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Negro Involuntary Servitude in the South, 1865–1940: A Preliminary Analysis

By WILLIAM COHEN

THE THIRTEENTH AMENDMENT FORMALLY ENDED SLAVERY, BUT THE legacy of bondage proved stubbornly persistent. Seventy-five years after emancipation black forced labor remained common in many areas of the South. While historians of the South have devoted much attention to the oppressive effects of sharecropping, tenantry, the crop-lien system, and peonage, few have addressed themselves to the larger system of involuntary servitude within which these factors operated. From a legal standpoint this system comprised a variety of state laws aimed at making it possible for both individuals and local governments to acquire and hold black labor virtually at will. Beyond this, involuntary servitude was a creature of custom dependent upon community attitudes which sanctioned the use of forced labor. Occasionally such attitudes even allowed whites to compel labor from Negroes without the pretense of a legal justification.¹

Contained in embryo in the Black Codes and gaining increasing strength in the years immediately after Reconstruction, the system of involuntary servitude remained largely hidden until 1907, when the Department of Justice published Assistant Attorney General Charles W. Russell's "Report . . . Relative to Peonage Matters." The title is misleading. The central argument of this work was that

¹ This article is a preliminary description of the system of involuntary servitude. As such, its consideration of the legal aspects of the system will be limited exclusively to the state laws which created the framework for the system. It should be noted, however, that there is extensive evidence to suggest that similar and complementary laws also existed at the local level. These will be dealt with in a future work in which the author will explore involuntary servitude in greater detail. This investigation was supported in part by a grant from the Welfare Administration and the Social Security Administration, U. S. Department of Health, Education, and Welfare, Washington, D. C. An earlier version was submitted to these agencies in October 1971 under the title, "Negro Involuntary Servitude in the Twentieth Century."

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peonage constituted only one dimension of a more comprehensive system of involuntary servitude having its roots in laws "considered to have been passed to force negro laborers to work" Peonage had a precise and narrow meaning. For this condition to exist an individual had to be held to labor against his will in order to satisfy a debt. According to Russell many southern statutes were being used to compel laborers to work against their will even without a claim of debt. In such cases the federal government was virtually powerless, for the Peonage Act of 1867 seemed to be the only tool that could be used to stop forced labor, and this law applied only in situations where a debt was alleged. Seeking to change this situation, Russell suggested that "It might even be well to abandon the use of the word 'peonage' and pass a law forbidding involuntary servitude" His plea went unheeded.²

In 1933 Walter Wilson called attention to some of the laws and customs which perpetuated southern involuntary servitude. Unfortunately, his general argument was so polemical that few took it seriously. Far more useful is Howard Devon Hamilton's 1950 doctoral dissertation, which includes an excellent discussion of the state laws and court decisions pertaining to peonage and other forms of involuntary servitude. Similar ground is covered in an earlier book by Charles S. Mangum, Jr. Both Mangum and Hamilton focus almost exclusively upon legal issues, and neither seeks to depict the social ethos in which involuntary servitude existed.³

Recently, Pete Daniel has thoroughly explored the peonage files of the Department of Justice, and the resulting work is a significant addition to the literature of involuntary servitude. Still, his narrow conceptual framework presents serious problems. Daniel limits himself to studying peonage, but some of the most significant cases he presents do not involve debt servitude. Sometimes he recognizes this, and at one point he notes that "The distinction between peonage and slavery was often blurred." Elsewhere he describes as peonage, cases where debt was, at best, a peripheral factor. By limiting himself to the study of peonage and then transgressing this boundary, Daniel leaves the reader confused as to the full scope of

² "Report of Hon. Charles W. Russell, Assistant Attorney General, Relative to Peonage Matters," in U. S. Attorney General, *Annual Report*, 1907 (2 vols., Washington, 1907), I, 211, 208.

³ Wilson, *Forced Labor in the United States* (London, [1933]), 84-114; Hamilton, "The Legislative and Judicial History of the Thirteenth Amendment" (unpublished Ph.D. dissertation, University of Illinois, 1950; cited hereinafter as Hamilton, "History of the Thirteenth Amendment"), 169-252; Mangum, *The Legal Status of the Negro* (Chapel Hill, 1940), 163-72. Although he deals with an earlier period, Richard B. Morris also indicates an awareness of the post-Civil War system in "The Measure of Bondage in the Slave States," *Mississippi Valley Historical Review*, XLI (September 1954), 219-40.

the system being described. Nevertheless, his work is important, and the present essay is intended to complement it rather than tear it down.⁴

Whether focusing upon peonage or involuntary servitude, all the authors mentioned above assert or imply that latter-day bondage was widespread. However, large-scale Negro migration from one southern state to another and later from the South to the North indicates that the southern labor system did not immobilize the Negro labor force. This essay will seek to describe the system of involuntary servitude within a conceptual framework that accounts for this paradox. At the same time it will attempt to describe the nineteenth-century origins of the system.

Far less rigid than slavery, the system of involuntary servitude that emerged after the Civil War was a fluid, flexible affair which alternated between free and forced labor in time to the rhythm of the southern labor market. Employers had the legal and social tools to compel labor from blacks, but the use of such measures was not obligatory. When labor was plentiful, Draconian powers were unneeded. When it was scarce, they were readily at hand. Thus, whites had no reason to impede black mobility except when faced with a real or anticipated shortage of hands, and the system had something of a "now you see it, now you don't" quality about it. Still, compulsion was frequent enough. Even when unused, force posed an omnipresent threat which had a pervasive effect upon the tone of the southern labor system.

The laws of involuntary servitude facilitated both the recruitment and retention of black labor. Enticement statutes established the proprietary claims of employers to "their" Negroes by making it a crime to hire away a laborer under contract to another man. Emigrant-agent laws assessed prohibitive license fees against those who made their living by moving labor from one state to another, and a variety of contract-enforcement statutes virtually legalized peonage. In some cases contract legislation went still further and made it a criminal offense to break a labor contract even when no debt was involved. Broadly drawn vagrancy statutes enabled police to round up idle blacks in times of labor scarcity and also gave employers a coercive tool that might be used to keep

⁴ Daniel, *The Shadow of Slavery: Peonage in the South, 1901-1969* (Urbana, Chicago, and London, 1972), 29, 20-25, 150, 172-74. The weakness of peonage as a conceptual framework is demonstrated in Chapter VIII, which deals with the Mississippi River flood of 1927. Daniel assumes that limitations on black mobility occurred during this disaster because "most" black laborers were in debt to their employers. This does not account for the fact that those who kept the Negroes confined to refugee camps made no distinction between those who owed money to their employers and those who did not.

workers on the job. Those jailed on charges of vagrancy or any other petty crime were then vulnerable to the operations of the criminal-surety system, which gave the offender an "opportunity" to sign a voluntary labor contract with his former employer or some other white who agreed to post bond. Convict-labor laws began where the surety system ended, and those who had no surety often wound up on chain gangs, which in effect were a state-sponsored part of the system of involuntary servitude.⁵

These statutes need not have created the system of involuntary servitude. Vagrancy and convict-leasing acts existed in the North, and, taken at face value, many contract-enforcement laws simply aimed at penalizing fraud. What gave life to the system was the intent of the men who wrote its laws and the spirit in which these measures were enforced. Most of the laws discussed here made no mention of race, but southerners knew that they were intended to maintain white control of the labor system, and local enforcement authorities implemented them with this in mind. Custom transcended statute; and, with the full assent of the white community, these acts served as a skeleton which was fleshed out with a host of extralegal and illegal practices designed to keep blacks hewing wood and drawing water.

Writing in September 1865, Henry William Ravenel voiced sentiments that would remain a common southern theme for generations when he said: "There must . . . be stringent laws to control the negroes, & require them to fulfill their contracts of labour on the farms."⁶ Responding to such pleas, from 1865 to 1867 one southern legislature after another enacted Black Codes designed to preserve white hegemony. The story of these codes is well known, and this essay will consider only those portions which laid the groundwork for the system of involuntary servitude. The code provisions dealing with contract enforcement and vagrancy have often been described, but less attention has been paid to related statutes. Also enacted at this time were laws dealing with enticement and measures foreshadowing later legislation pertaining to emigrant agents, convict labor, and the criminal-surety system.⁷

⁵ For an able discussion of these state laws and their relationship to peonage and involuntary servitude see Hamilton, "History of the Thirteenth Amendment," 210-29, 232-41.

⁶ Arney R. Childs, ed., *The Private Journal of Henry William Ravenel, 1859-1887* (Columbia, S.C., 1947), 256.

⁷ The best available monograph on the Black Codes is Theodore B. Wilson, *The Black Codes of the South* (University, Ala., 1965), especially 61-80, 96-115; see also William E. Burghardt Du Bois, *Black Reconstruction . . . in America, 1860-1880* (New York, 1935), 166-79.

Reconstruction voided most black-code legislation, including many statutes dealing with enticement, contract enforcement, and vagrancy. Once the Redeemers took power, however, the former Confederate states began to resurrect the labor controls established from 1865 to 1867. In the years after Reconstruction there was a spate of new laws aimed at keeping blacks on the farm. Significantly, when court action invalidated some of these measures, the states often replaced them with others of similar ilk. A survey of the laws of involuntary servitude and of the ways in which they were applied will reveal both the nature of the system of involuntary servitude and its persistence into the twentieth century.

More than any other form of legislation, the enticement acts embodied the essence of the system of involuntary servitude. They re-created in modified form the proprietary relationship that had existed between master and slave. With precedents going back to fourteenth-century England, these laws had an extensive history in both criminal and civil law. Seventeenth-century Americans often viewed the enticement of a servant as a crime against society (that is, a violation of criminal law), but later generations took the matter less seriously and treated it as a civil wrong involving only private rights. By the mid-nineteenth century criminal prosecutions for enticing a servant had become virtually nonexistent, and civil cases were rare.⁸ Thus, it is highly significant that when the South resurrected the enticement laws after the Civil War almost every former Confederate state chose to make them criminal statutes.

Ten southern states enacted enticement laws from 1865 to 1867. They were the most common measures aimed at controlling the Negro labor force adopted in these years. Only Tennessee failed to pass such an act then, and she did so in 1875. Of the remaining states, Virginia alone failed to make enticement a *criminal* offense. Georgia made it a crime to entice a worker "by offering higher wages or in any other way whatever." Some states made it illegal to hire a contract-breaker, and a few penalized those who harbored, detained, or fed such a person. Louisiana's law punished "any one who shall persuade or entice away, feed, harbor or secrete any person who leaves his or her employer"⁹

⁸ Richard B. Morris, *Government and Labor in Early America* (New York, 1946), 414-34; *Century Edition of the American Digest: A Complete Digest of All Reported American Cases from the Earliest Times to 1896* (50 vols., St. Paul, Minn., 1897-1904), XXXIV, 2055-63.

⁹ *Alabama Acts, 1865-1866*, pp. 111-12; *Arkansas Acts, 1866-1867*, p. 300; *Florida Acts, 1865*, p. 33; *Georgia Acts, 1865-1866*, pp. 153-54; *Louisiana Acts, 1865* (Extra Sess.), 24-26; *Mississippi Laws, 1865*, p. 85; *North Carolina Public Laws* (Spec. Sess.) 1866, pp. 122-23; *ibid.*, 1866-1867, pp. 197-98; *South Carolina Acts, 1865*, pp. 36-37; *Tennessee Acts, 1875*, pp. 168-69; *Texas General Laws, 1866*, p. 80; *Virginia Acts, 1865-1866*, p. 83. For the sake of brevity, here and throughout this article, session laws and state codes are cited in legal citation form.

Some of the enticement acts of the period 1865–1867 proved quite durable. Others disappeared for a time, only to surface again after Reconstruction. With amendments, the early enticement acts of Alabama, Georgia, Florida, and North Carolina continued into the era of World War II and beyond. Elsewhere in the South such laws were stricken from the books for a time, but only Texas and Virginia failed to enact new, equally hardy measures.¹⁰ Successful replacements came soon in Arkansas (1875) and South Carolina (1880). The Louisiana legislature considered the subject in 1880, and only a gubernatorial veto prevented Mississippi from adopting an enticement act in 1884. Both states enacted such laws in 1890.¹¹

Frequently amended, the enticement statutes remained active law until World War II. Most of the changes occurred before 1910, but some came later. South Carolina and Mississippi brought the enticement of minors within the purview of their laws in 1913 and 1924, respectively. Alabama made attempted enticement a crime in 1920. Three years later Arkansas increased the maximum penalties for those convicted under her law, and in 1928 Mississippi weakened her statute by making it applicable only to willful violators. As was often the case, this change was the result of a restrictive court decision. North Carolina had four enticement laws. One of these was enacted in 1905 and applied only to tenants and croppers living in certain specified counties. Between 1920 and 1951 ten separate acts added fourteen more counties to the fourteen originally listed in this act.¹²

Mississippi made extensive use of her enticement law, and in

¹⁰ The following are the latest state codes known to contain enticement legislation: *The Code of Alabama, Recompiled 1958* (Charlottesville, Va., 1958), Titles 26-331 to 26-333; *Arkansas Statutes, 1947: 1971 Replacement* (Indianapolis and New York, [1971]), Title 50-524; *Florida Statutes, 1941* (Tallahassee, 1942–1943), Sec. 448.02 (repealed by *Florida General Acts, 1943*, p. 834); *Code of Georgia Annotated . . . 1966 Revision* (Atlanta, [1966]), Secs. 66-9904 and 66-9905; Benjamin W. Dart, comp. and annotator, *General Statutes of the State of Louisiana, 1939* (Indianapolis, [1939]), Sec. 4384; *Mississippi Code, 1972, Annotated* (Atlanta, [1973]), Sec. 97-23-29; *The General Statutes of North Carolina, 1969 Replacement* (Charlottesville, Va., 1969), Secs. 14-347, 14-348, 14-358, and 14-359; *Code of Laws of South Carolina, 1962* (Charlottesville, Va., 1962), Sec. 40-454; *Tennessee Code Annotated . . . 1966 Replacement* (Indianapolis, 1966), Secs. 50-201 and 50-202.

¹¹ *Arkansas Acts, 1874–1875*, p. 231; *South Carolina Acts, 1879–1880* (Extra Sess., 1880), 423; *Senate Reports, 46 Cong., 2 Sess., No. 693: Report and Testimony of the Select Committee of the United States Senate to Investigate the Causes of the Removal of the Negroes from the Southern States to the Northern States* (3 Pts., Serials 1899–1900, Washington, 1880; hereinafter cited as *Senate Report on Exodus*), II, 223–24; *Appleton's Annual Cyclopaedia . . . 1884* (New York, 1885), 528; *Louisiana Acts, 1890*, p. 178; *Mississippi Laws, 1890*, p. 69.

¹² *South Carolina Acts, 1913*, pp. 33–34; *Mississippi Laws, 1924*, p. 213; *ibid.*, 1928, p. 366; *Alabama General and Local Laws, 1920* (Spec. Sess.), 155; *Arkansas General Acts, 1923* (Extraordinary Sess.), 187; *General Statutes of North Carolina, 1969 Replacement*, Sec. 14-359; see also *ibid.*, Secs. 14-347, 14-348, and 14-358.

1917 when the constitutionality of that act came before the state supreme court, Assistant Attorney General Frank Roberson noted that the statute had been before the high court on at least twenty previous occasions. He went on to argue that such a law was an absolute necessity "in an agricultural state where long time contracts are made and monies necessarily advanced in anticipation of the fulfillment of a contract." Then he added: "This is without reference to the fact that incidentally the larger part of the labor may be negroes." Whether Roberson meant to say that race was irrelevant to the issue, or subtly to imply the opposite, is not known. Whatever his intent, enticement cases in Mississippi and elsewhere almost always involved situations in which a white planter was seeking to entice a black laborer.¹³

Even in North Carolina, where whites generally outnumbered Negroes by a ratio of two to one, blacks figured in the great majority of enticement cases. When two black "orphans" ran away from a Sampson County planter in 1872 he published a notice saying: "I hereby forbid anyone employing them . . . or giving aid or comfort in any way to them upon penalties of law." In 1911 John Bridges, a Negro who lived in the vicinity of Wake Forest, entered into a contract with A. M. Harris, a white man. Bridges later quit as a result of a dispute over wages, and Harris proceeded to harass him from job to job by threatening to bring each new employer into court under charges of enticement. Finally, one employer, Jonathan C. Fort, refused to fire Bridges, and Harris brought suit against Fort. At the same time he arranged to have Bridges thrown in jail on unknown charges. Such practices still obtained on the eve of World War II, and in 1939 the *Caswell Messenger* of Yanceyville, North Carolina, carried the following advertisement: "NOTICE—I forbid any one to hire or harbor Herman Miles, colored, during the year 1939. A. P. Dabbs, Route 1, Yanceyville."¹⁴

The laws of enticement can be distinguished from contract-enforcement legislation by their emphasis upon regulating the behavior of employers rather than laborers. Nevertheless, the line

¹³ *State v. Hurdle*, 113 Miss. 736, at 739 (1917). Most of the reported higher-court cases involving enticement do not explicitly specify the race of the laborers involved, but inferential materials such as bits of dialogue leave little doubt that the laborers were almost always Negroes.

¹⁴ W. McKee Evans, *Ballots and Fence Rails: Reconstruction on the Lower Cape Fear* (Chapel Hill, 1967), 75; *North Carolina Public Laws, 1866*, pp. 100, 122-23; J. G. Mills to Herbert F. Seawell, August 11, 1911, appended to Seawell to the Attorney General of the United States, August 26, 1911, Doc. 150153-11, File 50-0, Materials Relating to Peonage: National Files, Classified Subject Files, Numerical Files, 1904-1937, General Records of the Department of Justice, Record Group 60 (National Archives, Washington, D. C.; cited hereinafter as DJ Peonage Files); *Caswell Messenger*, quoted in *Baltimore Evening Sun*, December 6, 1939, Sec. 2, p. 27.

between these types of law was often hazy, and the two could sometimes be combined in a single act. The law invoked by Dabbs against Miles was probably a 1905 statute making it a crime for tenants and croppers in certain specified counties to abandon their crops without first repaying any advances made by their landlords. A further clause penalized anyone who knowingly employed a laborer who had violated this provision. In 1909 the North Carolina Supreme Court declared the law unconstitutional except where the indictment alleged that the tenant had entered into his contract with the intention of defrauding his landlord. Taken on its face the statute was completely unconstitutional, for, until it was amended in 1945, it contained no reference to fraud.¹⁵

By bringing in the unmentioned matter of fraud, the court left just enough room for the statute to remain on the books, and this gave local magistrates an opportunity to use it without regard to its constitutionality. Responding to an inquiry from the editor of the *Chapel Hill Weekly*, a Yanceyville man familiar with the courts and county offices in the area asserted that notices like those placed by Dabbs were still being used "to 'put the fear of God into Negroes and ignorant white folks.'" He termed the law permitting this "archaic," but said that "Many of our magistrates still hold it is good law and zealously support its use in upholding the contentions of landlords who resent any dissatisfaction on the part of tenants to whom they have advanced as much as 50 cents for rations on which to make a crop. . . . As long as folks don't know the statute is unconstitutional it can be made to serve its intended purpose. The Caswell legislator who would try to take that law off the books would lose many votes."¹⁶

White planters concerned about maintaining a stable work force saw enticement as a threat to their labor system, and they took the same view of the "emigrant agents" who made a living as interstate labor brokers. Here, too, their main concern was to regulate the behavior of whites. In antebellum days slave traders played a necessary role in the southern economy by arranging for the reallocation of labor from areas where it was superabundant to places where it was scarce. After emancipation emigrant agents served the same function. In so doing they fell heir to the social stigma that

¹⁵ *North Carolina Public Laws, 1905*, pp. 333–34; *State v. Williams* 150 N.C. 802 (1909); *North Carolina Session Laws, 1945*, p. 878. The law in question here is somewhat uncertain, but it is not the 1905 act cited above, it must be *North Carolina Public Laws, 1901*, p. 913, whose general intent was similar to that of the 1905 law. The 1901 law would also have been unconstitutional under *State v. Williams*. See the annotations in North Carolina, *General Statutes, 1969 Replacement*, Secs. 14-348 and 14-358.

¹⁶ Quoted in *Baltimore Evening Sun*, December 6, 1939, Sec. 2, p. 27.

attached to their predecessors. Because their trade appeared to be a new one, few paid much attention to the recruiters in the months just after the war ended, and no state included an emigrant-agent law in its black code. Mississippi anticipated such legislation, however, when she provided especially harsh penalties for those who enticed laborers to leave the state.¹⁷

A useful though despised breed, the emigrant agents represented a menace to those who feared the loss of their workers. Thus, emigrant-agent laws came first in those states which felt themselves most threatened by Negro out-migration. Hard hit by black movement to the West, Georgia took the lead in 1876, when she levied an annual tax of \$100 for each county in which a recruiter sought labor. A year later she raised the amount to \$500. All the southern states which acted to outlaw emigrant agents followed this pattern and attempted to levy prohibitively high license or occupation taxes. Roughly similar measures were soon adopted in Alabama (1879), North Carolina (1891), South Carolina (1891), Florida (1903), and Mississippi (1912). The Alabama and Florida laws applied to all persons whether they were planters seeking hands or paid recruiters. Each of the Carolinas charged a \$1,000-per-county license fee and provided that violators might be punished with fines of up to \$5,000 or jail terms of up to two years. Virginia did not pass such a law until later, but in 1903 she did require all labor agents to get a certificate of good character from a local court.¹⁸

The massive wave of black migration that began in 1916 and continued sporadically through the 1920s provoked more legislation. Tennessee (1917), Virginia (1924), and Texas (1929) joined the list of states having emigrant-agent laws, and Florida, Georgia, and Alabama drastically increased the severity of their statutes. License fees and penalties rose sharply. In addition, Georgia broadened the definition of an agent to include virtually anyone who sought to take labor out of the state. Agents were required to make daily reports and to post bond to cover any debts which might be owed by those being transported to out-of-state

¹⁷ *Mississippi Laws, 1865*, p. 85. I am deeply obligated to John M. Robb for the above interpretation of the role of emigrant agents in the post-Civil War South. Mr. Robb has done extensive work on southern labor agents and has been kind enough to share both his insights and his research materials with me.

¹⁸ *Georgia Acts, 1876*, p. 17; *ibid.*, 1877, p. 120; *Alabama Acts, 1878-1879*, p. 205, as amended by *ibid.*, 1880-1881, p. 162; *North Carolina Laws, 1891*, p. 77; *South Carolina Acts, 1891*, p. 1084; *Florida Acts, 1903*, p. 135; *Virginia Acts, 1902-3-4*, p. 211; *Mississippi Laws, 1912*, p. 73. Georgia's law was upheld in *Shepherd v. Sumter County Commissioners*, 59 Ga. 535 (1877). The Alabama statute was declared unconstitutional in *Joseph v. Randolph*, 71 Ala. 499 (1882). A new statute was enacted twenty years later. *Alabama General Laws, 1903*, pp. 344-45.

jobs. These provisions were mild compared with those of Alabama, which defined the term "emigrant agent" so broadly that it included assistants, messengers, and even the printer who ran off recruiting handbills. Each such person had to pay a \$5,000-per-county annual license fee, and each had to supply a recommendation signed by twenty "householders and freeholders" testifying to his good moral character and to the fact that he had been a state resident for at least six months.¹⁹

The Great Depression rendered laws like this unnecessary, but prior to this time they were a powerful deterrent to the open solicitation of black labor. An occasional agent found it possible to pay the occupation tax and make a profit. For the most part, however, law and public opinion combined to drive them underground. Even before Mississippi legislated against the agents her citizens made their disdain for recruiters abundantly clear. In 1908 the steamer *America* landed at a Natchez wharf and waited while agents sought to add more laborers to the number already on board. Mobilizing to fight this threat, local businessmen "organized the 'Bankers' and Merchants' Labor' Agency for the purpose of keeping the negroes at home . . ." Meeting with a large group of blacks assembled at the pier, a committee of white citizens used methods which a southern reporter described as "so emphatic that the negroes concluded to abandon their idea of leaving . . ." That same day fifteen local labor agents (two of whom were Negroes) were told to leave town.²⁰

Official efforts to curb the recruiters often complemented informal actions like this. Sometimes the target might be a professional like R. A. "Pegleg" Williams of Atlanta, but more often than not the whites who ran afoul of the emigrant-agent laws were private employers like C. W. Lane, a West Virginia construction company official. Operating openly, Williams paid the Georgia license fee and transported thousands of blacks to the Southwest in the 1890s. Still, local authorities harassed him, and he invited prosecution by refusing to pay the license tax. Georgia officials gladly obliged, and

¹⁹ *Tennessee Public Acts, 1917*, p. 189; *Florida General Acts, 1917*, p. 25; *Georgia Acts, 1918*, p. 56; *ibid.*, 1920 (Extraordinary Sess.), 87–88, 122; *ibid.*, 1923, p. 38; *Alabama General Laws, 1919*, pp. 187–88; *ibid.*, 1923, pp. 208–15; *Virginia Acts, 1924*, p. 679; *Texas General Laws, 1929* (Second Called Sess.), 16, 203.

²⁰ *Charleston News and Courier*, December 27, 1908, p. 9. For other Mississippi incidents involving informal actions taken against emigrant agents see *Jackson Daily News*, November 29, 1911; *Natchez Democrat*, January 23, 24, 1920; *St. Louis Argus*, November 22, 1929. This last item was found in the Monroe N. Work Clipping File (Hollis-Burke-Frissell Library, Tuskegee Institute, Tuskegee, Ala.). The item in the *Jackson Daily News* was located in Newspaper Clippings Relating to Cotton Boll Weevil, Division of Southern Field-Crop Insect Investigations, Records of the Bureau of Entomology and Plant Quarantine, Record Group 7 (National Archives; hereinafter cited as Boll Weevil Clippings).

he then fought the case all the way to the United States Supreme Court. In 1900 this body upheld the right of the states to license emigrant agents as they saw fit and denied Williams's argument that such licensing interfered with interstate commerce. Unlike Williams, Lane sought workers for his own use and not for a third party, but this did not stop the sheriff of Rowan County, North Carolina, from arresting him in 1905 for attempting to hire men to build a railroad in West Virginia. Lane won his release by paying the license tax and subsequently sued for the return of his money. The North Carolina Supreme Court sustained his contention that he was not an agent within the meaning of the law. Typical of many, this case illustrates the frequent failure of local police to distinguish between the professionals and others who might also be recruiting black workers.²¹ Even in states that regulated only the professionals custom rendered suspect any solicitation of Negro laborers.

Inhibited by such laws and customs, whites needing labor often turned to Negro agents, subagents, and informal recruiters. These blacks knew where to find workers and could enter and leave Negro areas less conspicuously than whites. With some frequency, law-enforcement authorities arrested Negroes for recruiting without a license. Whether this reflected the degree to which whites actually used Negro surrogates as recruiters, or whether it mirrored differential treatment at the hands of sheriffs and police is not known.²² In 1918 South Carolina officials arrested Draten Bates, a black North Carolinian, and charged him with violating the emigrant-agent law. Bates voluntarily testified that his foreman had sent him to Pomaria, South Carolina, to "hunt some hands if I could" and claimed he had obtained only two men. The South Carolina Supreme Court accepted his account at face value but upheld his conviction. The fact that he was not a professional agent

²¹ For Williams see *Atlanta Constitution*, February 25, 1890; January 25, 1891; January 2, 1895; January 15, 17, 1900; *Williams v. Fears*, 179 U. S. 270 (1900). For Lane see *Lane v. Rowan County Commissioners*, 139 N.C. 443 (1905). Other higher-court cases involving the arrest of nonprofessional agents include: *Braxton v. City of Selma*, 16 Ala. App. 476 (1918); *Rowe v. State*, 19 Ala. App. 602 (1924); *Theus v. State*, 114 Ga. 53 (1901); *State v. Lowe*, 187 N.C. 524 (1924).

²² Often the records of the higher courts give little indication as to the race of those accused of recruiting labor without a license. In those cases which did have such inferential materials about one-fourth appear to have involved blacks. This estimate is highly tentative and is not based on a systematic sampling of all the emigrant-agent cases that came before the higher courts. Moreover, even if the sample is representative, one would still be faced with the question of whether or not blacks accused of being agents came before the higher courts more often than whites. In addition to the two cases cited in footnote 23 below see *Braxton v. City of Selma*; *Watts v. Commonwealth*, 106 Va. 851 (1907); and *State v. Hunt*, 129 N.C. 686 (1901).

was irrelevant because the law simply made it a crime to transport laborers out of the state. Moses Chambers fared somewhat better than Bates. Arrested in Cartersville, Georgia, for asking another Negro if he wanted to come to Tennessee and work for Alcoa at \$2.50 a day, Chambers was freed by Georgia's high court after that body determined that a reasonable doubt existed as to whether he was an agent or simply a successful job seeker anxious to share his good fortune with another.²³

Implicit in the sanctions against emigrant agents as well as in the enticement acts was a widely held proprietary attitude toward blacks, which had its roots in the property relations of slavery. If whites sometimes thought of themselves as the guardians of child-like Negroes, they more often responded to the presence of "enticers" or labor agents as though they thought their goods were about to be stolen.

Unlike the emigrant-agent and enticement acts, which focused on white behavior, contract-enforcement statutes aimed directly at regulating blacks. As in other areas, the Black Codes set the tone for later legislation. In 1865 Mississippi required Negroes to enter into labor contracts by a specified day each January. South Carolina, Louisiana, Texas, and Arkansas required employers to grant discharge certificates to laborers who had legitimately left their service. A subsequent employer who hired a worker without a certificate would render himself liable to prosecution for enticement. Most Draconian of all, Florida's contract law made "willful disobedience of orders," "wanton impudence," or the failure to perform assigned work crimes punishable in the same manner as vagrancy. At the discretion of the employer this penalty might be waived and the laborer remanded back to his custody.²⁴

This law continued into the 1890s, but the other statutes mentioned above disappeared during Reconstruction. Then, in the 1880s they began to reemerge in more subdued forms. The most common successor was the "false-pretenses" act, which made it a crime to take advances and then break a contract if one had entered the agreement with the intention of subsequently violating it. Enacted in Alabama (1885), North Carolina (1889, 1891), and Florida (1891), these early statutes spread a veneer of legitimacy over legal proceedings that were nothing less than criminal prosecutions for breach of contract. Refusing to go along with the

²³ *State v. Bates*, 113 S.C. 129, at 131 (1919); *Chambers v. State*, 23 Ga. App. 1 (1918).

²⁴ *Mississippi Laws*, 1865, p. 83; *South Carolina Acts*, 1865, pp. 36-37; *Louisiana Acts*, 1865 (Extra Sess.), 32; *Texas General Laws*, 1866, p. 81; *Arkansas Acts*, 1866-1867, p. 300; Wilson, *Black Codes*, 79; *Florida Acts*, 1865, pp. 32, 28; *ibid.*, 1866, pp. 21-22.

ruse, the Alabama Supreme Court insisted that valid convictions could only be had when it was proven that an intent to defraud existed when the contract was made.²⁵

In 1903 Alabama plugged this loophole by adding a proviso making the unjustified refusal or failure to do the work called for in the contract or to refund any advances that had been made "prima facie evidence of the intent to injure or defraud his employer." North Carolina (1905) and Florida (1907) soon followed suit. In the wake of Alabama's early lead, four states which had no false-pretenses acts at all saw fit to adopt such laws, and each included a prima facie clause in its new legislation. These states were Georgia (1903), Mississippi (1906), Arkansas (1907), and South Carolina (1908). If there had been any doubt as to the intent of the first false-pretenses acts, the new measures made it clear that what concerned the legislatures was not fraud but breach of contract. Law-enforcement officers acted accordingly, and only rarely did the evidence suggest that those accused under these laws had intended to commit fraud.²⁶

In *Bailey v. Alabama* (1911) the United States Supreme Court overturned the Alabama statute on the ground that it contravened the Federal Peonage Act of 1867 and the Thirteenth Amendment. The Court reasoned that, despite the law's apparent aim of penalizing fraud, the presumption of guilt contained in the prima facie clause created a condition of peonage. This alone would have justified the rejection of the law, but, in addition, the Court expressed concern that Alabama did not permit the defendant to give rebuttal testimony about his uncommunicated motives or intentions. As a result of the *Bailey* decision Arkansas and Mississippi belatedly removed the false-pretenses laws from their legal codes.²⁷

²⁵ *Alabama Acts, 1884-1885*, p. 142; *North Carolina Laws, 1889*, pp. 423-24, as amended by *ibid.*, 1891, pp. 98-99; *Florida Acts, 1891*, pp. 57-58; *Ex parte Riley*, 94 Ala. 82 (1891); see also Daniel, *Shadow of Slavery*, 66. Florida's long-lived contract law appears in James F. McClellan, comp., *A Digest of the Laws . . . of Florida . . . 1881* (Tallahassee, 1881), 208-209, but not in *The Revised Statutes of the State of Florida, [1892]* (Jacksonville, 1892). Neither the session laws nor the reports of the state supreme court shed any light on the disappearance of large segments of this contract law (the enticement provisions continued in force until 1943). In all probability most of this law was discarded when the code was revised in 1891.

²⁶ *Alabama General Laws, 1903*, p. 345; *North Carolina Public Laws, 1905*, pp. 422-23; *Florida Acts, 1907*, p. 182; *Georgia Acts, 1903*, pp. 90-91; *Arkansas Public and Private Acts, 1907*, pp. 621-22; *South Carolina Acts, 1908*, pp. 1080-83. The Mississippi law first appears in Albert H. Whitfield *et al.*, eds., *The Mississippi Code of 1906* (Nashville, 1906), Sec. 1148, but no antecedents are given. This new code is approved in *Mississippi Laws, 1906*, p. 78, but the new section is nowhere given specific approval.

²⁷ 219 U. S. 219. The Federal Peonage Act was designed to end debt servitude in New Mexico, and despite the date of its enactment, its sponsors did not intend it as a means of

Elsewhere the states sought to preserve such statutes. In 1911 Alabama passed a new measure which did not contain a *prima facie* clause. South Carolina followed suit a year later. North Carolina's high court held the clause invalid but sanctioned the rest of the law. With appropriate caveats the unconstitutional clause repeatedly appeared in the state code until 1943. Ignoring the essence of the *Bailey* decision, Georgia's supreme court held that this case did not apply to its law since the state had no rule forbidding rebuttal testimony against *prima facie* evidence. In 1913 Florida enacted a new statute designed to meet some of the objections of the federal court, but in 1919, after this measure proved defective, she adopted yet another act complete with *prima facie* clause. Both the Georgia and Florida laws continued in use until the high court struck them down during World War II.²⁸

As Table 1 shows, Georgia's law was the subject of a good deal of higher-court litigation prior to 1932.²⁹ The mere fact that so many contract cases came to these courts for adjudication suggests their

protecting southern blacks. This statute lay dormant until it was invoked in the *Alabama Peonage Cases* 123 F. 671 (M.D. Ala. 1903). Two years later in *Clyatt v. U. S.*, 197 U. S. 207 (1905), the Supreme Court opened the way for further use of this law in the South by holding that it applied to individuals as well as to state-sponsored systems of peonage. At the same time the Court restricted the use of the law to cases where forced labor was the result of a debt. Given the origins of this law, the Court's ruling was reasonable, but it also handed reluctant Justice Department officials a legitimate excuse for refusing to take action in many cases where blacks alleged they were being forced to labor against their wills. See Daniel, *Shadow of Slavery*, 12, 174, 191, and Hamilton, "History of the Thirteenth Amendment," 171-74, 178-79. The Arkansas false-pretenses act appears in William F. Kirby and John T. Castle, annotators, *A Digest of the Statutes of Arkansas . . . 1916* (Little Rock, 1916), Secs. 1711-13, but not in T. D. Crawford and Hamilton Moses, annotators, *A Digest of the Statutes of Arkansas . . . [1921]* ([Little Rock], 1921). Mississippi's law is given in Willaim Hemingway, annotator, *The Annotated Mississippi Code . . . 1917* (Indianapolis, 1917), Sec. 875, but not in A. H. Whitfield *et al.*, annotators, *Mississippi Code of 1930 . . . Revised and Annotated . . .* (Atlanta, 1930).

²⁸ *Alabama General Laws, 1911*, pp. 93-94; held constitutional in *Thomas v. State*, 13 Ala. App. 431 (1915). *South Carolina Acts, 1912*, pp. 774-75; *State v. Griffin*, 154 N.C. 611 (1911). Compare *The General Statutes of North Carolina of 1943* (Charlottesville, Va., 1943), Sec. 14-104 with A. Hewson Michie and Charles W. Sublett, annotators, *The North Carolina Code of 1939 . . .* (Charlottesville, Va., 1939), Sec. 4281. As is indicated in the text documented by note 16 above, unconstitutional laws which remained on the statute books could still be used to intimidate ignorant laborers. *Wilson v. State*, 138 Ga. 489 (1912); *Florida General Acts, 1913*, p. 417; *ibid.*, 1919, p. 286; *Goode v. Nelson*, 73 Fla. 29 (1917); *Taylor v. Georgia*, 315 U.S. 25 (1942); *Pollock v. Williams*, 322 U.S. 4 (1944).

²⁹ These figures were compiled from cases given in the five decennial editions of the *American Digest System* (164 vols., St. Paul, 1908-1950), covering the period 1897-1946. The tabulated cases were found under the following headings: Master and Servant, Section 67, criminal prosecutions for fraudulent breach of contract; Constitutional Law, Section 83 (2), prohibitions of involuntary servitude; and Vagrancy, Sections 1-6. The intervals used in this table were chosen to reflect the dichotomy between the periods before and after the *Bailey* decision and to include the last Georgia Supreme Court decision on the contract law. The statutes under consideration here appear in John L. Hopkins, annotator, *The Code of the State of Georgia . . . 1910*, Vol. II: *Penal Code* (Atlanta, 1911), Secs. 449 and 450 (vagrancy), and 715 and 716 (labor contracts).

wide use at the local level. Appeals were expensive and required support, and many cases must never have moved beyond the county courts. Contract cases came before Georgia's high courts more often than did vagrancy cases, and this too suggests the popularity of the false-pretenses act. It should be remembered, however, that there was far less dispute about the legal issues involved in vagrancy cases than in cases arising under the contract law. During the 1930s Georgia's higher courts heard fewer cases in both categories, and this partially reflects the impact of the Great Depression.

TABLE 1

REPORTED CASES FROM THE HIGHER COURTS OF GEORGIA INVOLVING LITIGATION UNDER THE STATE VAGRANCY AND LABOR-CONTRACT STATUTES

Period	Supreme Court		Appellate Court	
	Contract Cases	Vagrancy Cases	Contract Cases	Vagrancy Cases
1903-1911	23	10	39	7
1912-1921	1	--	41	4
1922-1931	--	--	17	7
1932-1942	2	--	4	1

Paralleling the false-pretenses acts, still other statutes virtually made the breach of a labor contract per se a criminal offense rather than a civil offense. In the early twentieth century Alabama, Mississippi, and Louisiana had active measures to this effect, but they were soon nullified by action of the state supreme courts. Perhaps because their legislators knew that custom and other statutes rendered such acts superfluous these states took no action to replace their fallen laws.³⁰

In 1869, with Radical Reconstruction at full tide, South Carolina adopted a contract law holding that a worker who failed to give the labor reasonably required of him or refused to abide by the conditions of his contract would "be liable to fine or imprisonment, according to the gravity of the offense" Quite unspecific regarding the punishment of laborers, this same act provided that landowners who defrauded their workers might be fined from \$50 to \$500. In 1889 these differential punishments provided the grounds for a court challenge. Even before the state supreme court rendered its decision the legislature hastened to correct the defect

³⁰ *Alabama Laws, 1900-1901*, p. 1208; *Toney v. State*, 141 Ala. 120 (1904); *Mississippi Laws, 1900*, p. 140; *State v. Armstead*, 103 Miss. 790 (1913); *Louisiana Acts, 1890*, p. 178; *ibid.*, 1892, pp. 71-72; *ibid.*, 1906, pp. 87-88; *State v. Oliva*, 144 La. 51 (1918). The Louisiana law had earlier been upheld in *State v. Murray*, 116 La. 655 (1906).

by providing equal penalties for both landlords and laborers. Eight years later a supplementary act promised imprisonment for from twenty to thirty days or a fine of \$25 to \$100 for "Any laborer working on shares of crop or for wages . . . who shall receive advances . . . and thereafter willfully and without just cause fail to perform the reasonable service required of him." Two 1904 amendments stiffened the penalties and provided that a conviction would not release the laborer from the duty of discharging his previous contractual obligation after he had been released from prison.³¹

In 1907 two courts declared this amended law (Section 357, South Carolina, *Criminal Code*, 1902) unconstitutional on the ground that it placed laborers in a condition of peonage. In overturning the measure, both the state supreme court and the federal district court said explicitly that it had been created to control Negro labor. Federal judge William Huggins Brawley summarized one of the arguments favoring the retention of the statute, saying that "the legislation complained of is a part of a system of local administration in matters of great concern to the industrial life of the state; . . . under our system of local self-government the power of the state in that sphere is supreme; and . . . the white people of the state, now charged with the responsibility of its government, being better acquainted with the negro, his capacities and limitations, can determine better than those outside of it what policy will best subserve his interest and their own."³²

Himself a Confederate veteran and a proud scion of the slaveholding class, Brawley nonetheless contended that "The one sufficient answer to the argument is that the question of human liberty is not one of merely local concern. It rests upon the Constitution of the United States . . ." Moreover, the courts had no higher duty than to construe liberally the provisions for personal security and liberty which were the foundations of free government. In a different vein, he also observed that South Carolina's efforts to promote foreign immigration would be to no avail "so long as our statute books hold legislation tending to create a system of forced labor, which in its essentials is as degrading as that of slavery."³³

Such sentiments notwithstanding, South Carolina was in no mood to abandon her system of involuntary servitude, and the complex and tortuous path of her contract legislation was the direct

³¹ *South Carolina Acts, 1868-1869*, pp. 227-28; *ibid.*, 1889, pp. 381-82; *ibid.*, 1897, p. 457; *ibid.*, 1904, pp. 428-29; *State v. Williams*, 32 S.C. 123 (1890).

³² *Ex parte Drayton et al.*, 153 F. 986, at 996 (D.S.C. 1907); *Ex parte Hollman*, 79 S.C. 9 (1908). On South Carolina's system of involuntary servitude see also George B. Tindall, *South Carolina Negroes, 1877-1900* (Columbia, S.C., 1952), 112-13.

³³ *Ex parte Drayton*, 153 F. 986, at 996.

result of her attempt to maintain this system against court assaults. Four laws adopted between 1907 and 1918 testify to the state's determination. In 1907, while the cases involving Section 357 were moving through the courts, South Carolina enacted a statute making it a misdemeanor for anyone unjustifiably to "leave, desert, or quit" land which had been leased or was being worked under the terms of a written contract. In 1908, with Section 357 a dead letter, the state adopted a comprehensive contract law, which contained both a false-pretenses section and a prima facie clause as well as detailed instructions as to the contents of valid contracts and provision for a system of contract registration. As has already been noted, in 1912, in response to the *Bailey* decision, the legislature enacted a new false-pretenses law which did not have a prima facie clause. Six years later the 1908 measure was repealed and replaced with a law that was virtually identical save for the removal of its prima facie clause. Together with the 1912 act and portions of the 1869 law this legislation remained on the books until at least 1962.³⁴

The contract system could work only if there was some way of forcing blacks to sign labor agreements in the first place. Vagrancy statutes provided just such a means, and all the former Confederate states except Tennessee and Arkansas passed new vagrancy laws in 1865 or 1866. Defining vagrancy in sweeping terms, these nine states gave local authorities a virtual mandate to arrest any poor man who did not have a labor contract. Significantly, all the new vagrancy laws except that of North Carolina provided for the hiring out of convicted offenders. Florida, Louisiana, Georgia, and South Carolina set maximum terms of up to one year. Alabama and Mississippi established penalties that combined fines and jail in such a manner as to mean at least a year's labor for anyone who could not pay his fine. Virginia and Texas provided milder punishments, and North Carolina set no limit to either the term in the workhouse or the size of the fine.³⁵

Only the vagrancy laws of Georgia, Texas, and Virginia survived Reconstruction intact. Louisiana, Mississippi, and South Carolina reverted to their antebellum vagrancy statutes, and elsewhere such laws were weakened. North Carolina limited maximum penalties to

³⁴ *South Carolina Acts, 1907*, p. 536; *ibid.*, 1908, pp. 1080-83; *ibid.*, 1912, pp. 774-75; *ibid.*, 1918, pp. 809-11; *South Carolina Code, 1962*, Secs. 40-351 to 40-359 and 40-401 to 40-404. A note following Section 499 of *Code of Laws of South Carolina, 1912*, Vol. II: *Criminal Code* (Charlottesville, Va.), says that the 1908 law was "enacted in view of the decision in *Ex parte Hollman*."

³⁵ *Alabama Acts, 1865-1866*, pp. 119-21; *Florida Acts, 1865*, pp. 28-29; *Georgia Acts, 1865-1866*, pp. 234-35; *Louisiana Acts, 1865* (Extra Sess.), 18, 20; *Mississippi Laws, 1865*, pp. 90-93; *North Carolina Public Laws, 1865-1866*, p. 111; *South Carolina Acts, 1865*, pp. 43-44; *Texas General Laws, 1866*, pp. 102-104; *Virginia Acts, 1865-1866*, pp. 91-93.

a \$50 fine or one month in the workhouse. Alabama set a top fine of \$50, while Florida had no fine but did have a maximum jail term of six months at hard labor. On March 24, 1875, just one day after signing the state's first enticement act, Tennessee's governor took similar action on a vagrancy law giving judges the discretion to impose fines of \$5 to \$25 and imprisonment for ten days to one year. These penalties were heavier than they seem. As late as 1914 Alabama prisoners were being permitted to work off their fines and court costs at the rate of \$6 a month.³⁶

Between 1890 and 1910 there was a rash of racially motivated legislation, including the infamous Jim Crow laws as well as a host of acts relating to the southern labor system. Taken as a whole, these measures indicated southern determination to make the existing system of caste and involuntary servitude even more rigid than it had already become. As part of this pattern all the former Confederate states except Tennessee adopted new vagrancy laws between 1893 and 1909. These laws defined the crime of vagrancy in painstaking detail, and yet, paradoxically, they were even broader and vaguer than before. Alabama's 1866 statute began by stating that "any person who, having no visible means of support, or being dependent on his labor, lives without employment, or habitually neglects his employment . . ." The 1903 replacement read that "any person wandering or strolling about in idleness, who is able to work, and has no property to support him; or any person leading an idle immoral, profligate life, having no property to support him . . ." This wording was identical with that of Georgia's 1866 law and was also adopted by Mississippi (1904) and North Carolina (1905). Georgia let her definition of vagrancy stand, but she did increase the range of penalties. From now on vagrancy would be punished "as for a misdemeanor," and this meant that judges might impose one or more of the following maximum penalties: a \$1,000 fine, six months on the state chain gang, or twelve months on the county chain gang. No other state went so far, but, on the whole, the new laws were harsher than those that preceded

³⁶ George N. Lester *et al.*, annotators, *The Code of the State of Georgia*, [1882] (Atlanta, 1882), Sec. 4560; Sam A. Willson, annotator, *Revised Penal Code . . . of . . . Texas*, [1889] (St. Louis, 1888), Secs. 634 and 635; *The Code of Virginia*, [1887] (Richmond, 1887), Secs. 884 to 889. For other states compare the sources given in the preceding citation with John Ray, comp., *Digest of the Statutes of the State of Louisiana*, [1870] (2 vols., New Orleans, 1870), I, 445; *The Revised Code . . . of the State of Mississippi*, [1871] (Jackson, 1871), Secs. 2836 to 2840; *North Carolina Laws, 1873-1874*, p. 261; *The Revised Statutes of . . . South Carolina*, [1872] (Columbia, 1873), 382-84; *The Penal Code of Alabama, 1866* (Montgomery, 1866), Sec. 88; *Alabama Acts, 1866-1867*, p. 504; *Florida Acts, 1868*, p. 99; *Tennessee Acts, 1875*, pp. 188-89, 168. In the case of Alabama a tough law had been adopted in 1865. The 1866 *Penal Code* contained a separate and milder vagrancy act. To eliminate ambiguity the first law was then repealed. On the remuneration for working off fines see discussion in text preceding note 49.

them. With little change these acts remained in effect into the 1960s.³⁷

Actual enforcement of the vagrancy laws varied. Immediately after the Civil War southerners were convinced that the Negro would not work without coercion, and they also knew that the northern conquerors were not averse to using vagrancy measures when they saw fit. At the same time they became increasingly aware of a sharp northern reaction against the Black Codes. As a result of these crosscurrents some areas experienced a vigorous enforcement of the vagrancy statutes, while others did not. Whether enforced or not, these laws served as a threat to those who might hesitate to enter into labor contracts, and this was their central purpose. Little is known about the enforcement of the vagrancy acts during Reconstruction, but it would appear that they were not heavily used until the twentieth century. In early 1880 a Senate committee held extensive hearings on the 1879 exodus of blacks to Kansas. Many of the Negroes who testified before this body complained bitterly about violence, disfranchisement, the condition of Negro labor, and a host of other subjects. Some told of the way minor charges like petty larceny were systematically used against blacks, and a few even spoke of fears that Negroes would soon be reenslaved. Nevertheless, not a single black mentioned the vagrancy laws as a source of oppression. Indeed, the only reference to these acts came from a white planter, who said that exodus leaders in the area of Macon, Mississippi, had been arrested on such a charge.³⁸

³⁷ *Penal Code of Alabama*, 1866, Sec. 88; *Alabama General Laws*, 1903, p. 244; *Mississippi Laws*, 1904, pp. 199-203; *North Carolina Public Laws*, 1905, p. 412; *Georgia Acts*, 1895, p. 63; *ibid.*, 1903, p. 47; John L. Hopkins *et al.*, annotators, *The Code of the State of Georgia* . . . 1895, Vol. III: *Penal Code* (Atlanta, 1896), Sec. 1039 (misdemeanors); *Arkansas Public and Private Acts*, 1905, pp. 702-703; *Florida Acts*, 1905, pp. 97-98; *ibid.*, 1907, p. 234; *Texas General Laws*, 1909, p. 111; *Virginia Acts*, 1902-3-4, p. 876. Louisiana did not alter her vagrancy law, but she did add a provision authorizing local governments to adopt vagrancy ordinances. *Louisiana Acts*, 1908, p. 308. Until they were weakened by the courts in the late 1960s these laws remained in full force. Only rarely were they amended in the years after 1910. See the latest code for each state.

³⁸ Whitelaw Reid, *After the War: A Southern Tour, May 1, 1865, to May 1, 1866* (Cincinnati and London, 1866), 153, 217, 343; John R. Ficklen, *History of Reconstruction in Louisiana (Through 1868)* (Baltimore, 1910), 140-42; *House Reports*, 39 Cong., 1 Sess., No. 30: *Report of the Joint Committee on Reconstruction* (4 Pts., Serial 1273, Washington, 1866), II, 126, 177, 182, 278; III, 175, 183; IV, 56, 79; Wilson, *Black Codes*, 57-59, 76, 101; C. Mildred Thompson, *Reconstruction in Georgia: Economic, Social, Political, 1865-1872* (New York, 1915), 49; William C. Harris, *Presidential Reconstruction in Mississippi* (Baton Rouge, 1967), 100-101, 148-49; William S. McFeely, *Yankee Stepfather: General O. O. Howard and the Freedmen* (New Haven and London, 1968), 168, 171, 179; William W. Davis, *The Civil War and Reconstruction in Florida* (New York, 1913), 423; Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (Chapel Hill, 1965), 107-108; *Senate Report on Exodus*, I, 132, 250, 253, 298-99, 304-305; II, 221-23, 441-42; III, 69, 70, 414-16, 424-25, 490-91, 501.

However limited their enforcement may have been before 1880, by the early twentieth century the vagrancy acts had become a mainstay of the system of involuntary servitude. More than for any other category of legislation, the use of these laws reflected the continuing belief of whites that they had the right to appropriate Negro labor whenever "the good of society" demanded it. In addition, the times at which the vagrancy statutes were invoked show clearly the way the free-labor market came and went according to the supply of black labor and how Negro migration could exist side by side with a system that could and did limit Negro mobility.

At harvest time cotton farms experienced an acute need for a large work force, and it was precisely at such times that the police became most active in discovering vagrants. In September 1901 a number of Mississippi towns rounded up "idlers and vagrants" and drove them "into the cotton fields where the farmers are crying for labor to pick the season's crop." In 1904 many areas of the South experienced labor shortages, and a February report from Newton, Georgia, claimed such a scarcity that acres might go uncultivated. To deal with the emergency local officers made "wholesale arrests of idle Negroes . . . to scare them back to the farms from which they emanated." In September of this same year the police of Waco, Texas, "commenced a determined war on idlers and vags generally" Reportedly, farmers in that area were "pleading for cotton pickers" ³⁹ So common were such practices that the *Atlanta Constitution* could quip to the police: "Cotton is ripening. See that the 'vags' get busy." Local officials at all levels endorsed such tactics, and in 1910 a Memphis police-court judge announced a new policy whereby blacks brought before him on vagrancy charges would be allowed "to go free provided they would accept jobs offered by farmers who have set up a cry over scarcity of 'hands'." Warmly endorsed by the mayor and police commissioner, this plan was accompanied by the announcement that the police would "renew their efforts to clear the city of all vagrants and loiterers." ⁴⁰

For cities, too, vagrancy statutes served as a means of recruiting black labor to serve the needs of white society. In 1910, as this country's romance with the car was beginning, the Automobile Club of America selected Savannah as the site of its International

³⁹ *Atlanta Constitution*, September 17, 1901; February 1, 1904; *San Antonio Daily Light*, September 1, 1904, Boll Weevil Clippings.

⁴⁰ *Atlanta Constitution*, September 2, 1904; *Little Rock Arkansas Gazette*, October 1, 1910; see also Carl V. Harris, "Reforms in Government Control of Negroes in Birmingham, Alabama, 1890-1920," *Journal of Southern History*, XXXVIII (November 1972), 578-82.

Grand Prize Race. When news of the decision reached the city, overjoyed local officials announced that in anticipation of this action they had already taken two hundred convicts off their normal jobs to put them to work on the racecourse. The superintendent of county public works said this would mean that all other public works requiring convict labor would have to be neglected. The next day "Negro loafers and vagrants were rounded up by the scores in all parts of Savannah" This dragnet brought in more than a hundred blacks, and it was announced that those who could not "prove their innocence" would be sent to work on the racecourse.⁴¹

Down through the years southerners continued to use vagrancy laws to compel community service from blacks. Many towns pressed these statutes into service during World War I, when superpatriotic "Work or Fight" programs demanded that male civilians give their all for the war effort. Local businessmen in Pine Bluff, Arkansas, went still further. Irritated that some Negro women were withdrawing from the work force to live on army allotments, they demanded that the "Work or Fight" program be applied to black women.⁴² No one suggested that it be used for white women also.

Vagrancy round-ups were generally the result of labor scarcity, but such shortages often arose out of attempts by planters to hold wages at artificially low levels. In August 1930, as the Great Depression worsened and labor became generally more abundant, Macon, Georgia, police began functioning as a labor agency for local planters. Chief of Detectives T. E. Garrett asked all those who wanted work in the fields to get in touch with him. Simultaneously, he warned: "There is no excuse for loitering and loafing . . . and we are going to arrest all who do not go to work at once." It seems more than likely that low wages caused the labor crisis which provoked this action. A little more than a year later planters in Phillips County, Arkansas, faced a severe labor shortage, which stemmed from the prevailing low wages of cotton pickers (thirty-five cents for each one hundred pounds picked). Chief of Police Lucian Webster led the campaign to quell vagrancy in Helena, Arkansas, and promised that, if necessary, he would make a "house-to-house canvas" to supply the one thousand additional hands needed by Phillips County planters.⁴³

⁴¹ Jacksonville *Florida Times Union*, October 12, 13, 1910.

⁴² John R. Shillady, executive secretary, N.A.A.C.P., to the President of the United States, September 23, 1918, File 158260-79, Department of Justice, Straight Numerical File, Record Group 60.

⁴³ Macon *Evening News*, August 21, 20, 26, 1930. The Arkansas incident is described in New York *Herald-Tribune*, September 25, 1931, and in Little Rock *Arkansas Gazette*, September 25, 26, 1931.

Urban areas too continued to use black forced labor for community purposes. In 1937, when depression-ridden Miami, Florida, could not find the funds to maintain its trash collection schedule, it began to use Negro prisoners as garbage men. The *Miami Daily News* sarcastically reported the ensuing events: "Unfortunately there weren't enough prisoners of the proper persuasion [that is, Negroes] available, but that didn't stop the astute officials. They simply sent an SOS to police, who promptly went out and rounded up a hatful of negro vagrants. As soon as the current crop of prisoners concludes its time, another batch will be forthcoming, promise the police." Investigating this report Justice Department lawyers learned that fifty-five blacks had been rounded up and that seventeen had been convicted of vagrancy. Although there was no evidence of similar white arrests, federal officials concluded that the vagrancy law was being impartially enforced.⁴⁴

World War II accelerated the socioeconomic changes that were gradually eroding the system of involuntary servitude, but remnants of the old ways persisted. In September 1943, acting in conformity with Alabama's "Work or Fight" program, the sheriff of Mobile County charged fifty-five Negroes with vagrancy. Included in this number were two men picked up at the specific request of their employer, the Ruberoid Company, because they had been absent from work for at least one day a week over the past one hundred weeks.⁴⁵

All these instances were linked by the theme of service to the white community. Whether the setting was Savannah, Georgia, Phillips County, Arkansas, or Miami, Florida, Negroes provided a ready pool of involuntary labor that could be tapped whenever whites faced any sort of labor emergency. Southern use of the vagrancy statutes has often been treated simply as a dimension of peonage, but to stop there is to miss the larger picture. Certainly, debt servitude existed, and certainly, vagrancy arrests could lead to peonage, but the cases given above have been selected to show that white southerners also made wide use of the vagrancy laws in situations where the element of debt was nonexistent or, at most, incidental.

⁴⁴ *Miami Daily News*, August 31, 1937, quoted in Walter White to Attorney General Homer S. Cummings, September 17, 1937; J. W. Watson, Miami city attorney to Assistant U.S. Attorney Lloyd C. Hooks, October 11, 1937; Assistant Attorney General Brien McMahon to Walter White, October 21, 1937; all in File 50-0, DJ Peonage Files.

⁴⁵ Memorandum from Sylvester Meyers (Department of Justice attorney) to Assistant Attorney General Tom C. Clark, November 9, 1943, File 50-3-3, DJ Peonage Files. Authorities in Deerfield Beach, Florida, also used a "Work or Fight" program to coerce labor from blacks. See memorandum from Tom C. Clark to the Attorney General, December 1, 1944, File 50-1-14, *ibid*.

Still, peonage remained a major element within the system of involuntary servitude. Contract-enforcement laws served as one means by which blacks might be held in peonage; the criminal-surety system provided another route toward the same end. Under this system employers paid the fines and costs of individuals convicted of minor offenses like vagrancy, petty larceny, or public drunkenness. Such persons were, in turn, contractually obligated to repay the money advanced on their behalf. In a variant of this system, a planter sometimes bailed out a worker before trial. The authorities then dropped the matter, leaving the black beholden to his new employer for the money advanced on his behalf and fearful that misbehavior would bring a return to jail.⁴⁶

With roots that probably went back to the antebellum mistreatment of poor whites and free Negroes, the criminal-surety system apparently came into wide use shortly after the Civil War. In 1867 a Louisiana Freedmen's Bureau agent described the system in his area, saying that some individuals would, "for the least provocation, have a freedman arrested and lodged in jail; some friend of the accuser will then . . . give bond for the freedman, [and] take him to his plantation and work him there perhaps a full year without remuneration." A "clique of lawyers" involved in this operation charged fees of \$50 to \$100 for handling cases that never reached the courts. These fees became part of the amount owed by the freedman to his surety.⁴⁷

The surety system remained in use well into the twentieth century, but only Georgia and Alabama gave it the sanction of state law. Elsewhere in the South, however, it at least had the endorsement of custom, and further research may show that it was written into law at the local level. In 1874 Georgia made it lawful for misdemeanor convicts working off their fines to hire themselves "to any citizen of this state who pays the amount of said sentence, for said prescribed term." Twenty years later the state supreme court held that this provision had been repealed by an 1878 convict law. As will be seen, the practice continued at the local level. Adopted in 1883, Alabama's complex surety law penalized those who signed a labor contract to get out of jail and then failed to perform the work called for in the agreement. This measure stipulated that the surety contract had to be signed in open court, but a 1907 enactment provided that such agreements would also be valid if

⁴⁶ Daniel, *Shadow of Slavery*, 25–26; Hamilton, "History of the Thirteenth Amendment," 225–29.

⁴⁷ Lt. James DeGrey to W. H. Stirling, April 30, 1867, Letters Received by the Assistant Commissioner, Louisiana, Records of the Bureau of Refugees, Freedmen, and Abandoned Lands, Record Group 105 (National Archives).

signed in the presence of a mayor or city recorder. The 1907 law symbolized Alabama's determination to maintain the system of involuntary servitude at all costs, for it came in the wake of a series of major federal peonage prosecutions, and it aimed to facilitate further the process by which blacks might be bound to labor for the most trivial offenses.⁴⁸

Upheld by the Alabama Supreme Court in 1883, the Alabama surety law came before this court on at least fifteen other occasions prior to 1914. Again, the volume of higher-court litigation suggests a heavy use at the local level. In 1914, however, the United States Supreme Court declared the law to be in violation of the Thirteenth Amendment (*United States v. Reynolds*). In this case Ed Rivers, a Negro convicted of petty larceny, had been sentenced to a \$15 fine plus court costs of \$43.75. Working these charges off in jail would have taken Rivers sixty-eight days, but, instead he chose to sign a surety contract obligating him to work nine months and twenty-four days to pay off his fine and fees at the rate of \$6 a month. Before fulfilling his agreement Rivers deserted his new employer and was rearrested. This time the judge sentenced him to pay a fine of one cent plus costs of \$87.75, and Rivers signed a new surety contract with G. W. Broughton in which he promised to work for over fourteen months to pay his newly acquired debt. Concurring with the majority opinion, Justice Oliver Wendell Holmes observed: "The successive contracts, each for a longer term than the last, are the inevitable, and must be taken to have been the contemplated outcome of the Alabama laws [of 1883 and 1907]." ⁴⁹

As events on the infamous Jasper County, Georgia, peonage farm of John S. Williams would show, the Reynolds decision invalidated the Alabama surety laws, but it did not end the practice of recruiting labor from southern jails. In 1921, fearing discovery by government agents, Williams arranged the murder of ten of his peons and personally killed an eleventh Negro. Subsequent investigation revealed that these workers had been acquired from the jails of Atlanta, Macon, and other nearby towns. Testifying in his own behalf, Williams said: "I am like most farmers that I know, that at times I have bonded out and paid fines for niggers with actual agreement that they would stay there till their fines were

⁴⁸ *Georgia Acts*, 1874, p. 29; *Walton Co. v. Franklin*, 95 Ga. 538 (1894); James J. Mayfield, annotator, *The Code of Alabama*, 1907 (Nashville, 1907), Secs. 6846 and 6847; *Peonage Cases*, 123 F. 671 (M.D. Ala. 1903).

⁴⁹ *Lee v. State*, 75 Ala. 29 (1883). The figure of fifteen cases includes *State v. Etowah Lumber Company*, 153 Ala. 77 (1907) and the cases listed in the annotation for *Code of Alabama*, 1907, Sec. 6846. *United States v. Reynolds*, 235 U.S. 133, at 139-40, 150 (quotation).

paid, or till he was relieved from his bond” Although self-serving, this statement rings true when measured against evidence that local jailers were so casual in releasing prisoners to farmers like Williams that they did not even bother to record the names of sureties. Clearly, there was nothing unusual in the way Williams acquired his labor. Almost three weeks after Williams and his foreman were found guilty of murder, the head of the Atlanta office of the [federal] Bureau of Investigation said he was receiving new reports of peonage daily.⁵⁰

When Ed Rivers chose to accept a ten-month surety contract in lieu of a sixty-eight-day jail sentence he made a rational choice, for the southern penal system stood as the ultimate sanction behind the surety system and every other aspect of involuntary servitude. Those who could not, or would not, be bound to a surety would work for the direct benefit of government instead. The methods of handling convicts that evolved in the post-Civil War era aimed to provide a maximum of deterrence and punishment at minimal cost to the taxpayers. Thus, between 1865 and 1867 Alabama, Georgia, South Carolina, Texas, and Virginia gave local authorities the right to use county prisoners on such public projects as roads and bridges. These five states together with Florida and Mississippi also made explicit provision for the hiring out of county prisoners or those who had committed minor crimes and could not pay their fines.⁵¹ This procedure did not require the convict’s consent, and he did not have to sign a surety agreement.

The southern states were somewhat slower to lease the inmates of their penitentiaries than they were to permit hiring out at the county level, but this changed as it became clear that the states could make a profit from convict leasing. By 1880 every former Confederate state except Virginia had a full-blown state leasing program. The lessees paid the states for the right to extract a maximum of labor from the prisoners, and they took the responsibility for guarding and maintaining them. Using shackles, dogs, whips, and guns, they created a living hell for the prisoners,

⁵⁰ Daniel, *Shadow of Slavery*, 110–31 (quotation on p. 116n); *New York Times*, April 26, 1921.

⁵¹ Alabama, *Penal Code of Alabama, 1866*, Secs. 217–20; *Florida Acts, 1865*, p. 22; *Georgia Acts, 1865–1866*, p. 37, as amended by *ibid.*, 1866, p. 26; *Mississippi Laws, 1865*, pp. 166–67; *South Carolina Acts, 1865*, p. 16; *Texas General Laws, 1866*, pp. 119, 193; *Virginia Acts, 1865–1866*, pp. 91–93. For the background of southern penological developments after the Civil War see Blake McKelvey, “Penal Slavery and Southern Reconstruction,” *Journal of Negro History*, XX (April 1935), 153–79; Dan T. Carter, “Prisons, Politics and Business: The Convict Lease System in the Post-Civil War South” (unpublished M.A. thesis, University of Wisconsin, 1964), 35–60.

which often bore a striking similarity to the most lurid abolitionist stereotypes of slavery.⁵²

Mortality rates were shocking. Of 285 convicts sent to build South Carolina's Greenwood and Augusta Railroad between 1877 and 1880, 128, or 44.9 percent, died. Tennessee boasted a model leasing program, but during the biennium 1884–1885, when she had an average of 600 prisoners, there were 163 deaths. Convicts generally fared worse than this in other southern states. By way of contrast, the annual death rate in the prisons of New Hampshire, Ohio, Iowa, and Illinois during the period 1881–1885 was slightly more than one percent. South Carolina's warden remarked in 1879 that "the casualties would have been less if the convicts were property having a value to preserve."⁵³ His remark implies that most of the convicts were black, and this was indeed the case. Taking population differences into account, in the period around 1880 the ratios of Negro to white prisoners in North Carolina, Georgia, and South Carolina were roughly 13:1, 11:1, and 7:1, respectively.⁵⁴

Figures like these were not accidental, for the southern prison system was being shaped specifically to deal with blacks. Guided by a white determination to return the Negro to "his place," the problems of crime, tax relief, internal development, and control of the labor force all intersected in the convict-lease system. Advocating this system in 1877, South Carolina Redeemer George D. Tillman asserted that "The negro has a constitutional propensity to steal, and in short to violate most of the ten commandments. The State should farm out such convicts even for only their subsistence, rather than compel taxpayers to support them in idleness." The returns from convict labor far exceeded subsistence. State prisoners played major roles in phosphate mining and turpentine (Florida), in coal mining (Alabama, Tennessee, and Georgia), and in road building (North Carolina and other states). Most important of all was the involuntary contribution of convicts to the South's railroads. In the capital-starved post-Civil War era they helped

⁵² McKelvey, "Penal Slavery," 155–75; J. C. Powell, *The American Siberia: or, Fourteen Years' Experience in a Southern Convict Camp* (Chicago, 1891).

⁵³ Quoted in Carter, "Prisons, Politics and Business," 91. For mortality figures see *ibid.*, 53, 91; and Tindall, *South Carolina Negroes*, 271.

⁵⁴ The ratios given above were calculated using 1880 census figures given in U. S. Bureau of the Census, *Negro Population, 1790–1915* (Washington, 1918), 44, and combining them with figures cited in Fletcher M. Green, "Some Aspects of the Convict Lease System in the Southern States," in Green, ed., *Essays in Southern History Presented to Joseph Gregoire de Roulhac Hamilton* (Chapel Hill, 1949), 120; Francis B. Simkins and Robert H. Woody, *South Carolina During Reconstruction* (Chapel Hill, 1932), 335; Jesse F. Steiner and Roy M. Brown, *The North Carolina Chain Gang: A Study of County Convict Road Work* (Chapel Hill, 1927), 15.

construct or reconstruct the railroads of every southern state save Louisiana. There, the levees took precedence.⁵⁵ Not surprisingly, as the advantages of convict labor became more apparent the zeal of law-enforcement authorities showed a corresponding rise.

By 1910, when Ed Rivers signed his first surety agreement, the southern prison system was improving, but not so fast as to induce him to opt for a short jail term. The leasing system was on the road to extinction, and the states were taking responsibility for guarding and maintaining prisoners even when they were let out to private contractors. During the next three decades conditions continued to improve, at least when compared with the barbarous 1880s. In 1928 Alabama became the last state formally to abandon the leasing system, and by 1932 the annual mortality rate of its Negro convicts was 2.5 percent. The comparable figure for white prisoners, however, was 0.7 percent. Less is known about conditions at the county level, where misdemeanants often served their terms, but there is reason to believe that improvement proceeded more slowly here. In some states, for example, county leasing remained legal after the practice had been abolished at the state level. Such improvements as there were may well have escaped the attention of convicts on the chain gangs. Brutality remained omnipresent, and the convicts who built the South's roads were often housed in movable cages that provided less space per man than would a box 6' × 4' × 4'.⁵⁶

During the 1930s blacks still constituted the great majority of those serving on the chain gangs of Alabama, Georgia, Virginia, and Florida, and the situation was certainly similar elsewhere in the South. In September 1932 Alabama's 1,089-man road force was composed entirely of Negroes. In Georgia, where blacks accounted for only 37 percent of the total population in 1930, they constituted 83 percent of the total prison population in 1932.⁵⁷ Even within the

⁵⁵ Quoted in Tindall, *South Carolina Negroes*, 267; Carter, "Prisons, Politics and Business," 42, 76, 79-83, 97.

⁵⁶ Blake McKelvey, "A Half Century of Southern Penal Exploitation," *Social Forces*, XIII (October 1934), 113-19. Useful descriptions of the various forms of convict labor together with assessments of the status of the leasing system and compilations of the state laws related to convict labor are to be found in U. S. Commissioner of Labor, *Second Annual Report . . . 1886: Convict Labor* (Washington, 1887), 379-96, 507-604; *id.*, *Twentieth Annual Report . . . 1905: Convict Labor* (Washington, 1906), 15-17, 615-787; U. S. Bureau of Labor Statistics, *Bulletin*, No. 372: *Convict Labor in 1923* (Washington, 1925), 3-4, 18, 169-265; *ibid.*, No. 595: *Prison Labor in the United States, 1932* (Washington, 1933), 4, 20-24; *ibid.*, No. 596: *Laws Relating to Prison Labor . . . 1933* (Washington, 1933). Mortality rates were calculated on the basis of death lists in Alabama, Board of Administration, *Annual Report . . . for the Fiscal Year Ending September 30, 1932* (Montgomery, 1932), 62-63, 72-74. Frank Tannenbaum, *Darker Phases of the South* (New York and London, 1924), 84-89, 100-106.

⁵⁷ Alabama, Board of Administration, *Annual Report, 1932*, pp. 28, 63. As of 1938 the size of Alabama's all-black road force had increased to 1,720 men. U. S. Prison Industries Reorganization Administration, *The Prison Problem in Alabama* ([Washington, 1939]), 10;

prison population, there was a further differential. As Table 2 shows, the percentage of white felons serving on Georgia's chain gangs was only somewhat less than the comparable figure for Negroes (79 percent versus 90 percent).⁵⁸ Considered outcasts, Georgia's white felons were treated none too gently. Misdemeanants posed a different problem, and only a handful of whites received jail sentences for minor offenses. Overwhelmingly, those jailed for misdemeanors in Georgia were blacks, and beyond this disparity the percentage assigned to county labor far exceeded the percentage of whites given similar sentences. With but few exceptions, those assigned to county labor worked on the chain gang, either fixing or building roads (2,348 misdemeanants served in this capacity) or doing other arduous labor.⁵⁹

TABLE 2
DISTRIBUTION OF GEORGIA PRISONERS
December 31, 1932

Race	Felons			Misdemeanants		
	Total	State Farm	Chain Gang	Total	State Farm	County Labor
Negro	3,229 100%	331 10%	2,898 90%	3,925 100%	212 5%	3,713 95%
White	1,196 100%	247 21%	949 79%	273 100%	141 52%	132 48%
Total	4,425	578	3,847	4,198	353	3,845
% Negro	73.0	57.3	75.3	93.5	60.1	96.6

The situation in Georgia is indicative of that in other southern states. In 1932 only 23 percent of the South's state prisoners (largely felons) served on chain gangs while 49 percent of its county prisoners (largely misdemeanants) were engaged in road work. That the overwhelming majority of these county prisoners were

id., *The Prison Problem in Florida* ([Washington, 1939]), 33; *id.*, *The Prison Problem in Virginia* ([Washington, 1939]), 35. The ratio of Georgia blacks to the total population of that state was calculated on the basis of figures given in U. S. Bureau of the Census, *Negroes in the United States, 1920-32* (Washington, 1935), 9. For the Georgia prisons see Prison Commission of Georgia, *Third [Fourth] Biennial Report . . . Jan. 1, 1931 to Dec. 31, 1932* ([Atlanta, 1933]), 23-26.

⁵⁸ The figures in this table have been calculated from information in Prison Commission of Georgia, *Third [Fourth] Biennial Report*, 23-26.

⁵⁹ *Ibid.*; U. S. Bureau of Labor Statistics, *Prison Labor, 1932*, p. 205. Felons and misdemeanants were treated separately in Georgia's statistical tables, but those felons who were assigned to the chain gang were not separated from the misdemeanants in actuality.

black is beyond doubt.⁶⁰ Even in the 1930s the southern prison system continued to supply cost-free labor for internal development. At the same time the continuing harshness of the prison system served as a potential weapon for any white seeking to intimidate his Negro employees.

In September 1937 Warren County, Georgia, cotton growers sought to prevent the farmers of adjoining Glascock County from enticing away their black laborers. Desperate for hands, the men from Glascock County had offered almost to double the rate being paid for cotton pickers in Warren County. Unwilling to abide by the law of supply and demand, Warren County planters mobilized to stop the depletion of their labor force. Sheriff G. P. Hogan described the ensuing events: "There was no trouble, although a number of them [the Warren County men] carried guns and fired them into the air. They told the pickers there was plenty of cotton to pick in Warren County and asked them to stay home and pick it. They decided to stay."⁶¹

The planters of Warren County might have brought charges of enticement against their competitors, but they didn't. Yet this incident is at least as representative of the workings of the system of involuntary servitude as the many cases where legal and quasi-legal processes came into play. Law gave the system structure and the appearance of legitimacy, but at base it was rooted in a state of mind that arrogated to whites the right to use Negro labor when and as they chose. Transcending peonage as it transcended the legal structure which partially defined it, the system of involuntary servitude was a unique blend of slavery and freedom which gave whites the option of limiting black movement while leaving Negroes otherwise free to come and go as they pleased.

It was this feature of the system which created the paradoxical situation whereby involuntary servitude coexisted with a good deal of black mobility. Prior to 1916 many Negroes moved from the Southeast to the Southwest, and after that date large numbers began moving north. Such movement was possible within the framework of involuntary servitude because it often occurred at times and places where labor was superabundant. When this was

⁶⁰ The percentages given above are based on calculations made from the tables given in U. S. Bureau of Labor Statistics, *Prison Labor, 1932*, pp. 20-24, 205. Unlike other states, Georgia did not categorize her prisoners as "state prisoners" or "county prisoners," but the terms "felons" and "misdemeanants" were roughly equivalent to the state-county dichotomy used elsewhere.

⁶¹ *New York Times*, September 16, 1937, p. 1. This incident or a similar one is described retrospectively by J. W. Whitely, a white Warren County pecan grower, in a letter to Secretary of Agriculture Henry A. Wallace, July 5, 1938, File 50-0, DJ Peonage Files.

not the case, white southerners frequently took steps to prevent blacks from departing. This had been the purpose of the emigrant-agent laws, and it was also the aim of those who sought to use all means, including violence, to prevent blacks from leaving the South in 1916 and 1917.⁶² The system of involuntary servitude did not always function perfectly; resourceful blacks could and did get around its restrictions. Just as the laws of slavery defined the ideals and fears of the slaveholders rather than the realities of the system, so too with the laws of involuntary servitude.

Writing in 1938 Jonathan Daniels quoted a southern editor as telling him that “ ‘Slavery is still in force . . . but not generally profitable.’ ”⁶³ The statement was an exaggeration, but hardly so far from the truth as one would like to believe.

⁶² On attempts to use force to stop Negro migration in 1916 and 1917 see for example *Savannah Tribune*, November 4, 1916; *Atlanta Constitution*, September 13, 1916; *Cleveland Gazette*, September 22, 1917.

⁶³ Daniels, *A Southerner Discovers the South* (New York, 1938), 170.