837), 41.

The complex relationships between slave owners and their slaves left Martineau to reflect on the impact manumission would have on society and interviewed several slave owners to get their thoughts on life without slavery. One of the most pressing questions that came out of the discussion dealt with what would happen to former slaves if they attained their freedom? Martineau maintained that slaves should be freed immediately and have all the rights of free men bestowed upon them without restrictions. Many Southerners, slaveholders or not, could not see a path to freedom that meant equality for former slaves. Several held the opinion that former slaves should be transported to Africa. Colonization societies popped up all over the United States and held the opinion that slaves should be sent “back” to Africa, notwithstanding the fact that several never came from Africa in the first place. The idea behind their scheme, which was supported by some black Americans, was that white and black people could never live in the same land with the same freedoms and must be separated.

Martineau related one conversation between a supporter of the colonization movement and someone with reservations about such schemes. The man in support of the colonization society maintained: “Africa is the only place for them.” He felt strongly that freed slaves

should not be awarded territory out west, because too much territory had already been ceded to the Indians. Freed slaves could not survive in the harsh and frigid climate of Canada, he continued, nor could they find refuge in Haiti, which was already contending with its own problems with freed slaves. He argued: "There is no rest for the soles of their feet, anywhere but Africa!" The detractor offered, "Why should they not stay where they are?" To which he replied, "Impossible...They could never live among the whites in a state of freedom."

Though this conversation took place approximately three decades prior to the Emancipation Proclamation, the man who supported colonization made an eerie prediction about the future of freed slaves. Knowing full well the society in which he lived, the strong racial hierarchy that existed and would persist, the man predicted the predicament former slaves would encounter in Virginia and throughout the South—they would be denied liberty and equality living amongst former slaveholders.

The idea that former slaves could never live in a state of freedom was echoed in the criminal justice system. Debates over punishment for free black offenders and later discussions about the institution of slavery as a whole reflected deeply entrenched attitudes

about black Virginians and their place in society. The penitentiary offers an example of one state entity and how it evolved alongside the institution of slavery. Overpopulation of the penitentiary and the fear of slave revolt drove legislators to take drastic measures to maintain order in society and Virginians came to rely on the penitentiary system for the control and apprehension of free and enslaved blacks. The fears of the slave owner in Martineau's account provide one illustration of the impact of Nat Turner's rebellion and the growing fears of citizens. The story also exemplifies how the penitentiary could play such a crucial role for citizens who feared for their lives.

Conclusion

Though the penitentiary housed a majority white population, transient slave prisoners maintained a presence in the prison. While slave revolt was rare, state militias, the armory, and citizens waited poised to act in a case of insurrection. The penitentiary remained an important pillar in upholding the institution of slavery, and a great deal of its transactions revolved around the policing, transportation, and removal of convict slaves from the state of Virginia. Questions over the sustained practice and validity of enslavement in the state cropped up on multiple occasions.

Because of this pervasive anxiety of slave rebellion, the state penitentiary system continued to provide white Virginians with a physical building to hold and later remove slaves perceived to be a problem. The prison remained an intermediary between convict slaves and their owners and acted as the nucleus for the maintenance of order. At great cost to the state, the practice of sale and transportation of convict slaves persisted. Slave owners continued to use the laws in place that awarded them compensation for their loss of property and the state penitentiary system set up channels through which to transfer slaves from their county to the penitentiary where they were held awaiting sale outside of state lines.

Though the penitentiary served as a failsafe for fearful Virginians, by the 1820's, the building was entirely inadequate. This left legislators and the penitentiary administrators with the job of concocting new policies to accommodate the growing need for prison cells. The decisions reached to address issues of overcrowding in the penitentiary represented a huge step back for Virginia. The committee members concocted the resolutions due to the unwillingness of the state to invest in the expansion of the penitentiary house, which was an increasingly powerful aspect of the state itself.

As evident by the sale and transportation of dozens of slaves, the Virginia Penitentiary aided in upholding slave society and had little investment in reform endeavors, regardless of original intentions. With the reinstatement of corporal punishment and the new law sentencing free peoples to a life of servitude, the state of Virginia solidified its power as a pillar for slave society as well as a menacing state-funded system of authority.

State-implemented punishments for crimes persisted whether the penitentiary was overcrowded or not. As the population continued to grow, the penitentiary faced issues of overcrowding for the rest of its existence. Though the committee pleaded for an expansion for the building, their suggestions were again ignored. Consequently, officials knew they needed to take concrete steps to slow the arrival of inmates to the overflowing facility and decided a two-year minimum sentence for white offenders and the barring of black inmates sufficed.

Though the penitentiary was founded on reform principles and intended to create a more humane system of criminal justice, the state consistently struggled to balance compassion with pragmatism and the reluctance of legislators to provide additional funds for its maintenance. The original intentions of the system were quickly

abandoned, and dominant cultural attitudes about labor, punishment, and fiscal responsibility overrode any semblance of compassion for criminals. By the 1820's, the stark differences in penitentiary practices across the United States became more defined, and the state of Virginia solidified its unique place in the penitentiary experiment.

Chapter IV:

Northern vs. Southern Labor and Religious Reform Ideologies

The preceding three chapters have covered aspects of the founding and early administration of the Virginia Penitentiary, as well as the labor assignments and racial and class hierarchies that existed within the institution. However, providing a narrative for each step of the prison's development in the 19th century is not enough to fully explain how why it differed from all other facilities described as penitentiaries at the time, or how its unique approach to incarceration evolved. As previous chapters have emphasized, the practices at the Virginia Penitentiary reflected racial and social hierarchies established in the earliest days of colonial settlement.¹⁵⁵ In this chapter I compare the Virginia Penitentiary to the penitentiaries in Philadelphia and Auburn in order to provide a broader context for understanding their

¹⁵⁵ See chapters 1-3.

different approaches and procedures.¹⁵⁶ This approach will help address some of the broader cultural differences between the North and South and consider how they impacted the operation of the regions' respective penitentiary houses.

The most critical differences between North and South were rooted in different attitudes and practices concerning labor. Nuanced perceptions undoubtedly existed in each region, but by and large, Northern penal systems developed with the notion that labor was reformatory for convicts—that it was good for their souls.¹⁵⁷ By contrast, labor in Southern prisons was understood as punitive restitution, meant to punish those incarcerated and forcing them to compensate the state. I use the Eastern State Penitentiary in Philadelphia and the Auburn Prison in New York as models of Northern prisons in order to

¹⁵⁶ This chapter is not about the Auburn Prison or Eastern State Penitentiary per se. I provide an overview of their operations in order to give readers a sense of their procedures, but do not seek to make new arguments about their function. Many scholars have covered these institutions and their development in great detail. Indeed, most use these two prisons as the de facto models to outline how American penology and its approach to discipline shifted was shaped by the Revolution and shifted in the Early Republic. For more on these two prisons see: Thomas L. Dumm, *Democracy and Punishment: Disciplinary Origins of the United States* (Madison: University of Wisconsin Press, 1987); Michel Foucault *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977); Rebecca L. McClennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (Cambridge: Cambridge University Press, 2008); Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: University of North Carolina Press, 1996); David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New Brunswick: Aldine Transaction, 1971).

¹⁵⁷ Meranze, *Laboratories of Virtue*, 296.

demonstrate how differently Richmond functioned. Though Auburn and Eastern State disputed over the best mode of confinement, prison reformers ultimately believed these two systems to be most effective. Reformers rejected penal discipline practices adopted at Richmond, because the underlying purpose of such practices was not the reformation of the convict. Instead, Southern prison administrators pursued compensation from convicts in the form of labor and chastised convicts in the hope they would never want to return to prison. It was the latter system—overpopulated and labor-driven, with a focus on retribution on behalf of society rather than of rehabilitation for the individual—that eventually prevailed in the United States and continues in the present day.¹⁵⁸

Though communication occurred between prison administrators across the nation, and each penitentiary initially at least claimed that it sought to eradicate corporal punishments and executions for crimes other than first-degree murder, the motive for embracing this new

¹⁵⁸ Work on 20th and 21st century prisons in the United States is extensive. Many scholars argue that prisons in the United States are the new form of slavery or Jim Crow. Though I agree with this premise, critics of the contemporary system of incarceration generally fail to explore the history modern prisons. This dissertation attempts to provide the genesis for modern penal systems and contribute to the understanding of how the modern prison industrial complex came into being. I argue the Virginia Penitentiary is the most important predecessor to modern prisons. For more on the current prison system, see: Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Color Blindness* (New York: The New Press, 2012).

paradigm differed in each state. Additionally, the conditions in different prisons were varied widely. While Eastern State Penitentiary boasted plumbing and heating pipes in each cell, the Virginia Penitentiary had holes in the ground for toilets and no mechanism for warming the prison. Moreover, work assignments were wide-ranging and could include shoe making in solitary confinement or nail production in a workshop. More importantly, however, the rationale for labor in each facility differed depending on region. Though the development of the penitentiary at Richmond is the major topic of this manuscript, the system did not exist in a vacuum, and it is important to examine the broader national context to better appreciate its distinctive character.

Penitentiaries in the United States attracted the attention of visitors around the world. Those who traveled across the Atlantic to survey America's prisons tended to notice broader trends about politics, culture, and practices unique to each region of the United States. From factories and reform societies in the North, to plantations and slave auction blocks in the South, American cultural practices differed depending on the region. The Virginia Penitentiary emerged in a society that relied on the institution of slavery for its subsistence. Because of this, corrective practices within the institution and attitudes

toward punishment differed greatly than penitentiaries that developed in the Northern United States in regions that abolished slavery decades prior to the establishment of a penitentiary. The observations of foreign visitors offer several anecdotes about life in the North versus the South and provide valuable context for understanding the emergence of two wholly different prison systems. Yet, even to call the penitentiaries of the United States a “system” is problematic. For each prison was founded on different principles, operated under diverse sets of rules, and functioned as parts of societies that had extreme ideological disparities.

When visitors went to the Virginia Penitentiary and expected it to function like the Eastern State Penitentiary in Philadelphia, they were sorely disappointed. However, as the 19th century progressed, reform organizations started to hold any institution that used the title “penitentiary” to the standard of what they deemed appropriate penal practices. Northern reformers and prison societies attempted to establish a set of codes and standards for all penitentiaries within the United States, thus creating a deeper chasm between Northern and Southern relationships. In this chapter, I explore these divergences from the perspective visitors to the penitentiary. These tourists acted as third party observers in an increasingly heated debate over social,

cultural, economic, and government practices between two distinctive regions that shared a common federal government.

Long before the first shots rang out at Fort Sumter, Northern and Southern regions of the United States grappled with ideological disparities. The differences between Northern and Southern prisons sprang primarily from the institution of slavery, which dictated many Southern social practices and institutions, including the penitentiary. Additionally, religious differences, and divergent attitudes about labor and seclusion helped solidify the chasm between North and South. Over time, the word “penitentiary” itself was subject to heated disputes, as prison reformers deemed practices in Richmond unworthy of the title.¹⁵⁹

What ultimately emerged from the fierce debate over the proper and humane confinement of criminals was the codification of two competing systems: the Pennsylvania System (solitary) and the Auburn System (silent). Though the solitary and silent systems adopted in Northern penitentiary systems differed concerning the proper method of confinement, they both defined their mission as that

¹⁵⁹ *Ninth Annual Report of the Board of Managers of the Prison Discipline Society* (Boston: Perkins, Marvin, & Co., 1834), 63.

involving the moral reform of criminals, and both became renown as humane and well-run systems.

Reformers and visitors to the United States' penitentiaries all seemed to agree that the system adopted in Virginia violated every goal of proper and humane confinement of convicts. Regardless of the rivalry occurring between the states of New York and Pennsylvania, prison reformers unanimously agreed that what happened in Virginia was ill conceived and should never be replicated. Tourists recorded their observations, which were then circulated and passed down through the generations. In lieu of making their own judgments, many prison reformers and philanthropists skipped an excursion down to Richmond and accepted the critical reports of prior onlookers.

But the founders and administrators of the penitentiary at Richmond never sought the same outcomes as those desired in the North. In 1830, the superintendent of the Virginia Penitentiary, Samuel Parsons, acknowledged the Eastern State Penitentiary in Philadelphia and offered no specific critique of the system, but he automatically dismissed it in favor of Virginia's in his 1830 annual report to the Governor. "The undersigned is more inclined to favour the system adopted in Virginia," he wrote, noting that he doubted "whether the

Pennsylvania system, or even the wisdom of man, is capable of introducing a system, of punishment more efficient." Indeed, Parsons stood by his penitentiary and the system that had been established three decades prior, stating that the "general condition of the institution" was "fully as prosperous as could reasonably have been anticipated, and certainly much more encouraging than any former period."¹⁶⁰ The penitentiary had experienced its share of tragedy over the decades and recovered in a manner that led Parsons to report that the system was not only functional, but the best in the United States. "For the first time since the establishment of the Penitentiary, the labour of the convicts has left a profit to the Commonwealth," Parsons concluded.

Therein lies the difference between Northern and Southern penitentiary systems: while Eastern State Penitentiary considered a successful stint in the prison as leading to an acceptance of God or an admission of guilt, the proprietor of the penitentiary at Richmond considered success in monetary terms. Each penitentiary administrator concerned himself with a budget, but the Virginia Penitentiary measured its success solely in terms of its ability to be self-sufficient, so

¹⁶⁰ Samuel P. Parsons, "Report of the Superintendent," November 30, 1830, *Journal of the House of Delegates of the Commonwealth of Virginia, 1830* (Richmond: Thomas Ritchie, 1830).

that it did not burden the state with expenses or debt related to corrections.

Prison reformers in the North often looked down upon the profit-driven endeavors of penitentiary keepers in the South. For those who favored the Pennsylvania system, the first priority was improvement of a prisoner through labor. In Virginia, the goal was to debase the prisoner to the lowest form of labor in society in order to punish them for criminal action. Tax-paying Virginians sought monetary reparations for any crime committed, and this became possible through the forced labor of those imprisoned as a form of restitution to the citizens and as a means of reform through industry for the prisoners.¹⁶¹

When Virginia amended their penal codes to eliminate the death penalty and corporal punishment, legislators did so with the intention of decreasing physical violence, but they had no intentions of eliminating discipline or chastisement for crimes. The penitentiary system developed in Virginia was not designed to reform the soul of convicts. Religious instruction was not even a part of the program offered in Richmond, much to the dismay of Northern reform

¹⁶¹ "An Act to Amend the Penal Laws of this Commonwealth," *The Statutes at Large of Virginia from October Session 1792, to December Session 1806, Inclusive* (Richmond: Samuel Shepherd, 1835), Chapter 2, Part 28.

agencies.¹⁶² When Dorothea Dix visited the Virginia Penitentiary in 1845 she observed: “The state prison at Richmond, Virginia, is destitute of a chaplain, and of those general provisions for instruction, which are so important in prisons.”¹⁶³ Instead, the prison in Virginia was designed to strike fear into the hearts of citizens. Time spent in the penitentiary was unpleasant. Prisoners were lonely and dejected for the first 6 months of their stay in solitary confinement. Then, they were made to labor for 10 hours a day in workshops to help offset the cost of their upkeep. Prisons were demoralizing and maintained for the purpose of securing a profit rather than aiding in the improvement of a prisoners’ personality.

In order to understand the reports of visitors to the penitentiaries in various states, it is first important to have context for their visits. I therefore briefly outline the systems found in Pennsylvania and New York, respectively. Ultimately, this provides the necessary context for understanding the penitentiary in Virginia – why it was considered so flawed, and how its reputation came to be sullied by a handful of

¹⁶² Dorothea Dix visited the Virginia Penitentiary and was dismayed to discover that the facility offered no religious instruction. Dix considered moral reform and religious instruction to be of the utmost importance in a prison and often asked questions regarding religious. Though she tried to be impartial in her reports and often criticized those who were not, Dix could not contain her disappointment in Virginia. Dorothea Dix, *Remarks on Prisons and Prison Discipline in the United States* (Philadelphia: Joseph Kite & Co., Printers, 1845).

¹⁶³ Dix, *Remarks on Prisons*, 59.

visitors who surveyed the prison and wrote it in highly critical terms. Moreover, this chapter offers analysis how Northern and Southern attitudes toward labor and reform led to different attitudes and practices in regard to crime and punishment.

The Pennsylvania System

Philadelphia's Walnut Street jail is often credited as the birth of the penitentiary system in the United States. While it is true that several of the newest advancements and theories in penology came out of Philadelphia, the jail itself was not large enough or designed with the intention of long term and isolated confinement. In fact, it was not until the Western and Eastern State penitentiaries of Pittsburgh and Philadelphia were built in the 1820's that the solitary system of confinement could be implemented in the manner prescribed by penologists. Still, reformers and philanthropists worked with what they had at the Walnut Street Jail to try and create a rehabilitative prison environment for convicts.

The Quaker religion strongly impacted the development of Northern social practices and institutions and helped to develop a distinct prison system.¹⁶⁴ Reformers in the young United States tried to

¹⁶⁴ The impact of Quakers on American society has been written about extensively. For more, see: Margaret Hope Bacon, *The Story of the Quakers in America* (New

distance it from English penal practices. Many Philadelphia Quakers found British Common Law punitive, harsh, and unworthy of the new republic. The Pennsylvania system, founded in Philadelphia by Quaker reformers, relied on strict solitary confinement of each prisoner with no opportunity to leave their space for the duration of their sentence. Prisoners in Pennsylvania worked, ate, slept, bathed, and exercised all within the approximately 8 by 12-foot cell.¹⁶⁵ Prisoners housed on the ground level had a small yard attached to their cell that they were allowed to walk in for one hour each day.

The Pennsylvania system of confinement was devised in the late 18th century as a means of reforming criminals to re-enter society as opposed to physically punishing them. The Philadelphia Society for Alleviating the Miseries of Public Prisons was organized by Philadelphia elite in order to address crime and punishment in Pennsylvania. The Quakers who settled the state were not keen on harsh, humiliating, or

York: Basic Books, Inc., 1969); Thomas D. Hamm, *The Quakers in America* (New York: Columbia University Press, 2003); and David Yount, *How the Quakers Invented America* (New York: Rowman & Littlefield Publishers, 2007). For more about the Quaker influence on the penitentiary system, see: Jennifer Graber, *The Furnace of Affliction: Prisons & Religion in Antebellum America* (Chapel Hill: The University of North Carolina Press, 2011), 16-44; and Michael Meranze, *Laboratories of Virtue*, 40, 59, 67-77, 111-117.

¹⁶⁵ For further description on the design, layout, and dimensions of each part of the Eastern State Penitentiary, see John Haviland, *A Description of Haviland's Design for the New Penitentiary, Now Erecting near Philadelphia* (Philadelphia: Robert Desilver, 1824).

physical punishments for crimes and rested more on notions of spiritual reform and the impact of punishment on the mind. Dr. Benjamin Rush, a famous Philadelphia physician was one of the leading members of the society and strongly opposed public chastisement. Rush was one of the leading voices in the movement to hide or remove the ugliness of crime and punishment from public view and helped devise the penitentiary system, which essentially concealed convicts from the public eye. The desire to remove members of society considered non-productive, harmful, or poverty stricken is related to broader trends of the Enlightenment and Revolutionary period in the United States and Quaker influences.

By 1790, the Pennsylvania legislature moved in the direction of establishing a penitentiary system as imagined by the Quaker society. The Walnut Street Jail was built and opened as a public jail and workhouse to give prisoners the opportunity to reform and repent for their crimes. The design was similar to an English workhouse, typically designed for debtors. Though the system was an attempt to remove public punishments, for the first few years of operation prisoners worked in the streets of Philadelphia and became objects of scorn and ridicule amongst the non-criminal public. Additionally, working in public allowed several prisoners had access to alcohol and other

vices. The sentences did not entail physical abuse, but the public aspect of punishment initially remained. Within a few years, however, reformers worked to completely remove prisoners from the public eye. The Walnut Street Jail was not big enough to house all of the offenders, separate the ages and sexes of prisoners, or provide enough space to be imprisoned in solitary confinement as imaged by reformers.

Because the Walnut Street Jail was never designed as a penitentiary and had operated as a standard jail since 1784, the shift to the innovative penitentiary practices were impossible due to limited space. It took over three decades for the state to grant the funds to construct a proper penitentiary house in Philadelphia. By this time, states throughout the nation had implemented their own style of penitentiaries—much to the chagrin of Quaker reformers who were left defending the solitary system against those states who they believed improperly implemented their vision. In 1833, the Philadelphia Society for Alleviating the Miseries in Public Prisons published a report denouncing every other state's system of solitary confinement in favor

of the practices they had established in Philadelphia.¹⁶⁶ The author of the report detailed the states that implemented solitary confinement and failed at the practice. According to the report, by 1829, the states of Virginia, New York, Maine, Massachusetts, and New Jersey all experimented with solitary confinement but did so improperly. Smith described their attempts as “diabolical cruelty and inconsiderate folly,” and lamented, “we blush for the character of our country, which permitted, even for a moment, the perpetration of such revolting outrages upon humanity, religion, and common sense.”¹⁶⁷ Smith had to denounce the attempts of other states in order to defend Pennsylvania's implementation of exclusive solitary confinement for the duration of each prisoner's sentence by claiming those states were applying the practice improperly.

The Eastern State Penitentiary opened in 1829 and was a state-of-the-art prison facility designed to hold over 200 prisoners in complete solitary confinement. Each cell was constructed with the intention of a prisoner spending multiple years in the space and had plumbing, heating, lodging, and a space to complete their work. Cells

¹⁶⁶ George W. Smith, *A Defence of the System of Solitary Confinement of Prisoners Adopted by the State of Pennsylvania With Remarks on the Origins and Extensions of this Species of Prison Discipline* (Philadelphia: E.G. Dorsey, Printer, 1833).

¹⁶⁷ Ibid.

on the ground level were attached to a small outdoor yard that prisoners were allowed to enter once a day for one hour. Meals were taken through a slot in their prison door and any movement throughout the prison was done with a black bag over the prisoners' head so their orientation was altered and their identity concealed.¹⁶⁸ William Crawford, a liaison from England observed the processing of a prisoner at Eastern State and reported:

When a prisoner is first received he is examined, and his height, complexion, age, &c. are recorded in the usual manner. He is then taken by two assistant keepers into a small building in the yard containing three rooms, in the first of which he undresses, and has his hair cut short: in the next apartment his person is cleansed in a warm bath; and in the third, he is clothed in the prison uniform. He is then blindfolded by having a cap or hood put over his head and face; and in this state he is led between two keepers into the interior of the prison.¹⁶⁹

Practices at the Eastern State Penitentiary were considered innovative and humane. Several European visitors lauded the system as the future of penology.

¹⁶⁸ See: William Crawford, Esq., *On the Penitentiaries of the United States, Addressed to His Majesty's Principal Secretary of State for the Home Department* (House of Commons, 1834), Appendix I, Pennsylvania. William Crawford was one of dozens of foreign visitors to the United States. His survey of the prison systems was one of the most thorough and he visited more facilities than the other visitors who wrote about their travels. In his exploration, he discovered the Pennsylvania system and favored it.

¹⁶⁹ Ibid.

Though several visitors and prison reformers considered the Pennsylvania system to be more humane and effective for the rehabilitation of criminals, the implementation and operation of such a system was expensive. The costs to maintain the facility was more than most states were willing to pay. However, according to a report out of Quebec in the 1830's, the legislature of Pennsylvania "cheerfully provided for the expenses."¹⁷⁰ One of the most profound differences between Northern and Southern penitentiary systems was the willingness of each state to invest in the propagation of a prison system. While most states in the North were happy to break even, and in the case of Pennsylvania, even shouldered the burden of the cost without expectations of returns, the state of Virginia sought profit. The labor and profit-driven model of incarceration in the South mirrors attitudes towards productivity and institutional success more generally. This point is particularly salient in terms of generating public services, infrastructure, and sustainability.

The Auburn System

¹⁷⁰ Hon. Mondelet and J. Neilson, Esquires, Commissioners. *Report of the Commissioners Appointed Under The Lower Canada Act, 4th William IV. Cap. 10, to visit the United States' Penitentiaries* (Quebec: Neilson & Cowan, Mountain Street, 1835).

Inspired by the penal reform efforts taking place in Pennsylvania, reformers in New York undertook a similar project in the late 18th century. Thomas Eddy, the famous prison reformer and philanthropist who was in communication with the founders of the Virginia Penitentiary, was among those responsible for the creation of the Auburn Prison System. Raised as a Quaker in Philadelphia, Eddy had connections to prison reform circles both within the United States and across the Atlantic. As a Loyalist who had served time in an American jail during the Revolution, Eddy experienced the need for prison reform firsthand. In attempt to bring some civility and compassion to the penal system, Eddy worked with reformers across the globe to bring humane methods of confinement to the state of New York.

The Auburn Prison was predated by the Newgate Prison, founded in 1796 and inspired by a facility of the same name in England.¹⁷¹ Newgate Prison was located in the West Village of New York City and quickly overcrowded, which paved the way for more prisons to open in other parts of the State. By the late 1820's, all of Newgate's prisoners were transferred. Newgate did not incorporate

¹⁷¹ A complete history of the Auburn Prison system can be found in W. David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796-1848* (Ithaca: Cornell University Press, 1965).

penal reform philosophies and was not considered a penitentiary, but more of a holding ground for prisoners with no workshop details or moral reform instruction. Though Newgate functioned as a penal institution, it was not until the Auburn Prison system was built that the state of New York implemented the famous style of penitentiary reform that attracted visitors from all over the globe. Auburn was first constructed in 1816 and expanded in 1820, with construction finally completed by 1825. Each cell in the prison measured seven and a half feet long, a little over three feet wide, and seven feet high. This tiny room was only meant for sleeping and could be used for little else. Prisoners were given "night tubs" that served as latrines and took them in and out of their cells daily. Before lining up for breakfast, they would empty the tub, rinse it, and place it in a line with other tubs to be retrieved at the end of the workday.¹⁷² Prisoners at Auburn worked all day long in workshops. Strict silence was enforced upon convicts laboring in workshops. Though the labor was meant to reform them and labor was considered positive, the imposed silence within the workshops made the work tedious and tested inmates at Auburn. Alexis de "Labour instead of being a comfort to the prisoners, is, in their eyes, a painful task, which they would be glad to get rid of,"

¹⁷² Crawford, *On Penitentiaries in the US*, Appendix Auburn, 23.

Tocqueville and Gustave de Beaumont noted in reference to the Auburn workshop. “In observing silence, they are incessantly tempted to violate its law.”¹⁷³ The importance of labor and the value it held in the North was not lost on prisoners at Auburn, but the enforced silence of a large group created an environment that literally drove prisoners mad.¹⁷⁴

Their work and enforced silence was broken up by the three meals of the day, in which prayers were allowed and led by a chaplain. On Sundays, the prisoners were not required to work, but they were required to attend church services, followed by Sunday school and additional hours in the chapel for prayer and Bible reading. Services at Auburn were performed based on the Presbyterian form of worship—another key difference from the Quaker-formed prison at Eastern State. On Sunday evenings, a chaplain visited prisoners individually in their cells to discuss their reform and progress toward salvation.

Much like Eastern State Penitentiary, religious instruction was paramount for the prisoners at Auburn. De Tocqueville and de

¹⁷³ Alexis de Tocqueville and Gustave de Beaumont, *On the Penitentiary System in the United States and its Application in France; with an Appendix on Penal Colonies and also Statistical Notes* (Philadelphia: Carey Publishing, 1833), 25.

¹⁷⁴ *Ibid.*

Beaumont commented on the efficiency of a communal system of religious instruction at Auburn, but they still favored the solitary Pennsylvania system. They commented: "...in all prisons subject to the same discipline, the instructor (sic) and the chaplain can address all the prisoners at once. At Auburn, there is a chaplain (Mr. Smith) exclusively for the establishment."¹⁷⁵ This emphasis on importance of religious instruction permeated the reports of many visitors to penitentiary houses in the United States. In reference to the religious instruction at Auburn, de Tocqueville and de Beaumont reported:

After the school, and the service of Sunday, the prisoners return to their solitary cells, where the chaplain visits them; he visits them in a similar way on the other days of the week; and strives to touch their hearts by enlightening their conscience; the prisoners feel pleasure when they see him enter their cell. He is the only friend who is left to them; they confide in him all their sentiments¹⁷⁶

In contrast, prisoners at the Virginia Penitentiary had no exposure to religious services. On rare occasions, perhaps once yearly, a pastor might appear to preach to the convicts, but this was not a practice or cornerstone of the prison's operation as it was in the North. When foreign visitors went to the South, they took notice of these

¹⁷⁵ Ibid, 54.

¹⁷⁶ Ibid.

differences and dismissed Southern penal practices as unworthy of observation.

Visitors to the Penitentiary and Their Observations

The penitentiary system in the United States attracted admiring visitors from several European countries during the 19th century. Eager to learn how to implement a system of long-term confinement, countries like England, France, Scotland, and Russia sent ambassadors to the United States to tour and report on the prisons. The focal point of many reports was the Eastern State Penitentiary in Philadelphia.

De Tocqueville and de Beaumont were some of the first foreign visitors to the United States who surveyed the penitentiary systems. Like many who followed, their primary interest rested in determining which system worked better: the silent or the solitary. Their investment in touring the penitentiary system stemmed from orders they received from the French government to study and report on the United States' new and lauded modes of convict confinement and reform efforts. Eager to shift the paradigm of the European criminal justice system, many visitors followed suit over the course of several decades.

De Tocqueville and de Beaumont toured the United States' penitentiary systems in 1831. For nine months, the pair traversed the American landscape in order to better understand the penal system

and how the government developed in the United States. From Rhode Island down to New Orleans, and from the backwoods of the American frontier out to the Atlantic, they wasted no time taking in as much of the American countryside as they could during their trip. The men came to America on a special assignment to observe the penitentiary system in order to report on the possibility of applying the same system of long-term confinement in France. Along the way, the travelers experienced more than just the penitentiary system and found American culture, politics, and customs to be equally interesting. When they returned to France, they published their findings in a volume titled, *On the Penitentiary System in the United States*. Then, a few years later, de Tocqueville completed his solo publication on his travels, *Democracy in America*.

Though the two inspectors focused their attention on Northern penitentiary systems, their observations of Southern culture and crime were perceptive and foretelling. One of their most profound observations came in their examination of labor and its meaning in the South. While several penitentiary systems in the North were founded on the idea that labor and work would reform the soul of the convict—attitudes toward labor in the South differed. His tour of the penitentiary systems of the North yielded the conclusion that labor was the driving

force behind the success of their penitentiary systems. De Tocqueville found Americans of the North to be hard working, virtuous, and reform oriented. "In the north...a great number of white people are found willing to do any work. There, moreover, labour is honourable," he surmised. "In the South, on the contrary, and particularly in the slave holding states, there are fewer persons of white colour willing to do the harder labours of husbandry or industry. This trouble is left to the negroes. Labour is not honoured in the south; it is detested as a servile thing."¹⁷⁷ He also claimed: "The American of the South is fond of grandeur, luxury, and renown, of gaiety, of pleasure, and above all of idleness; nothing obliges him to exert himself to subsist; and as he had no necessary occupations, he gives way to indolence, and does not even attempt what would be useful."¹⁷⁸

De Tocqueville's perceptions of Southern culture likely stemmed from the company he kept while touring the United States. Indeed, he dined with, interviewed, and hobnobbed with some of the most prominent members of American society. He even popped in for a meeting at the White House with President Andrew Jackson. De Tocqueville left America with the perception that many powerful

¹⁷⁷ Ibid, 257.

¹⁷⁸ Alexis de Tocqueville, *Democracy in America* (New York: Scatcherd and Adams, 1839), 392.

white people living in the South owned slaves and did everything they could to avoid labor. While this observation of the South held true for Southern elites who owned large numbers of slaves and avoided work on plantations, it was not true for everyone. However, many of these same people who held power, avoided labor, and had slaves, were also responsible for running the government and operating the penitentiary systems of the South. Since labor was so detested, the forced labor implemented in the penitentiary system served to lower prisoners to their most debased state. Forcing labor on prisoners was considered the harshest punishment and served in a punitive rather than reform oriented manner. As de Tocqueville and de Beaumont observed, labor in the South was left for slaves, so when criminals were made to labor in penitentiary workshops, it relegated prisoners to the status of slaves.

Conversely, labor in the penitentiaries of the North was considered a relief and good for the soul. He observed, "What would become, during the long hours of solitude, without this relief, of the prisoner, given up to himself, a prey to the remorse of his soul and the terrors of his imagination? Labour gives to the solitary cell an interest; it

fatigues the body and relieves the soul.”¹⁷⁹ Regardless of the truth in his observations regarding labor, the perception of each region is paramount for understanding the penitentiary system through the eyes of a foreign visitor. Clearly the situation was far more nuanced than his simplistic presentation of one population enjoying work while the other detested it, yet it helps explain the motives behind involuntary servitude while incarcerated. If Southerners hated labor, it should be included as a punishment. Conversely, if Northerners considered labor reformatory, it should be implemented in their new system of incarceration focused on the penitence of the soul.

Though de Tocqueville and de Beaumont were sent to the United States to survey the penitentiary systems and even traveled to the South, the pair passed on an opportunity to visit the penitentiary at Richmond. Based on reports from Northern reform societies and the rumors about the facility, de Tocqueville and his partner were quick to dismiss the Virginia Penitentiary as “one of the bad prisons.”¹⁸⁰

Attitudes about slavery and freedom were interwoven with the penal codes and penitentiary system within the state. Since the

¹⁷⁹ Alexis de Tocqueville and Gustave de Beaumont. *On the Penitentiary System in the United States and its Application in France; with an Appendix on Penal Colonies and also Statistical Notes* (Philadelphia: Carey Publishing, 1833), 23.

¹⁸⁰ *Ibid*, 29.

penitentiary was founded in a society ruled by slavery, attitudes and goals for the facility rested in the principles of involuntary servitude. Since slavery was considered the most severe punishment and slaves occupied the lowest rung of society, they rarely served time in the penitentiary as a punishment. The penitentiary served as a holding ground for slaves as they awaited execution or transportation out of the state.¹⁸¹ Many held the belief that slavery actually decreased the amount of crimes amongst the black population by occupying the time and controlling the freedom of those enslaved.¹⁸² The penitentiary served as an extension of the institution of slavery, however. When the Emancipation Proclamation granted freedom to all slaves in 1863, the penitentiary was well established and filled the void of the peculiar institution.

In fact, de Beaumont and de Tocqueville predicted an increase in black prisoners should slavery be abolished. They argued, "in the south the number of criminals increases with that of manumitted persons; thus, for the very reason that slavery seems to draw nearer to its ruin, the number of freed persons will increase for a long time in the

¹⁸¹ See chapter 2.

¹⁸² De Tocqueville de Beaumont, *On the Penitentiary System* 62.

south, and with it the number of criminals."¹⁸³ Much like slavery, the penitentiary itself offered a pillar for the function of Southern society; the two institutions both relied on involuntary servitude to subordinate the population. Labor and freedom were inextricably intertwined in Southern society. Labor served as a deterrent as well as a punishment for crime and the idea of abolition stoked fear in society that with too much freedom, crime would increase and productivity would decline. Maintaining control of Southern society rested on the ability to limit freedoms and increase labors. On the other hand, in penitentiaries in the North, labor was utilized to reform behavior and rehabilitate the souls of convicts rather than used in a disciplinary manner.

De Tocqueville spent over a week surveying the Eastern State Penitentiary and concluded, "the favour of labour is granted. When we visited this penitentiary, we successfully conversed with all its inmates. There was not a single one among them, who did not speak of labour with a kind of gratitude, and who did not express the idea that without the relief of constant occupation, life would be insufferable."¹⁸⁴ The gift of labor to those imprisoned in Northern

¹⁸³ Ibid.

¹⁸⁴ De Tocqueville and de Beaumont, *On the Penitentiary System* 23.

penitentiaries aided in their reformation, mental well being, and satisfaction within the prison. Contrary to attitudes in the South, De Tocqueville argued, convicts in the North thrived off of employment.

A couple of years after de Tocqueville and de Beaumont's visit to the United States, William Crawford, a prison surveyor from the United Kingdom, arrived at the Virginia Penitentiary. Unlike his predecessors, Crawford took the opportunity to visit prisons in the South and reported on their conditions and practices. He arrived in Richmond in September of 1833, shortly after the devastating cholera epidemic swept through the penitentiary killing over 50 inmates. In his report to Lord Viscount Duncannon, the principal Secretary of State for the United Kingdom, Crawford profiled 17 different penitentiaries in the United States. He was sent with instructions to inspect the prisons with the intention of acquiring knowledge to apply one of the systems in his own country.¹⁸⁵

He described the Virginia Penitentiary, sitting on a hill between two deep gorges that met up and emptied into the James River. More than three decades passed since the penitentiary opened, but the sanitation issues and putrid stench persisted. Crawford's account started by noting the proximity of the structure to pools of human

¹⁸⁵ Crawford, *On the Penitentiaries of the United States*, 3.

waste that emptied into the ravines. These stagnant pools of excrement accumulated from the waste produced by the city's inhabitants as well as the hundreds of inmates. When he visited in September the air was dense with the stench of filth creating an unpleasant, thick, and stale miasma that wafted throughout the penitentiary.

In his detailed account, Crawford noted the distinctiveness of the Virginia Penitentiary. The laws requiring long stretches of time in solitary confinement combined with periods of intense manual labor set the institution apart from the other penitentiaries in the United States by combining the two most prevalent systems of penology: the silent and solitary systems. The system adopted in Virginia baffled prison reformers and visitors because of the strange combination of solitary confinement and workshop detail. While serving time in solitary, prisoners in Richmond were banned from working, a practice foreign to other penitentiaries that either practiced solitary labor or labor in workshops. The time spent in solitary for prisoners in Virginia also confused visitors because it was not used as a period for moral reflection since no religious instruction was provided. Unlike the solitary system in Pennsylvania, prisoners in Richmond did not receive moral instruction or religious services. Though each prisoner was allotted a

Bible, the vast majority of inmates were unable to read. Even if they could, the solitary cells they inhabited for long stretches of their confinement had no lighting.

After leaving solitary confinement, prisoners performed work in shops that consisted of sun up to sun down labor meant to profit the penitentiary. Those in charge of weaving—typically prisoners in the women's section of the penitentiary—made all of the prisoners' clothing so there was no need to rely on outside vendors. Other materials manufactured in the workshops were sold at the penitentiary store; products included harnesses, shoes, and nails. A proprietor was in charge of acquiring supplies for the production of penitentiary products. Labor was not offered as a means of rehabilitation and could be stopped at any time for malfeasance. If a prisoner was not employed in the workshops, it could be due to illness or misbehavior. In the case of illness, the prisoner could convalesce at the prison hospital. In the case of misbehavior, their meals could be reduced to bread and water, they could be forced into solitary confinement, or more likely, the superintendent would whip them.

When Crawford visited in 1833, "a black woman had received six lashes for talking to a prisoner through the drain pipes of his cell."¹⁸⁶ Following her punishment, she returned to work in the women's department weaving prison uniforms. Punishments were inflicted for infractions as simple as talking, which was not permitted, or something more serious like conspiracy. In any case, religious instruction was not resorted to in hopes of promoting penitence, nor were prisoners left in solitude in order to repent. A prisoner's punishment was always punitive and usually designed around the option least likely to stop production.

The whip was the most utilized form of punishment in the Virginia Penitentiary. According to Crawford: "The superintendent may also order diminution in allowance of food, or may punish the prisoner by whipping; this last is the most usual course adopted. The whipping always takes place in private, under the direction of the superintendent."¹⁸⁷ When Virginia amended their penal laws in the late 18th century, lawmakers unabashedly denounced the use of corporal punishment and stated the function of the penitentiary was to eliminate physical punishment for crimes. But instead of ceasing

¹⁸⁶ Ibid, Appendix on Virginia, 107.

¹⁸⁷ Ibid.

corporal punishment, the administrators of the penitentiary at Richmond shielded corporal punishment from the eyes of the public and still instituted it as a punishment. Other penitentiary systems also resorted to the same practices of whipping prisoners for misbehaviors like speaking, spitting, stopping work, stealing supplies, or disobeying a guard. Eastern State Penitentiary often avoided the use of corporal punishment due to the round the clock seclusion of prisoners, giving them less of an opportunity to break prison codes. In Virginia, the relative weakness of religious reform, the forced labor for profit, and the corporal punishments utilized for discipline, violated reformers' visions for the penitentiary. The original vision and intention for the penitentiary was long gone by the time foreign visitors arrived in Richmond to survey the system. Prison discipline societies took notice of this dramatic shift in their reports on the Virginia Penitentiary beginning in 1826. By the early 1830's, the Virginia Penitentiary had earned a poor reputation. Visitors from all over the world flocked to see the new prison system within the United States, but many of the reports out of Virginia were less than flattering.

Northern Reform Organizations Visit Virginia

In June of 1825, Rev. Louis Dwight founded the Boston Prison Discipline Society in Boston, Massachusetts. Inspired by the work of the

Philadelphia Society for Alleviating the Ills of Public Prisons, the Boston society also sought make penitentiaries more humane. Dwight established the organization after visiting prisons across the nation and delivering Bibles to those incarcerated. He was appalled by the conditions he discovered in his visits and vowed to spend his life improving prisons. Members of the Boston Prison Discipline Society who started the organization took as their founding principle the Christian scripture that instructed: "when I was hungry, ye gave me meat, when I was thirsty, ye gave me drink; when I was a stranger, ye took me in; sick and in prison, ye visited me."¹⁸⁸ Group members pledged to live by these words, and their Christian faith encouraged them to seek improvements within the prison system. The first annual report of the board of managers stated that they aimed to "promote the improvement of Public Prisons" and laid out a constitution composed of eighteen different articles.¹⁸⁹ The society was regarded as one of the most prominent surveyors of American prisons and met yearly to report on the conditions of prisons throughout the United States. Though harsh on all of the facilities, the reports from Boston reserved the harshest criticisms for the system adopted in Virginia, comparing

¹⁸⁸ *Reports of the Prison Discipline Society, Boston* (Boston: Press of T.R. Marvin, 1855), 2.

¹⁸⁹ *Ibid*, 4.

the conditions of the prison to dungeons found during the Inquisitions.¹⁹⁰ The group was appalled by the penitentiary's use of labor as punitive and its lack of religious instruction.

This is not to say that Northern prisons did not inflict harsh punishment; on the contrary, some of the most draconian examples of outright torture came from prisons of the North. The physical punishments inflicted in these facilities, however, were accompanied by religious instruction. As the years passed, however, some particularly heinous modes of punishment were eradicated from prison discipline across the nation at the behest of reform organizations. According to the majority of reports from Richmond, the most typical form of punishment there was whipping, while places like Auburn and Eastern State devised more unusual forms of torture for prisoners to endure. In the 1852 report for the Boston Prison Discipline Society, some of these tortures were described in detail, along with a plea to prison officials to halt the practices.¹⁹¹ Though punitive

¹⁹⁰ Smith, *In Defence of the System of Solitary Confinement*.

¹⁹¹ Several implements of torture meant for correction were devised by the administrators of the Auburn and Eastern State Penitentiaries and found their way into prison discipline models in several states. Though the whip was most popular in Richmond, a metal gag devise first used in Auburn was used in Virginia as a punishment for speaking during work hours. Other methods of punishment included ice bath/showers in which a prisoner was strapped to a chair and soaked in freezing cold water multiple times, and a similar method of "dunking" in which a prisoner was hung by his or her wrists and dipped into a pool of freezing water. On one occasion,

punishments at Richmond were typically rebuked, and the institution itself was considered inferior, the punishments inflicted there were typically swift and unaccompanied by moralizing. Rather, punishments at Richmond were meant to inflict bodily harm as a means of deterrence and a return to the workshops. According to many prison reformers and penitentiary advocates of the North, this model directly violated the purpose of correction in the penitentiary—to restore a devotion to God and subservience in prisoners.

In a report from 1842, the society distinguished between prisons they deemed defective and ones they considered “very bad.”¹⁹² The Virginia Penitentiary appeared on both lists. It was considered defective in its design, and also “very bad” due to the lack of religious

a report out of Auburn noted that icicles had formed on the hair and face of one man during the winter months during the punishment. In Eastern State, the use of a “mad” or “tranquilizing chair” was popular. Prisoners were strapped to a chair in a box with their hands tied behind their backs and their feet restrained, with no means of rest or the ability to place their feet on the floor. The prisoner was made to sit in this position for hours and was beaten intermittently. Maintaining this position was said to be extremely painful, and when released, prisoners’ hands, feet, and legs were swollen. In Eastern State as well as Auburn, the Yoke was another common form of punishment meant to inflict extreme discomfort and embarrassment for the wearer. The 40 pound pole was strapped across a prisoners back with their wrists fastened tightly around it. Deputies claimed 20 minutes in this posture would create complete compliance and submission on the part of the prisoner, but the typical period of enforcement was over an hour. In one case, a prisoner was forced to wear the yoke for over 2 hours and was severely crippled as a result. For more detailed descriptions of the types of disciplinary actions taken at each penitentiary see: *Reports of the Prison Discipline Society, Boston* (Boston: Press of T.R. Marvin, 1843 & 1852 editions).

¹⁹²*Reports of the Prison Discipline Society, Boston*, 31-32.

instruction—a complaint that surfaced regularly year after year. Though Dwight attempted to communicate with the superintendent of the Virginia Penitentiary and encouraged reform, his report remained the same. In some years, the keepers of the penitentiary refused to communicate with the organization at all, and most times a representative from Boston wouldn't even tour the facility.¹⁹³

The chasm between Northern and Southern prisons becomes more pronounced as the years went on. From the first detailed report on Richmond in 1826, to the sparse bits of information concerning how the prison operated in the 1854 report, the relationship between Northern reform societies and southern prisons deteriorated from friendly and communicative to disregard and contrarian.¹⁹⁴ The Southern penal system had no interest in adhering to Northern standards for prison discipline and went its own way.

The Boston Prison Discipline Society was particularly influential in the Northeast and relied on institutions like Auburn as examples for others to follow. Yet, their harsh criticisms of Southern prisons rarely

¹⁹³ During the 1840's, reports on Virginia were sparse, sometimes no more than a paragraph of information was provided and was typically copied from the previous year.

¹⁹⁴ In the first years of reports, the author mentions communication with the superintendent of the penitentiary and provides pages of information regarding the institution. Most prisons are covered in this same way. By the 1840's and 1850's, the reports are limited to a paragraph because the superintendent did not provide annual reports to the society.

made a splash or caused a change in their operational procedures. On the contrary, after the first negative report from the society in 1826, administrators at the Virginia Penitentiary limited public accessibility and stopped offering information. In some volumes of reports the society has no data on the Virginia Penitentiary; in other volumes there is a short paragraph about the institution. These annual reports detailed the construction of each facility, the security measures taken, solitary confinement accommodations and techniques, health issues, the administration, the prisoners and their conditions, religious instruction opportunities, and a number of other subjects relevant to the operation of each penitentiary. The annual meetings and reports of the Boston Prison Discipline Society include calls for consistent practices in detention and offers historians an example of how mass incarceration became regulated. Creating guidelines and expectations for each institution was not only important for encouraging uniformity within the states and their penal institutions, but also set a standard of care for prisoners. Reverend Dwight favored the Auburn system because of the extreme psychological impact and unrealistic cost of the Pennsylvania System's model of solitary confinement and detested the procedures at Richmond for their lack of religious guidance. When held to the standards of Northern prisons,

the Virginia Penitentiary struggled to adhere to the latest requirements. Moreover, administrators in Virginia never sought those protocols or outcomes in the first place.

In addition to the Boston Prison Discipline Society, the Philadelphia Society remained strong. One of their most prominent members, Dorothea Dix, visited and wrote about penitentiaries in the United States and published a report in 1845, *Remarks on Prisons and Prison Discipline in the United States*.¹⁹⁵ Dix acknowledged the heated debate between the systems in New York and Pennsylvania but avoided expressing any preference toward one system. In fact, though she was a member of the Philadelphia Society for Alleviating the Miseries of Public Prisons, Dix did not argue in favor of the Pennsylvania system, but rather denounced any report that pitted one against the other and argued that any penitentiary could be evil if not administered properly. She noted that several penitentiary visitors pointed out all of the flaws of the system they deemed unfit, a practice she considered “unfair and unjust.”¹⁹⁶ In her reports on the prisons, Dix mainly concerned herself with the health, cleanliness, and

¹⁹⁵ Many have written about Dix and her involvement in prison reform. She was a Quaker woman associated with the Philadelphia Society for Alleviating the Ills of Public Prisons

¹⁹⁶ Dix, *Remarks on Prisons*, 7.

moral instruction opportunities available at each facility, emphasizing that “the best system ever devised by human wisdom, if badly administered, may become the fruitful source of almost incredible miseries and corruption.”¹⁹⁷

In her report on Virginia, Dix, like others before her, denounced the lack of religious instruction and noted: “few convicts have ever had opportunities of moral and mental culture.”¹⁹⁸ She surveyed the facilities and found the labor in workshops to be dangerous to the health of the prisoners due to the poor ventilation. Dix considered labor important to the reformation of criminals, but she did believe it should be balanced with access to religious services, chaplains, and Bibles. In her survey of the Eastern State Penitentiary, Dix chose to quote a report on the system from Superintendent Parsons, who wrote: “The system of separate confinement, with labor, which has been adopted in this State...I believe is one of the best that has ever been devised by the genius of man.”¹⁹⁹ Not only was the system of solitude and labor the best, according to this report, but it also provided gentle and humane reform to the criminal through the use of religious

¹⁹⁷ Ibid.

¹⁹⁸ Dix, *Remarks on Prisons*, 59.

¹⁹⁹ Ibid, 77.

instruction. This mode of punishment remained deeply unlike the system found in Richmond.

Conclusion

The popularity of the Pennsylvania and New York penitentiary systems shaped the world's perception of the United States' criminal justice system and resulted in a bias amongst contemporaries, one that later shaped historical scholarship. Even though the Virginia system was well known during the 19th century, confinement practices at the Virginia Penitentiary were often considered unsophisticated. This profoundly impacted the attitudes of foreign visitors who expected each penitentiary to operate on a similar paradigm.

The dismissal of Southern penal practices was indicative of a larger shift occurring in American penology—the homogenization of carceral practices, and the establishment of Northern reformers as experts in penology and their facilities as examples for the world. After reports from both domestic and foreign bodies, the Virginia Penitentiary became notorious, regardless of its position as one of the first penitentiaries.

In the end, however, Southern styles of incarceration came to dominate over the course of several decades, with the rise in incarceration rates for black convicts, the overcrowding of facilities,

the labor and profit driven models, and the lack of moral reform programs in prisons. Though Southern politics and culture were frowned upon, Virginia's methods of penology became the accepted paradigm for the modern prison system.

Chapter V:

From Plantation to Penitentiary: Slave Labor Moves to Prison Labor, 1852-1866

In January of 1852, a “respectable gentleman” from Virginia traveling through Columbus, Georgia, stopped to witness a public sale of slaves in the town square. The man recognized three of the slaves for sale. Two men, Nelson and Daniel, and a “yellow woman,” Haney, had been found guilty of poisoning in Mecklenburg, Virginia, some 18 months prior and sent to the penitentiary in Richmond to await sale and transportation. A year and a half later, the trio appeared on an auction block with dozens of other slaves over 500 miles from the Virginia Penitentiary. Though the three slaves had been found guilty of conspiracy and poisoning and condemned to the gallows, Governor reprieved them to be sold outside the state of Virginia. Upon further investigation, the gentleman discovered that a total of 14 slaves on the auction block, all of whom were purchased, hailed from the penitentiary at Richmond. The buyers had no knowledge of these individuals' pasts.

Later that year, in July 1852, the *Richmond Whig* published an opinion piece in which the observer, identified only as “T,” pleaded with legislators to overturn the practice of reprieving and selling

convicted slaves out of state.²⁰⁰ "T" was concerned not for the slaves, but rather for the new owners, whom he considered to be in imminent danger. The writer proclaimed it "outrageous to impose convict negroes on the people of Georgia or any other State" and asked, "ought not these people [Georgians] to know of the imposition?" Frustrated by Virginia's decision to continue the practice, "T" continued, "Only to think, that by any Legislative act of ours or the action of our Governor, that such a pack of house-breakers, burners, murders, and poisoners, should be turned loose on an unsuspecting community."²⁰¹

The editorial in the *Richmond Whig* reflected a larger issue: citizens disagreed over the amount of power the state possessed, and some persistently fought to undermine that power, to no avail. Just a half a century prior, slaveholders and plantation owners had held most of the influence. For decades, elected officials worked closely with slave owners and were themselves often part of the planter class. Yet, over the course of five decades, the state judicial system, bolstered by the penitentiary at Richmond, came to advance its own agenda. This is not to say the state deliberately ignored citizens' wishes, but over

²⁰⁰ "The Virginia Penitentiary Negroes Sold in Georgia," *Richmond Whig*, July 2, 1852.

²⁰¹ *Ibid.*

time, the institution's financial status and survival depended on the implementation of policies that often conflicted with those wishes.

One example of this phenomenon was the reprieve, sale, and transportation of convict slaves outside of the state.

"T's" opinion piece was one of many public outcries in opposition to reprieving convict slaves to be sold outside of the state. In fact, the very same year these tensions boiled to the surface as a result of a debate surrounding the case of Jordan Hatcher.²⁰² The Hatcher case exemplifies an ongoing struggle between citizens and State, with the penitentiary system looming as the physical manifestation of the State's power. Jordan Hatcher was a 17-year-old slave who worked in a tobacco factory under a 19-year-old overseer named William P. Jackson. Jackson approached Hatcher one

²⁰² Historians have analyzed the Hatcher case from multiple perspectives. Harry Ward, *Public Executions in Virginia*, argues that it set a precedent that slaves had the right to resist authority. "A major significance of the Jordan Hatcher case was that it set an important precedent that slaves had a legal right to resist authority" (59). I disagree with this analysis based on the response of Governor Johnson to detractors in 1852. Governor Johnson fully rebuked this claim and defends his commutation of the sentence based on the degree of murder, maintaining the murder was not pre-meditated. Additionally, Hatcher was not acquitted, but sold into slavery to another state—still a harsh punishment. Moreover, Ward does not take into consideration the economic implications of execution versus sale and transportation. The idea that slaves could hold rights to resist their masters persisted as a pervasive fear for Virginians. They labeled this case as such and fought for an execution in order to deter other slaves from committing the same offense. They considered the death penalty the only acceptable form of punishment for a slave found guilty of murdering his master. However, Governor Johnson upheld the rights of owners to reprimand their slaves in any way they deemed fit. For more, see: Harry Ward, *Public Executions in Richmond: A History, 1782-1907* (Jefferson: McFarland & Company Inc., Publishers, 2012), 59-62.

morning to confront him about the way he was bundling tobacco, reprimanding him for shoddy work. According to a petition written by the defense counsel, Hatcher “begged his [Jackson's] forgiveness and proclaimed to endeavor to do better for the future.”²⁰³ The overseer responded to his pleas for forgiveness by repeatedly whipping him with a cowhide. After multiple blows, Hatcher “caught hold of the cowhide and asked Mr. Jackson not to whip him anymore.”²⁰⁴ Jackson advised Hatcher to let go of the hide, and a struggle ensued. Jackson kicked Hatcher, and the two fell to the ground. In the brawl that ensued, Hatcher grabbed a hot iron poker and struck his overseer over the head once, dropped the poker, and fled the scene to hide in a nearby stable for 3 days.²⁰⁵

Doctor John A. Cunningham was called around 8 a.m. on the day of the incident to attend to Jackson’s wounds. He found a “slight wound or cut on his forehead” and noted “no evidence of any serious injury.” Additionally, his patient was “not complaining of any pain or

²⁰³ William Wallace Day. “Petition to His Excellency Joseph Johnson, Esq. Governor of Virginia,” *Record of the Court in Richmond Hustings Court*, March 12, 1852.

²⁰⁴ William Barkus, “A slave called as a witness in the case,” *Record of Court in Jordan Hatcher's Case*, Richmond, March 12, 1852.

²⁰⁵ For more details on the Hatcher case see: William A. Link, *Roots of Secession: Slavery and Politics in Antebellum Virginia* (Chapel Hill: University of North Carolina Press, 2003), 80-83. Link argues the Hatcher case held important implications for the social tensions brewing in Antebellum Virginia and claims that slaves could also be actors in the predominately white male realm of the political world.

sickness of stomach." The following day, Doctor Cunningham was called back to Jackson's tobacco factory to find him suffering "from a very severe injury to the brain." Doctors Deane and Bolton also arrived on the scene to attend to Jackson's brain injury and discovered his skull "had been broken and portions of it forced in upon the brain." Deane and Bolton performed an emergency operation to remove parts of his skull. The doctors attempted the risky surgery using a trephine to cut a cylindrical hole into the patient's brain. Upon opening his skull, the doctors fished around in his brain with their fingers searching for pieces of bone to remove, but found none. After closing the incision, doctors Deane and Bolton bled the patient and evacuated his bowels.²⁰⁶ Doctors noted a brief improvement in the patient's condition that quickly spiraled in the opposite direction. Jackson went comatose within hours of the operation.

Jackson's condition worsened after his surgery, and by the following morning, he died from traumatic brain injury.²⁰⁷ According to the transcripts and testimony from the doctors, Jackson died from the blow to the head administered by Hatcher, but refused to concede that the surgery had any impact on his condition. In keeping

²⁰⁶ Jas. Bolten, M.D., "Fatal Injury of the Head," *The Stethoscope and Virginia Medical Gazette* (Richmond: Ritchies and Dunnavant, 1852), 495-502.

²⁰⁷ *Record of Court in Jordan Hatcher's Case*, Richmond, March 12, 1852.

with the wishes of the deceased's mother, no post mortem examination of the body took place. Dr. Bolton wrote a medical report later that year, in which he used the Jackson case to warn surgeons of the dangers of using a trephine for brain surgery. "There is no operation which should be undertaken with more reluctance than that of trephining the skull," he wrote. "We have considerations weighty and fearful enough to deter us from the rash use of this instrument."²⁰⁸

While medical details of the case may seem irrelevant, the brain operation—in which the doctor open Jackson's skull and inserted his "little finger carefully into the puncture in the brain"—was likely the actual cause of death, rather than the initial blow itself. Had the doctors been forthright with the court concerning the danger of brain surgery, the jury might have ruled it an accidental death. That being said, race played the biggest role in this case; citizens could not accept the idea of a slave receiving less than the death penalty for killing an overseer. Indeed, if the same conflict occurred between two white men, the defendant might have been exonerated. Governor Johnson pointed to this racial disparity in sentencing , "If Hatcher had

²⁰⁸ Bolton, "Fatal Injury of the Head," 498.

been a white man, the utmost he could have been charged with would have been justifiable homicide or involuntary manslaughter."²⁰⁹

Jackson's death created an onslaught of controversy for the state judicial and penitentiary system. Governor Johnson's decision divided the citizens of Richmond. Since the court found Hatcher guilty by a unanimous vote and sentenced him to death by hanging, the commutation of his sentence by the Governor was a direct violation of the jurors' decision. The execution was planned to happen in April 1852, but Governor Johnson commuted his sentence to sale and transportation, which sparked outrage across the state that led to rioting in the city. Cavalry and artillery troops were called in to guard the Governor's mansion as well as the mayor's home. Public officials finally managed to allay the angry mob bent on vigilante justice.²¹⁰

In the years leading up to the Civil War, the Virginia penitentiary increasingly faced no-win situations. The penitentiary was overcrowded and registered a negative balance at the end of each fiscal year. Because of this, politicians were left with few choices to appease citizens. Had the Governor gone through with the execution, the state would have lost \$600 outright after paying Hatcher's owner,

²⁰⁹ Governor Joseph Johnson. "Gov. Johnson's Reasons for Commuting Jordan Hatcher's Sentence," *Record of Court in Jordan Hatcher's Case*, May 11, 1852.

²¹⁰ Ward, *Public Executions in Virginia*, 59.

a widow named P.O. Godsey, for loss of property.²¹¹ Citizens in Richmond frequently complained the penitentiary system created a financial burden to taxpayers. When Johnson chose to commute Hatcher's sentence, the state was able to make up a good portion, if not all, of the money paid out to reimburse Godsey. But the arrangement of commuting and selling—as opposed to executing convicted slaves—did little to appease Virginians' thirst for justice or vengeance. The Hatcher case exemplifies the divide between citizen and state, but to claim the conflict was only two-sided would not do justice to the nuance of the situation. Indeed, the House of Delegates was torn over the decision and many chided Governor Johnson's decision.

Many shared the sentiment expressed by “T,” who argued that the “law should be altered to either hang or acquit them [slaves charged with serious crimes].” The straightforward decision of guilt and a death sentence or innocence and acquittal, seemed to be the most prudent choice to many Virginians. Yet, this posed a problem for the treasury, which frequently racked up a bill in the tens of thousands of dollars by compensating slave owners upon the execution of their slaves after conviction. Indeed, the cost incurred by the State for the

²¹¹ *Record of the Court in Jordan Hatcher Case, March 12, 1852.*

execution of 27 slaves between 1846 and 1851 amounted to \$15,235.²¹² This amount was an outright loss to the penitentiary coffers. While it might make sense to change the law compensating slave owners for the loss of their property, the most powerful Virginians benefitted from this system and would not support the change. By the 1840's, many slave owners in Virginia relied on trading slaves to make money rather than using slaves to work in the tobacco fields and factories. Slave owners stood to lose a fortune and an easy means of making money should the compensation system be abolished.²¹³ The state had to find a way to appease multiple parties, and carrying out death sentences rarely made any financial sense.

Carrying out death sentences for slaves always constituted a cost. However, if the penitentiary sold and transported convicted slaves outside state lines, the institution recouped a good portion of its expenditures. Between 1846-1851, the same years the state lost over \$15,000 in executions of slaves, the Governor commuted death

²¹² *Report of the Joint Committee to Examine the Penitentiary Institution, 1852.*

²¹³ As early as 1831, when Harriet Martineau traveled in Virginia, she noticed the need for slave labor dwindling. Indeed, slave owners stood to make more money by selling slaves into regions further south. Slaves were desperately needed in cotton states, and Virginians ended up making more money in trading slaves than working them on plantations. The prison system acted as an intermediary in many cases and the system of slavery thrived with its help in apprehending, transporting, and re-selling slaves. For more on this, see: Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge: Harvard University Press, 2013), 218; 401-407.

sentences for 45 other slave convicts. Though still responsible for compensating owners, the state was able to recover some of most of this cost by re-selling convicted slaves. Compensation to owners of convicted slaves sold outside the states amounted to \$25,363 during these years, while the treasury made \$19,270 from the sale of these same slaves. Though still operating at a loss, the state managed to recover nearly three quarters of the money it otherwise would have lost had death sentences been carried out.²¹⁴ In summary, slaves were worth more to the state alive than dead. Because the treasury stood to benefit more from sale and transportation, fiscally speaking, this arrangement also benefitted taxpayers. Yet, citizens wanted convict slaves put to death if found guilty of felonies. Those citizens also wanted a financially lucrative penitentiary system. Though both were desired, the task was virtually impossible under a system where the state was responsible for compensating slave owners.

By 1852, the penitentiary was entrenched in Virginian society and served a purpose most everyone agreed on: the apprehension and correction of convicts, both enslaved and free. A persistent complaint, however, stemmed from the costs associated with its operation. State legislators as well as citizens felt the institution should

²¹⁴ *Report of the Joint Committee to Examine the Penitentiary Institution, 1852.*

not only be self-sustainable, but actually turn a profit. This was never the case, despite repeated promises. The state was between a rock and hard place: it was charged with both punishing criminals and making money. If convict slaves hanged for their crimes, the state was on the hook to pay for the loss of property without any chance of generating income. If state officials reprieved, sold, and transported the convict out of state, they could regain a portion, or sometimes all, of their original payout. Either way, citizens complained that justice was not being served, or that the cost of the state penitentiary system was a burden.

Convict Leasing

By mid-century, the penitentiary at Richmond had transformed into a powerful State entity. The penitentiary acted as a pillar for the state judicial system by managing the transport and confinement of criminals. Additionally, the penitentiary perpetuated and bolstered the institution of slavery by overseeing the conviction, sale, transportation, or execution of convict slaves—in addition to shouldering the responsibility of compensating slave owners for their loss of property. Yet, the building itself remained inadequate. After experimentation with solitary confinement, sales of free black convicts into slavery, and raising the threshold for penitentiary sentences, the prison was

persistently overcrowded, which created a dangerous situation for prisoners and guards alike. The penitentiary's inadequacies created security concerns for the safe confinement of so many criminals, but the state continued to cram prisoners into the walls. This model mirrored the wasp nests Latrobe studied and emulated, but without concern for infusing elements of compassion or accommodation like the original architect envisioned.²¹⁵

The population of the state continued to swell, crimes continued to be committed, and the building only designed for 200 convicts simply could not accommodate the needs of the state. The state of Virginia was hard pressed to find support for their existing institution, let alone an expansion or new building altogether. An additional complication for the penitentiary at Richmond was the decision to convict, apprehend, and transport convict slaves out of the state's lines. The penitentiary was never designed to house slave convicts, and only expected a small population of free black offenders due to their small population at the time of construction.

The Prosser revolt of the early 19th century fundamentally changed the purpose of the institution from a correctional facility for free citizens to a state-controlled entity that imposed upon the

²¹⁵ See Chapter 1.

traditional means of plantation justice. The state wedged itself into plantation politics by introducing slaves into the state penitentiary system. The Prosser revolt struck fear into the hearts of citizens in Richmond and the penitentiary system offered an additional means of control for the flourishing slave population. This not only caused overcrowding in the building, but also conflicted with the original purpose of the institution, which was to provide an alternative to corporal punishment for free citizens.

When the penitentiary system started processing slaves awaiting sale and transportation, most of those who filtered through the institution were young men. As Schwarz points out in *Slave Laws in Virginia*, most slaves convicted and transported were men in their late teens and early twenties. Young laborers in the prime of their life seemed “more likely to come into conflict with the criminal code of Virginia.”²¹⁶ This fact, reflected in prison registers and executive sales, reveals the State’s desire to acquire as much profit from the transportation and sale of viable labor into regions of the country more in need of a free workforce. As Martineau pointed out on her visit in the late 1830’s, Virginians were less in need of slave labor as the cotton states further south. As such, paying an overseer for their loss of

²¹⁶ Schwarz, *Slave Laws in Virginia*, 116.

property and then executing a young male slave made little economic sense for the state. The penitentiary could intervene, apprehend and convict the slave, compensate the owners, and then focus on recovering their losses upon sale and transportation. As the convict slave population continued to grow, sale and transportation became less popular, as Virginians took notice of the number of convict slaves escaping the gallows. As a result, the Virginia legislature devised a new solution to the perceived problem.

Between 1857 and 1858, Governor Wise of Virginia responded to a call from the legislature to assign free blacks and slaves convicted of felonies to complete public works projects. Though the practice of leasing convicts to private companies happened sporadically across Southern states, especially in states without a state penitentiary building, Virginia was among the first states to undertake this practice.²¹⁷ The practice of convict-leasing seemed like a good compromise for everyone involved. The measure did not satisfy those who still wished for the execution of convict slaves, but it did help that

²¹⁷ Paul Keve claims Virginia was the first state to practice convict leasing, though the state's entire penal policy was not reliant on leasing. Yet, according to Cyndi Banks, *Punishment in America: A Reference Handbook*, "In Louisiana, convicts were leased to private operators from 1844 until 1901 without a break." For more information see: Cyndi Banks. *Punishment in America: A Reference Handbook* (Santa Barbara: ABC CLIO, 2005), 58; Paul Keve, *A History of Corrections in Virginia*, 72-73; Matthew Mancini *One Dies Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: University of South Carolina Press, 1996) 5-9.

the convicts would be apprehended and supervised by a state entity rather than resold to an unsuspecting overseer in a distant state.

In order to appease citizens, the state halted the practice of transporting and selling convicts out of state and reserved the convicts for their own public work's projects. The penitentiary essentially commandeered a slave labor force signaling a complete transformation of the state penitentiary system. By the end of the Civil War, the Virginia Penitentiary legally succeeded in moving slave labor from the plantation to the penitentiary. The 13th amendment banned "slavery or involuntary servitude, except as a punishment for crime," but the state of Virginia legally continued the practice of slavery.²¹⁸

In 1858, the penitentiary housed 340 convicts in 171 cells. 29 of the cells held one prisoner each and the remaining 311 convicts were packed into 142 cells.²¹⁹ However, after Governor Wise approved the legislation allowing free black and slave convicts to work on projects outside the walls of the penitentiary, the institution became less crowded. Convicts worked on state building projects like canals, railroads, and coalmines. When the Civil War broke out, convict laborers were used in munitions manufacturing and fortification

²¹⁸ Thirteenth Amendment, § 1, United States Constitution (1865).

²¹⁹ "The Penitentiary of Virginia." *Alexandria Gazette*, September 14, 1858.

building. Free black and slave convicts played a large role in the fortification of the state. According to annual reports and Governor's messages, slaves, both convict and free, played an integral part in public works projects that contributed to fortification efforts for Confederate troops.²²⁰

Prior to the War breaking out, the Governor created a system of rules and regulations for convict slaves working outside the penitentiary. Leasing in Virginia was not considered a traditional leasing system as seen in other states further south after the War, because convicts in Virginia worked on state building projects. Leased convicts in Virginia worked outside of the institution for state contractors and sometimes the prisoners fetched a good price for the penitentiary. According to one report, men could be hired out for as much \$175 each per month. Women and children brought much smaller prices, the best being around \$50 per month, and at the lower end of the spectrum, contractors would just offer to provide clothing

²²⁰ Governor Wise. "Document 45: Rules and Regulations for the Employment of Negro Convicts on Public Works," *Message of the Governor of Virginia and Accompanying Documents*, May 4, 1858; Governor John Letcher. "The Penitentiary," *Message of the Governor and Accompanying Documents*, 1861; Governor John Letcher. "The Penitentiary," *Message of the Governor of Virginia and Accompanying Documents* (Richmond: William F. Ritchie, Public Printer, 1862).

and victuals for the women.²²¹ Depending on the project, teams of free black and slave convicts would be sent out in groups that could consist of more than 50 convicts.

Though Governor Wise outlined that “the women shall be kept strictly apart from the men,” problems continually cropped up with the sexually integrated work teams.²²² Usually 2-3 women accompanied the predominantly male workforce to their project to be employed “chiefly in washing and cooking.”²²³ In 1862, the report of the commissioners on the penitentiary complained: “The females are useless and unprofitable in the institution: and some that have been hired out, have returned with the additional burden of young children.”²²⁴ Another report claimed, “One of the free female negroes who was employed on the public works has a male child two years old, also one of the female slaves who was employed on the public works has two children (one a male about four years old, the other an infant).”²²⁵ Female convicts, both adult and youth, attended to the

²²¹ Governor John Letcher. “The Penitentiary,” *Message of the Governor and Accompanying Documents*, 1861.

²²² Governor Wise. “Document 45: Rules and Regulations for the Employment of Negro Convicts on Public Works,” *Message of the Governor of Virginia and Accompanying Documents*, May 4, 1858.

²²³ *Ibid.*

²²⁴ “Report of the Commissioners on the Penitentiary, Appointed under the Joint Resolution of the 15th May 1862,” *Message of the Governor and Accompanying Documents*, May 15, 1862.

²²⁵ *Ibid.*

domestic needs of convict laborers. In addition to cooking and cleaning for prisoners, the women and girls were also responsible for feeding their overseers and doing their laundry.

Though indispensable to the operation of work camps, women and girls were often considered an irritation. In the Governor's annual report from 1862, he listed 13 women on public works who garnered \$50 each for the penitentiary, and two other women who procured \$ only 25—the same amount gained from the lease of a girl who was only 10 years old. These numbers paled in comparison to the \$175 each male attained for the state. Not to mention, the amount of labor each man performed was considered more useful by state officials for the improvement of the state's infrastructure. Though women and children assisted in the day-to-day function of labor camps, the state still considered their presence less valuable than male convicts.

Leasing convicts to work on state projects increased and became particularly important when the War started. In 1862, the annual report for the penitentiary claimed that 26 slaves, 16 males and 10 females, lived inside of the penitentiary, while 107 "free negroes and slaves," both men and women, were hired to work outside the building. Free black and convict slaves outside the facility labored on state-sponsored projects in order to improve supply routes as well as

manufacture materials for troops. Railways, canals, steam ships, munitions, and coal mining all required the attention of a massive work force. The state utilized the labor of convicts in order to assist in projects they were desperate to complete for the war effort.

Several teams of convicts worked in camps throughout the state building railroad tracks or digging canals. Just as Virginians opposed the sale and transportation of convict slaves, many also took issue with their presence within the communities working on public works projects. In the 1862 report on the penitentiary to Governor Letcher, inspectors brought the issue to his attention by claiming, "The people in the neighborhood in which a considerable number of these convicts have been hired, are greatly dissatisfied, and have complained, through public meetings, threatening to resort to mob law, unless they shall be withdrawn."²²⁶ Regardless of the state's desperate need for labor, citizens remained unhappy with the Governor's decision to commute sentences for free black and slave convicts and put them to work on state projects,.

Despite efforts on behalf of the state to appease both citizens and the treasury, the public works leasing system did not satisfy

²²⁶ Governor John Letcher, "The Penitentiary," *Message of the Governor of Virginia and Accompanying Documents* (Richmond: William F. Ritchie, Public Printer, 1862).

everyone. In another attempt to placate Virginians and create a solution to what inspectors recognized as a growing problem, the penitentiary keeper again recommended sale and transportation. Even though free black and slave convicts performed vital labor for the state during the War, many citizens demanded their removal and threatened violence. Again, the state refused to capitulate and instead suggested more ways to acquire free labor. By the end of 1862, the Confederate government became more desperate for supplies and labor. In the Governor's report on "Free negroes and slaves," he recommended "all free negroes now resident in those portions of the state which have been overrun by the enemy, to be removed and put to work upon the fortifications." He suggested that free black people had "power to do us [The Confederacy] mischief, not only by tampering with our slaves, but in communicating valuable information to the enemy." The letter went on to propose that "confederate commanders [should] arrest free negroes, list them, and deliver them over to the proper officer of the Confederate government, for this or any other service in which labor is required."²²⁷ The Governor went on to claim each free black person arrested would

²²⁷ Ibid.

receive a fair wage and be allowed to return to their home at the conclusion of the war.

Though these proposed arrests were not a penitentiary matter, this mandate proves the power of the state to acquire free labor by any means necessary. Even if that meant arresting, detaining, and enslaving law abiding citizens. Regardless of the Governor's promise to pay a fair wage, the labor was involuntary servitude, and the Confederate government did not have the funds to pay them anyway. Oftentimes, payment to laborers depended on individual soldiers or their units.²²⁸ While not in custody at the penitentiary, the state now controlled slave labor by mandate, through arrest and detention. In addition to the arrest of free black people to work on fortifications, the government demanded slave owners turn over their slaves in service to the state for the duration of the war. Not all complied, and the Governor suggested hiring more convicts to fill the void.²²⁹

²²⁸ Colin Edward Woodward, *Marching Masters: Slavery, Race, and the Confederate Army during the Civil War* (Charlottesville: University of Virginia Press, 2014), Ch. 4.

²²⁹ For an in depth analysis of the Confederate government's use of slave labor utilized during the Civil War, see: Colin Edward Woodward, *Marching Masters: Slavery, Race, and the Confederate Army during the Civil War* (Charlottesville: University of Virginia Press, 2014). Woodward's work explores slavery's role in Confederate identity and how slave labor was exploited by the military. He argues the Confederate Army was wholly reliant on slaves on a day-to-day basis during the war, and that this complicated the debate over slavery in a profound way.

As the State became more invested in convict labor, the stakes became higher. With no facility in which to house convicts, working on state sponsored projects outside the facility was the most viable option. Even though inspectors repeatedly recommended transportation, the option was no longer viable during the years of the Civil War, even if the State wanted to repeat the practice. According to an 1862 report, the Governor could only sell and transport slaves if they were transported beyond the limits of the Confederate States. This ordinance was passed in July of 1861. The reporter pointed out, "So as long as the present war and blockade are continued, this is virtually a prohibition of any sale; and without some relaxation of the condition, the state must continue to hold and provide for all the convict slaves."²³⁰ Convicts continued to pile up for the penitentiary, but as the war continued, the Confederacy was in desperate need of free labor.

In terms of penitentiary labor, most of the convict slaves hired out worked for Joseph R. Anderson & Co., better known as Tredegar Iron Works. Founded in 1837, Tredegar was the state's largest manufacturers of iron. Prior to the War, Tredegar primarily handled

Woodward details the types of labor slaves performed, where they came from, and what roles they played in military strategy for the duration of the War.

²³⁰ Letcher, "The Penitentiary," 1862.

large railroad contracts and controlled manufacturing for the railroads. But the state formed an important partnership with the company and signed contracts with Anderson before, during, and after the War. The iron works factory was located in Richmond, right down the hill from the penitentiary, and Anderson managed the company throughout the Civil War. Tredegar produced munitions, ships, canons, and railways for the Confederate Army. Anderson utilized slave laborers, many of who were inmates at the Virginia Penitentiary.²³¹

The penitentiary overcrowded during the War and more free black and slave convicts got assigned to work for Tredegar. In 1863, the inspectors of the penitentiary noted, "Several of the convict negroes hired to J.R. Anderson & Co. have absconded within the last year, and are supposed to have made their escape into enemy's lines." While some convicts worked inside the ironworks company, many were assigned work on the furnaces. This gave convicts a chance to escape and retreat behind enemy lines, an alarming but

²³¹ For more information on the vital role the iron works played during the Civil War and the impact the company had on the relocation of the Confederate capital to Richmond, see: Nathan Vernon Madison, *Tredegar Iron Works: Richmond's Foundry on the James* (Charleston: The History Press, 2015); Kathleen Bruce, *Virginia Iron Manufacture in the Slave Era* (New York: The Century Company, 1931); Charles Dew, *Ironmaker to the Confederacy* (New Haven: Yale University Press, 1966); and Ervin L. Jordan, *Black Confederates and Afro Yankees in Civil War Virginia* (Charlottesville, University of Virginia Press, 1995).

apparently unavoidable situation. The reporter noted he “had no doubt” that the guards were “diligent and watchful” and “used proper precautions to prevent escapes.” Regardless of the “very small number” that were lost, the writer lamented it was, “a serious matter to the state.”²³²

Even though the inspector noted a small number of convicts were lost to escapes, a prior statement from 1861 noted losses due to illness and physical ailments. According to the report, conditions for convict laborers were brutal. Sickesses like dysentery and cholera were always present inside and outside the penitentiary and convicts working on fortifications often fell victim to these ailments, but convicts working outside the penitentiary also faced extreme physical abuse. When inmates were leased to a company like Anderson & Co., each convict was subject to the rules and regulations of the state-sanctioned overseers, who were not trained penitentiary guards. In 1861, a special section emerged in the annual reports on the institution detailing abuses prisoners experienced on work projects, some so severe they were returned to the penitentiary to convalesce.

²³² Governor John Letcher. “The Penitentiary,” *Message of the Governor of Virginia and Accompanying Documents* (Richmond: William F. Ritchie, Public Printer, 1863).

Describing the convicts who returned from work detail, the surgeon for the penitentiary said, "These men bear marks of hard usage, and some are rendered worthless for life."²³³ The surgeon was frustrated with the current system that allowed overseers to abuse slaves and return them to the penitentiary under his care at the taxpayers' expense. He complained that the penitentiary should be "taking care of its own sick, under its own management."²³⁴ But the leased convicts technically belonged to the state that put them in the care of overseers who did not follow penitentiary protocols for punishment. Though inmates could be and often were subject to corporal punishment within the penitentiary, there were strict regulations on the number of times an inmate could be whipped, and only some offenses were punishable with force. In May of 1861, 24 prisoners, nearly one quarter of that particular labor team, were returned to the penitentiary in bad shape because of abuses on the public works.

John Gaines, a free black inmate arrived back at the penitentiary to be treated for a lacerated wound that the work camps did not have the supplies or knowledge to properly dress. The surgeon

²³³ W.A. Patterson. "Surgeon's Report," *Message of the Governor and Accompanying Documents* (Richmond: William F. Ritchie, Public Printer, 1861).

²³⁴ *Ibid.*

reported that he had “numerous scars, from severe whipping, over almost every part of his body.” He recovered in the penitentiary hospital and was sent back to the public works project. Most of the men who returned to the penitentiary hospital had just contracted vicious stomach viruses and most had severe infections from injuries incurred during work. A couple of weeks prior to Gaines’ arrival, two other men arrived back on the same day suffering from chronic diarrhea and feebleness. Ben Cane and Ransom Hayward, both free men, worked on the public works projects for a short time before becoming sick. The surgeon reported they were “hardly used.” Cane laid in a hospital bed in the penitentiary weak and ill for six weeks before dying from a stomach ailment. Sam, a slave, was received from the public works on May 28, 1861, suffering from tuberculosis. According to the surgeon he was “feeble, badly used, and much whipped.” Though no follow-up occurred on his case, the surgeon reported his condition was not improving, and he likely died from the disease.

Though free black and convict slaves working outside of the penitentiary had issues of illness and injuries, they posed less of a problem for the state than the inmates who continued to overcrowd the penitentiary. The convicts who worked inside the prison during the

war could not be kept busy due to a shortage of wartime supplies. The penitentiary keeper simply could not acquire the supplies needed to keep the inmates at work. In a special report on the condition of the penitentiary to the General Assembly from May of 1862, one of the chief complaints was about work stoppages due to lack of supplies. The commissioners reported, "a great deal of profitable labor was lost in the shoe shop, axe factory and weaving department, between 1st October 1861 and the 19th April 1862 for want of materials to work upon."²³⁵ The convicts residing in the penitentiary were idle on and off for the duration of the War.

Oftentimes, when the keeper managed to obtain supplies needed to continue work in the shops, convicts, in a deliberate act of protest, destroyed the materials. In his 1863 report to the Governor, the superintendent complained, "A most damaging and serious difficulty in the management of the penitentiary, is the systematic and constant destruction of material by the convicts, when in their power to do so."²³⁶ The loss of control over some of the inmates was a growing problem for administrators who continually faced behavioral issues. In

²³⁵ "Report of the commissioners on the penitentiary, appointed under the joint resolution of the 15th May 1862," *Annual Report of Officers, Boards, and Institutions of the Commonwealth of Virginia* (Richmond: William F. Ritchie, Public Printer, 1862).

²³⁶ Colin Bass to Governor John Letcher, September 1863, *Message of the Governor and Accompanying Documents* (Richmond: William F. Ritchie, Public Printer, 1863).

the same report, the Superintendent claimed, "The convicts here now are of a class far worse I presume than has ever been in any one prison on the American continent."²³⁷

In addition to running low on supplies, the penitentiary was running low on guards and administrators. Even though several men applied to work as guards at the penitentiary in order to avoid military conscription, the Secretary of War refused permission for the Superintendent to hire any man from the Army.²³⁸ The men left as candidates for penitentiary guards who had questionable characters; the superintendent even concluded that their employment was potentially dangerous for convicts. Since the penitentiary could not pay good wages due to inflation, men of "unsullied character" were difficult to find. However, Superintendent Bass reminded the Governor that the penitentiary had a history of conduct issues, even amongst the guards. He recommended the Governor increase the wages for penitentiary guards and administrators so more upstanding men could take the job. Despite the precarious control the penitentiary guards and administrators maintained over the prison, the facility continued to accept convicts for the duration of the War.

²³⁷ Ibid.

²³⁸ Ibid.

The flow of convicts remained the same in most regards, except in the cases of women. Though the penitentiary originally had space specifically allocated for the confinement of female convicts, male prisoners overran that space over the decades. However, the Civil War led to a rise in the number of women inmates; by 1863, there were more women in the penitentiary than ever before. Bass noted, "There are about 25 women here, who cannot be worked to any profit for want of room. They are huddled together in a room so small that work cannot be done."²³⁹ Though black women had been a steady presence in the penitentiary since its opening, white women began to face penitentiary sentences as well. Between June and December of 1863, five white females were processed at the penitentiary, one being a girl only 11 years old. The women were not segregated by race, nor by age or crime committed.

The End of the War

When the Civil War ended in 1865, hundreds of inmates were far removed from the penitentiary building working on the railroads when Union troops descended on the city. While hundreds worked outside

²³⁹ Ibid.

the walls, 287 stayed behind to work inside the penitentiary building.²⁴⁰ Even though work stoppages were frequent, convicts were still responsible for making axes, shoes, and doing weaving projects as supplies became available. Toward the close of the war, however, all chaos broke loose in the city of Richmond. On Sunday, April 2, tobacco warehouses were set ablaze at the behest of Confederate officials in order to destroy any goods the Union Army could use. Throughout the day, the flames spread from rooftop to rooftop, destroying homes, businesses, government buildings, and churches. Masses of citizens fled from the fires. With Union troops approaching the Confederate capital and no troops to stop them, the citizens of Richmond panicked and began evacuating of the city, taking whatever they could carry with them. After the Confederate government escaped, hordes of citizens followed suit and mobs of defeated people set their own town aflame upon their exit. Angry at the approaching Union troops, the citizens sought to destroy the city before allowing a takeover of their capital.

Trains were packed with government officials and panicked citizens attempting to make their escape from the flames as well as the

²⁴⁰ "Virginia State Penitentiary," *Harper's Weekly*, Volume IX, Issue 464, p. 730. This article claims 287 convicts were in the penitentiary at the time of the fire, but annual reports and registers suggest that the number was closer to 400. There is no absolute figure for this period because of the confusion surrounding the evacuation.

arriving Union soldiers. Many feared the treatment they could receive at the hands of an occupying force. As buildings burned, so did all of the documents contained in them. The penitentiary, sitting on a hill above the James River overlooked the burning city and it was only a matter of time before it caught fire. The citizens went wild looting stores, setting more fires, and getting drunk in the streets. Late Sunday night, they were joined by hundreds of inmates from the penitentiary who were let loose on the doomed city by guards who also fled. The escaped inmates joined in on the marauding waiting for Union troops to descend on the city as the penitentiary burned in the distance.²⁴¹

According to a *Harper's Weekly* article, the public guard escaped during the evacuation, and the prisoners "took the law into their own hands, broke up and made instruments of escape out of their iron bedsteads, [and] set fire to the building." Despite their escape and the utter chaos that ensued in the following days, penitentiary officials managed to re-capture over 100 prisoners by that Thursday.²⁴² Because of the fire, there is a lapse in the prison registers between December of 1864 and September of 1865. Those registers likely burned during the evacuation. Yet the state penitentiary system

²⁴¹ Walter S. Griggs, Jr., *Historic Disasters of Richmond* (Charleston: The History Press, 2016), 51-56.

²⁴² "News from Richmond," *Providence Evening Press*, April 8, 1865.

was such a deeply entrenched state entity that it resumed business as usual in just a few short days after the evacuation. Public guards continued to re-capture escaped convicts, and the prisoners were immediately put back to work rebuilding the burned structure.

Conclusion

Several months after the fall of Richmond, the penitentiary began to accept visitors again. In late November of 1865, Laura Haviland, a prisoner reformer who had also supported abolition, approached the penitentiary at Richmond for a tour.²⁴³ In her travels, she collected several interesting stories, some from Virginia, particularly from the years leading up to and through the War. Haviland spoke with former slaves who worked for the Mayor of Richmond, Joseph Mayo. According to his slaves, Mayo was a cruel master. In 1865, he sent one of his female slaves to the penitentiary for a “trivial offense,” apparently a punishment he resorted to on a regular basis. When Haviland interviewed the woman’s friend she relayed, “she said it was a relief, for she was treated better there [at the penitentiary] than at her master’s.”²⁴⁴ This story lends credence to the role the penitentiary played in society. Not entirely unlike slavery, the penitentiary at Richmond acted as a state-run plantation.

²⁴³ Laura Smith Haviland was a Quaker abolitionist who spent much of her life in the Michigan territory where she helped establish the region’s first anti-slavery society and opened her house as an Underground Railroad stop. In addition to harboring fugitive slaves, Haviland also established the Raisin Institute, the first coed racially integrated school in Michigan open to all children “of good moral character, regardless of sex or color.” Haviland championed integration, education, and women’s equality throughout her life. For more, see: Laura Smith Haviland. *A Woman’s Life-Work: Labors and Experiences of Laura S. Haviland* (Chicago: C.V. Waite & Company Publishers, 1887), 34.

²⁴⁴ Haviland. *A Woman’s Life-Work*, 404.

Penitentiary administrators acted as overseers for the predominantly black prison population, but were more accountable for prisoners than a master was to his slave.

When Haviland visited the penitentiary at Richmond, it had been in operation for over 65 years. It was the oldest fully-functioning penitentiary in the United States. The keeper hesitated to admit her. He looked her over thoroughly and declared: "I am afraid you'll give a bad report of us, as did Miss Dix, who gave us a bad name." The keeper referred to another female visitor, the famous Dorothea Dix, who maligned the prison some 20 years prior. Haviland insisted on entering and assured him she was not there to judge their "housekeeping" or deliver a bad report. The keeper noted Haviland's resemblance to Dix and acknowledged the vast differences between Northern and Southern prisons and mockingly affirmed the chasm: "You know we don't have our prisons like yours of the North, like grand palaces with flower-yards."

Indeed, the penitentiary at Richmond, consistently overcrowded, habitually underfunded, and teeming with inmates of all ages, looked nothing like a palace or a Northeastern penitentiary. In fact, by 1865, the state funded penitentiary system looked more like a plantation, complete with domestic labor, manufacturing, and

manual labor projects guarded by white men on horseback. Women and children cooked, sewed, and served, while black men and boys dug trenches, laid railroad track, and manufactured goods for the State outside the walls of the prison.

In February of 1866, the *Daily Constitutional Union* printed a short piece about the problems the Virginia Penitentiary had with overcrowding as a result of emancipation. The writer claimed slaves were never allowed at the penitentiary prior to the War, but since emancipation, "the Penitentiary is filled with negroes to overflowing." The report asserted the state was "in a quandary about what to do with these evil doers," and went on to claim they were "totally unfitted to work in the factories, and only fitted for out door drudgery."²⁴⁵ This piece was not only false, but also added to the feelings of resentment still brewing between North and South. Though it was correct that free black convicts overflowed the penitentiary in the wake of the Civil War, the fact remains, the state apprehended slave convicts since the first year the penitentiary opened, and housed free black convicts all along. Moreover, after Governor Wise's 1857 decree calling for free and slave convicts to work on state projects, slaves had been hard at

²⁴⁵ "Richmond Penitentiary," *Daily Constitutional Union*, February 26, 1866.

work on state sponsored projects nearly 10 years prior to the publication of the article.

When Latrobe designed the penitentiary in the late 18th century, he emulated the wasp nests he observed while in the Virginia countryside. While fascinated by the design and concept of walling convicts in, Latrobe sought to make the arrangement more humane for inmates based on his experiences working with leading prison reformers in England. When he left the project due to disagreements with the first superintendent, the penitentiary at Richmond quickly spiraled into the cruel wasp nest Latrobe sought to avoid.

When the penitentiary opened in 1800, it sat on a hill above the James River with a little over a dozen inmates confined. The vast Virginia countryside spread westward. There were no railroads, hardly any useable routes on horseback, and people lived scattered across the largely undeveloped land. Over time, the penitentiary gained prestige and power as more inmates were sentenced to the facility from all over the state. Transporting prisoners required infrastructure and the penitentiary system was one state entity that encouraged growth and organization.

Because the institution operated in a slave society, bondage immediately impacted the function of the penitentiary system.

Legislators never intended the institution to be used for the confinement of slaves, but as the judicial system expanded, citizens demanded the apprehension of convict slaves due to growing fears of revolt. For the first several decades of operation, the penitentiary was a pillar for the growing state government and the imbedded slave system. By apprehending free citizens as well as slaves, residents began to depend on the penitentiary to dispense justice to any offender and the penitentiary became a staple in the state government.

The existence of slavery also impacted the ways penitentiaries developed in the North versus the South. Because labor in the South was viewed differently than in the North, the penitentiary models utilized labor in different ways. In the South, labor was a form of punishment, while in the North labor was considered morally reformative. Prisoners forced to labor in the Virginia Penitentiary faced conditions akin to slavery in order to debase convicts, and some actually were already slaves. In addition to punitive labor, Virginians sought monetary reparations from prisoners in the form of labor. The penitentiary always tried to turn a profit off of convict labor, but rarely succeeded.

By mid-century, the state penitentiary was always overcrowded with inmates and the state was forced to concoct new ways to earn profits. Because selling and transporting convicted slaves out of the state became controversial and costly, the state formulated a new plan for slave convicts. When Governor Wise authorized prisoners to work outside the institution on public works projects, the state implemented a different system of involuntary servitude using prisoner labor for its own purposes and growth.²⁴⁶ In 1870, 828 prisoners were in the custody of the state and that number only grew. 672 of the prisoners were listed as “black” and over 400 of them worked on the railroads for the state.²⁴⁷ By 1878, there were over 1300 prisoners in the custody of the penitentiary. Most were distributed to labor across the state.²⁴⁸

From Latrobe’s original vision of a humane system of justice for citizens, to a state-run plantation, the penitentiary at Richmond

²⁴⁶ In the years following the Civil War, the number of prisoners in state custody skyrocketed. The penitentiary was only able to hold 200 convicts, but this number swelled to nearly 1400 by the 1880’s. Convicts flowed in and out of the system by the hundreds every year, and the state railroad system rapidly expanded due to the slave labor performed by convicts. For more information, see: Records of the Virginia Penitentiary, Series II: prisoner Records, 1865-1990, Accession 41558. State Records Collection, The Library of Virginia, Richmond, Virginia.

²⁴⁷ “Table VII,” *Report of the Board of Directors of the Virginia Penitentiary with Accompanying Documents* (Richmond: C.A. Schaffter, Superintendent Public Printing, 1871).

²⁴⁸ “Table A,” *Annual Report of the Board of Directors of the Virginia Penitentiary with Accompanying Documents* (Richmond: A.R. Mico, Superintendent of Public Printing, 1886).

underwent multiple transformations that all led to an outcome that still utilized free labor. Despite some ethical attempts of superintendents, governors, and legislators, the state penitentiary system could not escape the deep-rooted system of slavery that dominated the region until 1865. In 1866, new authorizations were dispensed to the penitentiary by the general assembly approving the lease of convicts out to work on the city reservoir.²⁴⁹ Even after Emancipation, the Civil War, and the burning of Richmond, a type of slavery was strong enough to recover in a new form that ushered in the rise of mass incarceration in American society. This all happened under the guise of the state penitentiary system.

²⁴⁹ Chapter 134, "An Act to authorize the Superintendent and Directors of the Penitentiary to hire the Convicts to the City of Richmond," *Acts of the General Assembly of the State of Virginia: Passed in 1866-1867* (Richmond: James E. Goode, Printer, 1867).

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