

Branding Slaves, 19th century. Source: William O. Blake, The History of Slavery and the Slave Trade (Columbus, 1857), p. 97.

This essay is Part Two of a four-part series concerning the triumvirate of violence in slave societies. The first part examined private violence, the second part looks at public violence, the third at vigilante violence, and the fourth part will demonstrate the ways in which these forms of violence carried over into the Reconstruction Era and beyond.

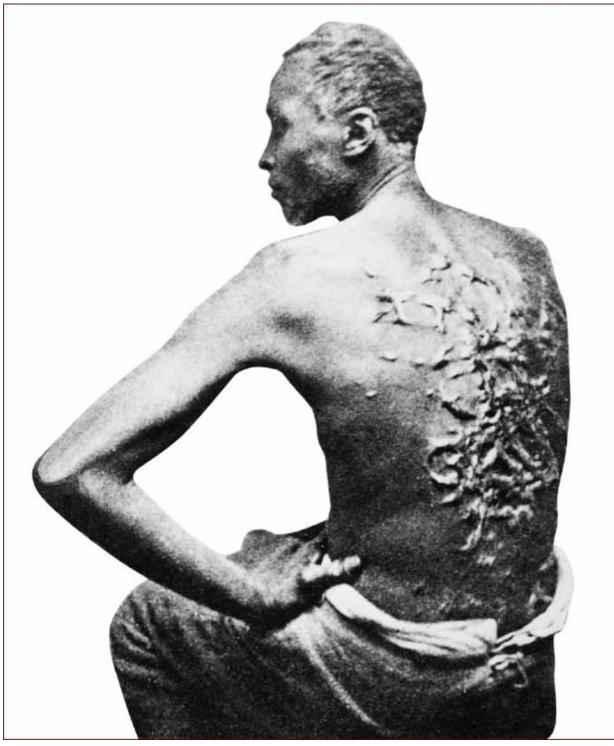
Part II: Public, Legal Violence (State-Sanctioned Violence Enacted through the Criminal Justice System)

Far too often, scholars of the criminal justice system have avoided widespread research of local courts and customs, instead studying state-level laws and appellate decisions. Throughout the nineteenth century, however, it must be remembered that southern power was extremely localized. To fully understand the system, it is imperative to study the enforcement of laws at the town, parish, or county level. Magistrate courts, inferior courts, and county-level superior courts hold clues to some of America's most persistent historical questions.

Slaveholders undoubtedly used their positions of power to maintain tight control over the southern population, policing and jailing poor whites who could possibly cause trouble or disrupt the slave system. While more likely to be whipped and beaten by individuals, slaves and free blacks were also victims of the brutality of the antebellum carceral state. Most slaveholders preferred to punish the enslaved privately, as a whipping still allowed laborers to immediately return to work, while imprisonment interrupted their work schedule. Thus, the vast majority of slaves incarcerated in local jails were runaways who were being held until their masters could retrieve them. Louisiana was the only Deep South state to regularly house slaves in the penitentiary (as an alternative to hanging); the other states simply brutalized enslaved African Americans privately and set them back to work as quickly as possible. Free blacks, however, were frequently incarcerated for the same reasons as poor whites.

Most antebellum inmates were not incarcerated for murder, rape, or even assault; instead, about half of them spent years behind bars-or at hard labor-for insignificant property crimes like petit larceny and burglary. Many others were there for non-violent behavioral "crimes" like vagrancy, drunkenness, and gambling. The point of most of these arrests was neither to punish nor to reform. Instead, slave owners used these laws to dominate and scare poor whites and free blacks into docility, jailing them for months or years at a time-often without the chance to stand trial.¹

It should be noted that one particular punishment invoked the overwhelming indignation of white convicts: public whipping. While most scholars assert that the public whipping of white men and women ended in America during the Jacksonian period, these customs did, in fact, continue in the Deep South's slave societies until after the Civil War. A primary objective of whipping white people was to completely and utterly embarrass them, degrading them to the level of slaves. South Carolina Governor John Means confirmed this point in 1852, stating that "when a white man once had" a public whipping, "he disappeared and never returned again."



Whipped back. Source: Wikimedia Commons.

Despite this embarrassment, however, racial relations between the incarcerated seemed relatively fluid. Given the state of most jails, guardhouses, and prisons, all convicts were usually housed together, regardless of race (and sometimes regardless of gender). This fact seemingly encouraged the collaboration and cooperation of whites and African Americans, especially concerning jail breaks and escapes. In fact, incarcerated individuals escaped from local jails with relative frequency. In South Carolina's Kershaw District, one black and two white prisoners absconded in the spring of 1856. Herman Holleyman, a debtor, and Jackson Bradley, a murderer sentenced to be hanged, banded together with a runaway slave who was physically ill and therefore not confined to a cell. The three men tied pieces of blankets together and bored a hole into the wall near a window, slipping out into the night and towards freedom.²

At other times, the enslaved helped white convicts break out of incarceration, bonding over a mutual desire to achieve freedom. In Talbotton, Georgia, for example, Bartley M. Murdock attempted to escape from the local jail. Murdock "was confined in the lower story, in company with a negro," when the guard retired to a room above the cell. Hearing a noise, the guard looked around, spotting an African American man just outside the jail. "Supposing him to be a negro who had come to converse with the one in jail," the guard ordered him away. As the man scurried off the guard noticed a white man exit from inside the jail and join the black man, whereupon the pair ran together towards the woods. Immediately hightailing it downstairs, the guard realized that the prisoners had escaped through a hole they cut in the wall. Dogs were sent after the escapees, and the authorities soon apprehended the African American man. They found Murdock several hours later that evening, in a swamp near the courthouse. At first he refused to tell the officials who aided his escape, but after being threatened with lynch law, he changed his mind, confessing that he received the tools from a "negro, whom he had promised to carry to a free state." Officials immediately hauled Murdock off to the Harris County jail, where he was ordered to "be strictly guarded."³

Leeds Anti-slavery Series. No. 7.

SLAVERY A SYSTEM OF INHERENT CRUELTY.



FLOGGING A SLAVE FASTENED TO THE GROUND.

The Leeds Anti-slavery Series. Source: Library of Congress.

Not surprisingly, in a region completely dependent upon forced labor, it was not long before the Deep South's prisons resembled plantations, a foreshadowing of the incarceral system that would arise once African Americans were "free." Convicts—both white and black—were made to work long hours in ungodly conditions, and if they faltered in their labor, they immediately suffered under the crack of the whip.

Throughout the later antebellum years, prisoners produced a wide array of goods, from wagons to slave shoes to pails to bricks. Penitentiary superintendents, as well as county-level sheriffs, even conducted their own versions of convict leasing. And yet connections between the antebellum carceral system and its various manifestations during Reconstruction and Jim Crow remain gravely understudied. As legal scholar Richard Morris hypothesized, the relatively frequent imprisonment of poor white and free black southerners, combined with other methods of compelling them to work at low wages, set the precedent for the treatment of all African Americans following the Thirteenth Amendment. White "bondage," according to Morris, "provided the necessary experience in the control of 'free' labor which served as the design for the emerging pattern of quasi-freedom cut to fit the emancipated Negro in the era of Reconstruction." Rarely have modern scholars realized the accuracy of Morris's convincing ideas about class and power in the slaveholding states.⁴

Indeed, the jailing, whipping, and brutalization of convicts during the antebellum period undoubtedly paved the way for the violence of the criminal justice system during the Reconstruction Era and beyond. The precedents set by a harsh legal system during slavery would give former slaveholders an avenue towards reenslavement in all but name following emancipation. The structures were there; the standards had been established. The only things that would change would be the race of the convicts and the intensities of the punishments. To be sure, slavery's continuing influence on violence and incarceration would become impossible to deny.