POWER AND FORCED LABOR:

A GENEOLOGY OF

LABOR AND MIGRATION IN THE UNITED STATES

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ABSTRACT

Recently, federal agents across the United States have uncovered an unprecedented number of forced labor operations. Many, though not all, of these incidents involve non-citizens, both with and without legal residency status, who are forced to perform farm work under threat of violence and deportation. Contemporary scholarship explains this phenomenon as the effect of increasingly liberalized economic relations, changes in industrialized agriculture, and the persistent consumer demand for cheap products. While such explanations are instructive, they leave open questions of whether and how historical factors sanction the coercive farm labor relations we see today. Using the genealogical method, this paper examines the history of labor practices in Florida, a state in which forced labor not only flourished before the Civil War, but also in which forced labor remains common today.

After highlighting how Florida's ante-bellum and post-bellum labor practices and discourses functioned to imbue employment with normative valuations, I argue that such discourses and practices have been taken up by state and federal institutions, eventually influencing laws and policies concerning prisoners and immigrants. I conclude that although economic liberalization, agricultural industrialization, and mass consumerism provide helpful structural context for how coercive labor relations flourish today, the practices through which

these relations emerge and the discourses with which they are justified rely heavily upon historically embedded, normative discourses that function to discipline the lives of non-citizens and govern their status through employment.

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INTRODUCTION

Although the United States (US) outlawed involuntary servitude nearly 150 years ago, instances of forced labor continue to emerge throughout the nation. As recently as September 2010, for example, Federal Bureau of Investigation (FBI) agents uncovered a human trafficking and involuntary servitude operation that spanned thirteen states. Labeled as one of the largest cases of its kind, four employees from Global Horizons Manpower, a US-based labor recruiting agency, along with two labor recruiters from Thailand, were charged with holding four hundred Thai guestworkers against their will and forcing them to work on farms.[1]

At first glance, the occurrence of such cases in the US may seem surprising, but in fact they are far from abnormal. According to a 2006 FBI Intelligence Report, between 15,000 and 18,000 people are trafficked into the US and forced to work against their will each year.[2] As the Department of Justice (DOJ) notes, between January 2008 and June 2010, federal human trafficking task forces investigated over 2,500 cases of suspected human trafficking,[3] confirming nearly four hundred cases and eventually making nearly 150 arrests, the majority for sex and labor trafficking.

According to the DOJ, at 82%, sex trafficking made up the vast majority of federal human trafficking investigations conducted from January 2008 to June 2010, while labor trafficking accounted for nearly 14% of all human trafficking investigations. However, although

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[1] Mark Niess, "Feds Charge 6 In Forced Labor Of 400 Thai Workers, Largest Human-Trafficking Case In U.S. History," *The Huffington Post*, September 2, 2010, http://www.huffingtonpost.com/2010/09/02/us-human-trafficking-thai-forced-labor_n_704290.html (accessed 10 September 2012).

[2] Federal Bureau of Investigation, "Human Trafficking: An Intelligence Report," June 12, 2006, http://www.fbi.gov/news/stories/2006/june/humantrafficking_061206 (accessed 10 September 2012).

[3] U.S. Department of Justice, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010* (Washington, DC, 2011), 1. http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2372 (accessed 10 September 2012). Also see: Tresa Baldas, "Human Trafficking a growing crime in U.S.," *USA Today*, 22 January 2012, http://www.usatoday.com/news/nation/2012-01-22-us-human-trafficking_N.htm (accessed 10 September 2012)

the DOJ reports that 83% of all sex trafficking victims from January 2008 to June 2010 were identified as US citizens, the statistic is almost entirely reversed for victims of labor trafficking. Close to 95% of all labor trafficking victims were identified as non-citizens, mostly Hispanic and Asian, and while agents identified 67% as undocumented non-citizens, they identified 28% as "qualified aliens." Thus, not only does nearly every confirmed case of labor trafficking involve non-citizens, but a significant proportion of such cases involves non-citizens with valid residency and work authorization documents.[4]

Interestingly, however, as Shelley Cavalieri's argues in her study of labor trafficking in the US agricultural sector, federal law enforcement officials regularly favor investigating, charging, and prosecuting individuals for sex trafficking crimes.[5] As Cavalieri notes, federal police statistics indicate that "from 2001 through 2009, 66% of cases filed, 69% of defendants charged, and 72% of convictions for human trafficking prosecutions are for sex trafficking." But because police reporting statistics do not account for all crimes committed, such investigation and enforcement rates, Cavalieri argues, fail to reflect the true prevalence of labor trafficking in the US, which often is not investigated and therefore goes recorded and unprosecuted.[6] Cavalieri finds that the number of trafficking victims certified by Health and Justice officials under the Trafficking Victims Protection Act (TVPA) of 2000, which provides trafficking victims access to certain resources and protections if they file for special visas and cooperate with federal agents, demonstrates that labor trafficking likely makes up a much more substantial proportion of all human trafficking cases than indicated by enforcement statistics. In 2009, for example, labor trafficking victims received 82% of all certifications under the TVPA, while sex trafficking

[4] U.S. Department of Justice, *Characteristics of Suspected Human Trafficking Incidents*, 1.
[5] Shelley Cavalieri, "The Eyes that Blind Us: The Overlooked Phenomenon of Trafficking into the Agricultural Sector," *Northern Illinois University Law Review* 31 (2011): 507-508.
[6] Ibid., 508.

victims received just 13% of all certifications.[7] Thus, not only does labor trafficking disproportionately affect non-citizens, but it is also likely that the phenomenon's prevalence is much more common than authorities contemplate. In what ways, then, might labor trafficking occur?

A substantial number of labor trafficking victims, Cavalieri argues, likely include those trafficked into the agricultural sector. However, accurate estimates are difficult to find, as government statistics often fail to sufficiently disaggregate labor trafficking data. Nonetheless, according to the DOJ, over 65% of all labor trafficking investigations opened by federal agents between January 2008 and June 2010 involved "unregulated" industries, a rather vague category that includes not just day laborers (which are often migrant farmworkers), but also domestic workers, roadside vendors, and those involved in illegal sectors.[8] However, although this data is imprecise, it succeeds in raising the possibility that forced labor in the agricultural sector accounts for a significant portion of all labor trafficking cases. The extent to which we might aim to understand the prevalence and place of labor trafficking and forced labor in the US today, consequently, might be aided considerably by an examination of labor practices in the agricultural sector.

Several factors, Cavalieri again points out, support the notion that forced labor in the agricultural industry warrants closer academic and police investigation. First, forced labor in the agricultural industry often fails to attract lasting public scrutiny, as its widespread recognition would contradict and undermine traditional American truisms that romanticize rural life and agricultural work. Moreover, recognizing forced labor in the food industry might disturb the ways in which many Americans relate to, understand, and possibly even purchase their food.

[7] Those falling under both categories accounted for the remaining five percent, according to Cavalieri. See: Ibid., 508. I would also like to acknowledge that victims of sex trafficking might be less likely to want to come forward.
[8] U.S. Department of Justice, *Characteristics of Suspected Human Trafficking Incidents*, 3.

Such realities, Cavalieri claims, mean that an ongoing, public discussion on the topic of forced labor in the agricultural sector would be both unpleasant and uncomfortable. Secondly, most farmworkers in the US reside in rural areas that are far away from the public eye and from the large supermarket chains in which the products they harvest are sold, a distance even further complicated by the linguistic differences that often insulate migrant farmworker communities. Finally, although a relatively smaller amount of confirmed labor trafficking cases involve victims with qualified residency status and work authorization documents, the number of qualified non-citizens that report their experiences is likely unrepresentative of the number that actually experience highly coercive labor conditions. For example, in order for their immigration status to remain valid, temporary agricultural guestworkers, who are imported yearly under the H-2A visa program, must remain employed by the same employers that sponsor their visas. Moreover, they restricted from remaining inside the country after their visa expires, and sponsoring employers often control their access to food, housing, and transportation. Thus, although temporary guestworkers constitute a smaller amount of confirmed labor trafficking cases than unauthorized workers, the ways in which guestworkers are regulated and controlled by employers might cause them to underreport their experiences. An examination of forced labor in the agricultural sector, therefore, might be more successful if it investigated not just the sector's labor conditions, but also the conditions affecting non-citizens, particularly the unauthorized laborers and temporary guestworkers that constitute much of the agricultural sector's workforce.

The information above raises several important questions regarding the phenomenon of forced labor in the US. How common is this phenomenon? What are the conditions that make this phenomenon possible, and how do they emerge within the agricultural sector? How are

victims discouraged from reporting their experiences to authorities? Specifically, in what ways might non-citizens be discouraged or prevented from seeking assistance? Fortunately, academic research on human trafficking and forced labor helps address some of these questions.

Literature Review

Recent scholarship on the topic of human trafficking and forced labor in the US is both theoretically instructive and descriptively rich. Analyses include participant-observation ethnographies and reports of modern-day slavery advocacy groups like the Coalition of Immokalee Workers (CIW),[9] investigations and reports of human trafficking operations,[10] detailed accounts of contemporary agricultural practices,[11] informative interviews with individuals affected by modern farm labor practices,[12] and journalistic accounts of both the survivors and perpetrators of human trafficking and forced labor crimes.[13] Several analyses focus on the presence of human trafficking and forced labor both nationally and internationally.[14] Such analyses contribute immensely to exposing and understanding the coercive nature of

[9] John Bowe, *Nobodies: Modern American Slave Labor and the Dark Side of the New Global Economy* (New York, New York: Random House, 2007), 3-77; Barry Estabrook, *Tomatoland: How Modern Industrial Agriculture Destroyed Our Most Alluring Fruit* (Kansas City, Missouri: Andrew McMeel Publishing, 2011), 97-138.
[10] E. Benjamin Skinner, *A Crime So Monstrous: Face-To-Face with Modern-Day Slavery* (New York, New York: Free Press, 2008), 1-41; Kevin Bales and Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today* (Berkeley and Los Angeles: University of California Press, 2009), 43-77.
[11] Estabrook, *Tomatoland*, 1-72.
[12] For a partial reprinting of information and depositions obtained during a lawsuit in which South Florida farmworkers sued a grower for allegedly using pesticides illegally, see: Ibid., 64-72.
[13] For an interesting account of the process of buying child slaves from Haiti, see: Skinner, *A Crime So Monstrous*, 7-12. For a moving account of how labor contractors use physical violence to coerce farmworkers in Florida, see: Bowe, *Nobodies*, 62-64.
[14] For details on human trafficking in the national context, see: Bales and Soodalter, *The Slave Next Door*; Bowe, *Nobodies*, 1-151. For details on human trafficking in the international context, see: Bales, *Disposable People*; Kevin Bales, Zoe Trodd, and Alex Kent Williamson, *Modern Slavery: The Secret World of 27 Million People* (Oxford, United Kingdom: Oneworld Publications, 2009); David Batstone, *Not For Sale: The Return of the Global Slave Trade—and How We Can Fight It*, revised ed. (New York, New York: HarperOne, 2010); Jesse Sage and Liora Kasten, eds., *Enslaved: True Stories of Modern Day Slavery* (New York, New York: Palgrave Macmillan, 2008); Skinner, *A Crime So Monstrous*.

contemporary labor relations, particularly in the agricultural and domestic service sectors.[15] Generally, these texts interweave rich descriptions of modern-day slavery with 1) survivor narratives;[16] 2) critiques of the US food industry, contemporary agricultural production, and modern US immigration practices;[17] and 3) contextual information on national economies and intergovernmental organizations.[18] Many of these analyses contend that modern-day slavery is on the rise in both the US and throughout the world.[19]

A number of recent texts, including many of those cited above, touch closely on conditions found throughout the US agricultural industry. In his widely popular critique of the food industry, for example, Eric Schlosser argues that fast food restaurants, supermarkets, and large food service providers regularly leverage their purchasing power down the food production chain in order to keep fruit and vegetable prices as low as possible – a strategy that leaves agriculturalists with little option but to skimp on safety precautions, forgo equipment maintenance, and deny wage increases.[20]

Bowe and Estabrook provide especially valuable analyses of the US agricultural industry. Through interviews, observations, and in-depth research, Bowe and Estabrook argue in their texts that bulk buyers use their purchasing power to keep produce costs artificially low.[21] As a result, distributers and packagers are paid less for their services, while growers are forced to generate profits elsewhere, often by outsourcing their labor procurement and management

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[15] For a helpful account of forced labor in the domestic service sector, see: Bales and Soodalter, *The Slave Next Door*, 18-42.
[16] Skinner, *A Crime So Monstrous*.
[17] On agriculture and the food industry, see: Bowe, *Nobodies*; Estabrook, *Tomatoland*; Bales and Soodalter, *The Slave Next Door*, 43-77; Eric Schlosser, *Fast-Food Nation: The Dark Side of the All-American Meal* (New York, New York: Harper Perennial, 2002). On immigration practices, see Bales and Soodalter, *The Slave Next Door*, 3-17.
[18] Skinner, *A Crime So Monstrous*.
[19] Bales, Trodd, and Williamson, *Modern Slavery*; Bales and Soodalter, *The Slave Next Door*.
[20] Schlosser, *Fast-Food Nation*. Also see: Bales & Soodalter, *The Slave Next Door*; Bowe, *Nobodies*; Estabrook, *Tomatoland*.
[21] Bowe, *Nobodies*, 57-59; Estabrook, *Tomatoland*, 97-120.

services to farm labor contractors, who competitively bid for contracts with growers. Usually, growers choose contractors offering the cheapest rates, which means lower wages and higher rates of wage theft for farmworkers. And because labor contractors are charged with both finding and managing the laborers working the growers' fields, the labor contracting model also often means that if contractors falsely certify the work authorization of farmworkers or fail to distribute earnings, growers are in a much better position to absolve themselves of responsibility by claiming ignorance.[22] The impersonal business relationships characteristic of contemporary agricultural production, therefore, provide large purchasers and farmers ample opportunity to abdicate responsibility, both for the effects that these relationships have on farmworkers, and for the control that such relationships bestow upon labor contractors.[23]

Estabrook's critique of the tomato industry is particularly helpful, as a large portion of the text focuses on labor conditions in Florida's tomato fields, which have been widely publicized as bastions for labor trafficking and modern-day slavery operations. Additionally, by narrowing his analysis solely on the tomato industry, Estabrook is able to detail the oft-unpublicized ways in which contemporary methods of tomato production – through the use of dangerous fertilizers, poisonous pesticides, and expensive biotechnological products – not only have negative effects on farmworkers' wages, but also on their health and well-being.[24] In another fascinating analysis of the tomato industry, Deborah Barndt explores the ways in which the North American Free Trade Agreement (NAFTA) has affected the tomato industry from

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[22] Ibid., 3-77; Ibid., 97-120. For a helpful summary of how this process works, see: Tracey McMillan, "California's rampant farm-labor abuse," *Salon*, 12 September 2012, http://www.salon.com/2012/09/12/californias_rampant_farm_labor_abuse/ (accessed 14 September 2012).

[23] Ibid., 3-77; Ibid., 97-120. For an in-depth history of the practice of farm labor contracting in the US, see: Cindy Hahamovitch, *The Fruits of Their Labor: Atlantic Coast Farmworkers and the Making of Migrant Poverty, 1870-1945* (Chapel Hill, North Carolina: University of North Carolina Press, 1997).

[24] Estabrook, *Tomatoland*, 19-72.

production to consumption.[25] Tracing the journey of Mexican tomatoes through the US and until they arrive in Canada, Barndt's broadly accessible text uses stops along the way as opportunities for describing the ways in which tomatoes are grown, harvested, packaged, transported, monitored, branded, marketed, and purchased.[26] Although Barndt does not examine of the role of forced labor in the industry, she nonetheless offers a decidedly critical analysis, arguing that although these free trade processes result in readily accessible produce, they often rely on and in fact reinforce unequal gender dynamics and poor labor conditions.[27]

These analyses generally deploy three different but interrelated explanations for forced labor in the US agricultural sector. First, the driving force of modern-day slavery is deeply connected with globalizing forces, which involve increasingly liberalized and capitalistic economic relations as well as migration flows.[28] Together, these forces intensify international economic competition, erode domestic labor protections, and encourage coercive farm labor practices.[29] Second, the production and distribution chain of industrialized agriculture sanctions and relies on the persistence of forced labor, as large produce purchasers habitually exploit their market positions to manipulate prices and keep costs stagnant. At the same time, purchasers' indirect relationships with farmworkers also serve as the basis upon which they can absolve themselves of responsibility for farm labor conditions, thereby creating an environment in which moral accountability is constantly redirected to those who lack the capacity for resolution.[30] Third, the costly nature of modern agricultural production – which involves numerous

[25] Deborah Barndt, *Tangled Routs: Women, Work, and Globalization on the Tomato Trail*, 2nd ed. (Plymouth, United Kingdom: Rowman & Littlefield Publishers, 2007).
[26] Ibid., 8-33.
[27] Ibid., 186-260.
[28] For example, see Bales and Soodalter, *The Slave Next Door*, 6.
[29] See: Ibid.; Estabrook, *Tomatoland*; and Schlosser, *Fast Food Nation*. For an analysis that involves a diverse discussion of labor conditions in Mexico, the US, and Canada, see: Barndt, *Tangled Routes*.
[30] For an example of how this typically plays out when journalists ask corporate spokespeople questions about accountability, see: Bowe, *Nobodies*, 57-58.

developments in crop production, fertilizers, and advanced irrigation technologies – both exacerbates the industry's dependence on cheap farmworkers and endangers the conditions in which they work.[31]

Research Gaps

These types of analyses are both informative and instructive. They provide invaluable information for activists, policymakers, and scholars seeking to change and understand the complex ways in which forced labor is able to flourish in the agricultural sector. Nevertheless, such analyses largely focus on the contemporary workings of the agricultural industry, the current formation of human trafficking and forced labor operations, and how the modern arrangements between purchasers and growers affect farmworkers. Few of these texts, however, provide detailed accounts of the role that deeply-embedded historical trends might play in the precipitation of modern farm labor practices.[32] Moreover, several of these texts stress the differences between antebellum and modern-day forced labor.[33] As such, they risk over-privileging the causal role of modern liberal economic relations, industrialized agriculture, and consumer demand for fresh produce in explaining the occurrence of forced farm labor today.

Although these explanations and the information these texts provide are certainly relevant, such analyses risk creating the impression that modern-day slavery in the agricultural sector is the product of contemporary rather than historically-embedded forces. Moreover, they risk supporting the notion that there is something more or less discontinuous between antebellum and modern-day forced labor. Of course, one can find plenty of discontinuities when comparing

[31] See: Estabrook, *Tomatoland*, 19-95.
[32] In *The Slave Next Door*, pages 6-17, Bales and Soodalter provide a brief historical overview of ante-bellum slavery, debt bondage and sharecropping during the early 1900s, and modern-day slavery, highlighting how modern-day slavery is largely product of visa practices.
[33] Bales, *Disposable People*, 15; Bales and Soodalter, *The Slave Next Door*, 3-17.

the slave trade of the 18th and early 19th Centuries with the human trafficking operations of today, but if one considers the continuing prominence that forced labor has occupied in America's agricultural sector throughout history, one might wonder whether an analysis of the development and formation of labor practices over the past 200 years might shed light on how contemporary agricultural labor practices have taken root.

How, then, might an historical analysis of labor practices and discourses help provide an account of the forces structuring the lives of today's farmworkers? Can a genealogy of farm labor discourses and practices help uncover the power relations surrounding modern agriculture and its labor practices? In what ways was ante-bellum slavery justified and supported, and have any of these justifications and supporting elements survived to help structure contemporary labor practices?

Foucauldian Genealogy as a Methodology

This paper is a genealogy of labor practices, examining in large part – though not exclusively – the ways in which these practices have functioned and continue to function in relation to agriculture. Specifically, this paper interrogates labor practices and the various discourses that justified them within the context of Florida, a state chosen because of both its history as a slave state as well as a state that has recently been the location of several federal human trafficking investigations. Since 1997, Florida has seen at least nine federal cases involving forced labor and human trafficking convictions, all of which involved farmworkers that were forced to work on large farms. Thus, the primary objective of this genealogy is to provide an explanation of contemporary labor practices that is grounded in the discourses, practices, laws, and institutions that characterize Florida's history.

A history of labor practices that focuses on Florida can proceed in several ways. A Marxist analysis, for example, might examine historically significant changes in the state's underlying economic structure, its systems of labor, and its means of production. For agriculture, such a history might include an analysis of how the transition from slave to wage labor, the development of mechanized crop harvesting, and the emergence of large-scale farms have helped produce and determine the conditions currently affecting farmworkers. A structural-functionalist analysis, on the other hand, might investigate Florida's political and social institutions and their effects on labor conditions. Such an analysis might be interested in how Florida's institutions functioned to prevent, mediate, and facilitate certain types of labor relations both historically and today. A structuralist analysis, alternatively, might investigate the evolution of norms and values surrounding labor in Florida. Such an analysis might interrogate how these norms and values prohibited changes in farm labor conditions.

A Foucauldian genealogy, however, must investigate the ways in which power and knowledge relations formed, were practiced, and were taken up over time by various individuals and institutions. The value of this particular methodology lies in its ability to uncover the unlikely and hidden ways in which contemporary phenomena occur and thrive – the ways in which contemporary phenomena emerge not from some apparent chain of cause and effect, but rather from a series of coincidences. To do this, genealogy interrogates discourses, which, according to Mark Laffey and Jutta Weldes, can be defined as "sets of rules that both enable practices and are reproduced and/or transformed by them."[34] Discourses do not take form only in texts and language, but also in "non-linguistic practices."[35] At the same time, discourses "are always implicated in institutions, broadly conceived," in ways that are "sometimes reinforcing,

[34] Mark Laffey and Jutta Weldes, "Methodological Reflections on Discourse Analysis," *Qualitative Methods* (Spring 2004): 28.
[35] Ibid.

sometimes challenging, sometimes participating in or being expressed through, sometimes completely ignored or marginalized" by institutionalized power.[36] Additionally, discourses produce "subjects, objects, and the relations among them," and therefore function to organize the "criteria according to which [truth] claims are judged."[37] Finally, discourses are "inherently political," as they "are about the production and distribution of power, and struggles over knowledge, interests, identity and the social relations they enable or undermine."[38] A Foucauldian genealogy of labor practices that focuses on Florida, consequently, must interrogate the ways in which specific discourses emerged, evolved, and interacted, the ways they sanctioned and were informed by certain sets of practices, and the ways in which they produced particular kinds of subjects embedded within particular kinds of social and political spaces.

As Ladelle McWhorter writes in her genealogy of racism and sexual oppression, genealogy seeks to explain contemporary phenomena by looking for "moments at which historically disparate elements align to delineate new objects of knowledge, fields of action, or ways of life and moments at which seemingly unitary objects, institutions, or systems fissured, allowing fragments of a previous unity to align with alien elements."[39] Genealogy, consequently, examines how various discourses and practices interacted and the ways in which these interactions functioned to establish or reconstitute certain patterns of behavior, methods of understanding, and relations of power. Power, accordingly, is not something that someone can possess, but is rather a relation that is articulated, exercised, and often resisted. Knowledge, similarly, is not the discovery of objective Truth, but rather a discursive process through which truths accumulate, become categorized, conflict with one another, and produce norms.

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[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ladelle McWhorter, *Racism and Sexual Oppression in Anglo-America: A Genealogy* (Bloomington, Indiana: Indiana University Press, 2009), 52.

Power, thus, is articulated through practice, while knowledge is articulated through production, internalization, and institutionalization. A master's practicing of power over his slave, for instance, might result in the slave internalizing his understanding of himself as a slave and the state institutionalizing his status by grounding it in law. Such productions, however, also create the conditions in which the oppressive power relations between slave and master can be resisted.

Although genealogy is deeply historical, it fundamentally resists deterministic, chronologically linear conveyances of history in its explanation of contemporary phenomena. As Michel Foucault explains, genealogy "does not pretend to go back in time to restore an unbroken continuity that operates beyond the dispersion of forgotten things; its duty is not to demonstrate that the past actively exists in the present, that it continues secretly to animate the present, having imposed a predetermined form to all vicissitudes."[40] Instead, Foucault continues, genealogy seeks to "record the singularity of events outside of any monotonous finality."[41] Genealogy, Foucault concludes, explores events "in the most unpromising places, in what we tend to feel is without history—in sentiments, love, conscience, instincts, it must be sensitive to their recurrences, not in order to trace the gradual curve of their evolution, but to isolate the different scenes where they engage in different roles."[42] Thus, rather than explaining contemporary phenomena by recapitulating well-established facts in newly critical ways, genealogy privileges the accidental, the random, and the contingent in explaining the emergence of seemingly unified, timeless realities.

Genealogy's ability to highlight patterns of practices across time and space, as McWhorter explains, makes it "especially effective in application to regimes of normalization,

[40] Michel Foucault, *Nietzsche, Genealogy, History* (New York, New York: Random House, 1984), 81.
[41] Ibid., 76.
[42] Ibid., 76.

because showing how particular norms have emerged historically, shifted, and even sometimes disappeared entirely robs them of the basis for the claim to be natural, simply 'given,' or universal."[43] Genealogy, accordingly, uses historical abnormalities, discontinuities, and aberrations as pedagogically instructive platforms for exploring potential weak points in norms that are otherwise taken for granted and accepted as truths. Such weak points, moreover, can be used to inform strategies for undermining and resisting current forms oppression.

Florida as a Case Study

Florida is uniquely positioned for a genealogical investigation of contemporary labor practices. Before the end of the Civil War, the state was home to tens of thousands of slaves, many working on cotton plantations, turpentine farms, and in the domiciles of the state's residents. Moreover, after the Civil War ended, involuntary servitude flourished throughout the state in the form of convict peonage and debt bondage. Finally, in recent years, federal agents have uncovered labor trafficking operations in Florida at an alarming rate.[44] Thus, a genealogy of labor practices using Florida as its reference point promises to produce an instructive account of how power and knowledge relations have evolved, interacted, and conflicted throughout history to enable, sanction, and justify forced labor.

Florida also occupies a unique place in American history. After Spain ceded the state to the US in 1819, it operated under the governance of a territorial council until it achieved statehood in 1845. But before and after Florida seceded from the Union in 1861, not only did US troops fight numerous battles with Florida's Native American populations, but entrepreneurial agriculturalists, many from the Carolinas, migrated to the state, often with their slaves, to start

[43] McWhorter, *Racism and Sexual Oppression*, 51.
[44] Coalition of Immokalee Workers, "Anti-Slavery Campaign," accessed December 5, 2012, http://www.ciw-online.org/slavery.html.

cotton plantations, timber businesses, and mining operations. Florida's history, therefore, serves as a reference point not just for slavery and Southern culture, but also for conflict, agricultural production and resource extraction, and US political, economic, and military expansion.

Finally, as mentioned above, many contemporary involuntary servitude cases involve victims that lack US citizenship. As human trafficking and forced labor affects individuals with and without citizenship or legal residency, the absence of US citizenship clearly does not on its own form the primary basis for involuntary servitude. Nonetheless, an overwhelming majority of labor trafficking victims are non-citizens, many lacking work authorization. Many of these individuals manage to avoid the detection of authorities by joining the poorly regulated, informal labor pool on which much of the US agricultural sector depends. Such realities suggest the possible presence of significant intersections between US labor and immigration discourses. Florida serves as a promising opportunity in which to investigate these intersections, as the state has consistently served as a destination state for migrants, immigrants, and emigrants – from American settlers to West Indians, African Americans, Depression-era migrant workers, Cubans, Puerto Ricans, Mexicans, and Central Americans, to name a few. A genealogy that focuses on Florida, therefore, is uniquely positioned to uncover the extent to which labor and immigration practices and discourses might overlap and converge.

Summary of Paper

Chapter I discusses the laws and surveillance practices used to regulate slaves and freemen in the ante-bellum South. The chapter highlights how in Florida, a series of disciplinary practices, including legislative measures, surveillance tactics, and punishments emerged that functioned to solidify the roles of black men and women as manual and domestic laborers and to limit their mobility accordingly. **Chapter II** describes the ways in which post-Civil War

discourses in the South expressed worry over the various dangers posed by recently freed slaves. Motivated by racially-informed norms about labor, post-Civil War discourses in Florida, the chapter finds, gave way to several sets of practices regarding crime and punishment, which quickly took institutional hold within the state's early penal arrangements, its judicial system, and its law enforcement agencies.

Chapter III summarizes the South's penal reform discourses at the turn of the century, which sought to eliminate the practice of convict leasing.[45] Discourses influencing Florida's penal reform efforts, the chapter finds, not only produced the institutionalized means through which labor and penal practices could converge, but also stabilized the normative discourses that subjected freedom and mobility to the ideal of obedient labor. Moreover, the chapter concludes, these newly institutionalized penal and labor practices served as conduits through which the state's prisons could become intimately aligned with the interests of the state's agricultural sector.

Chapter IV describes labor discourses practices during and after World War I (WWI), summarizing how they gave way to national and state laws that relied on racialized norms when designing labor policy. In Florida, I argue, these norms and laws empowered local police officers to use their authority in the service of agricultural production. The chapter then goes on to explain labor discourses during World War II (WWII), which demonized American farmworkers and justified the importation of foreign farmworkers from Mexico and the Caribbean to replace them. In Florida, I argue, as imported Caribbean farmworkers replaced American farmworkers,

[45] Convict leasing refers to the practice of leasing individuals convicted of misdemeanor and/or felony offenses to individuals who were willing to pay their fines, court fees, and the cost of prison care. The convict peons would then be legally obligated to work as bondsmen until their debts were satisfied. The practice is discussed in-depth in Chapter II.

the state's agriculturalists discovered deportation to be an increasingly useful tool for disposing of injured and uncooperative foreign farmworkers.

Chapter V explains how the WWII farm labor importation program eventually became a key component of federal immigration policy, thereby stabilizing the subjection of immigration status to employment. The chapter then goes on to critique the emergence of contemporary immigration practices and policies, arguing that these practices function to discipline, monitor, and regulate non-citizens – particularly those without work authorization and those with strict visa limitations. In the **Conclusion**, I suggest some of the ways in which my findings contribute to discussions about forced labor and human trafficking in the US today. I then provide some suggestions regarding the dangers of current immigration discourses.

Confined on the ship, from which there is no escape, the madman is delivered to the river with its thousand arms, the sea with its thousand roads, to that great uncertainty external to everything. He is a prisoner in the midst of what is the freest, the openest of routes: bound fast at the infinite crossroads. He is the Passenger par excellence: that is, the prisoner of the passage. And the land he will come to is unknown – as is, once he disembarks, the land from which he comes. He has his truth and his homeland only in that fruitless expanse between two countries that cannot belong to him. – Michel Foucault, on the madman's voyage, or exile.[46]

[46] Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York, New York: Vintage Books, 1998): 11.

CHAPTER I

ANTEBELLUM LAWS AND SURVEILLANCE PRACTICES

As the US expanded during 19th Century, both slaves and freemen began participating much more visibly and actively in public life. At the behest of their venture-bound masters and employers, for example, slaves and freemen often traveled to frontier territories in order to excavate plots for future plantations or to "hire" themselves out as laborers.[47] After harvests, slaves and freemen frequently travelled to cities, where they were instructed by their masters or employers to sell surplus produce.[48] Slaves were often "hired out" by their masters as artisans to local businessmen who needed skilled labor.[49] These practices provided ways for venture businessmen to develop land, access cheap labor, and profit from involuntary servitude year-round. But, as Jonathan Martin points out in his study of slavery in the South, although these hiring practices certainly contributed to the nation's economic and political expansion in the 19th Century, they also afforded slaves and freemen a level of autonomy and a lack of supervision that threatened to undermine the white power structure.[50]

According to Alex Lichtenstein, white Southerners commonly believed that black Americans[51] were untrustworthy, deceptive, and morally opposed to their masters' interests.[52] Such moral failings, Lichtenstein contends, meant that slaves and black freemen warranted constant supervision – and not just by their masters, employers, and overseers, but by all white

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[47] Jonathan D. Martin, *Divided Mastery: Slave Hiring in the American South* (Cambridge, Massachusetts: Harvard University Press, 2004), 34-43.
[48] Ibid., 1-8.
[49] Ibid., 17.
[50] Ibid., 43-71.
[51] I use "black" rather than "African" with hesitations, most of which are undoubtedly the product of the necessarily limited experiences in which, as a white male, I encounter race and racism. Ultimately, I made the decision based on the fact that many black men and women living in the US immediately before and after the end of the Civil War were from the US and the Caribbean, not Africa. Thus, the term "African American" incorrectly implies an origin of Africa, when in fact the situation is much more complex and nuanced.
[52] Alex Lichtenstein, "'That Disposition to Theft, with Which They Have Been Branded': Moral Economy, Slave Management, and the Law," *Journal of Social History* 32, no. 3 (1988): 422.

citizens.[53] Without supervision, Southerners reasoned, slaves would be tempted to run away, interact with other escaped slaves and freemen, collude with non-slaveholding whites to commit property crimes,[54] or as Nat Turner's 1831 insurrection clearly demonstrated, conspire to engage in sedition and rebellion.[55] At the very least, they would plague communities with acts of petty larceny.[56]

Southern lawmakers hoped to preempt such dangers by passing a series of laws that encouraged the surveillance and restricted the movement of slaves and freemen. Many of these laws and practices restricted slaves from trading goods, participating in skilled labor markets, and traveling without permission slips signed by their masters. According to Thelma Bates, at least four states required freemen to obtain white guardians, while at least eight required them to register with local authorities.[57] As Christopher Adamson and Daniel Novak note, freemen in many states were required to procure employment contracts, while freemen in South Carolina had to obtain special licenses for non-agricultural work and those in Mississippi were prevented from renting land.[58] In many states, slaves were only allowed to buy and sell goods if they carried permission slips from their masters.[59] Often, they were prohibited from engaging in trade altogether.[60] Slaves were also frequently required to present signed permission slips while traveling and prohibited from traveling without white chaperones.[61] Such practices were a

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[53] Ibid., 429.
[54] Ibid., 426.
[55] Thelma Bates, "The Legal Status of the Negro in Florida," *The Florida Historical Society Quarterly* 6, no. 3 (1928): 163; Joseph Conan Thompson, "Toward a More Humane Oppression: Florida's Slave Codes, 1821-1861," *The Florida Historical Quarterly* 71, no. 3 (1993): 326.
[56] Lichtenstein, "'That Disposition to Theft, with Which They Have Been Branded'," 429.
[57] Bates, "The Legal Status of the Negro in Florida," 164.
[58] Christopher Adamson, "Punishment After Slavery: Southern State Penal Systems: 1865-1890," *Social Problems* 30, no. 5, Thematic Issue on Justice (1983): 559; Citing: Daniel A. Novak, *The Wheel of Servitude: Black Forced Labor After Slavery* (Lexington, Kentucky: University Press of Kentucky, 1978), 1. Also citing: Kenneth A. Stampp, *The Era of Reconstruction, 1865-1877* (New York, New York: Oxford University Press, 1965), 80.
[59] Lichtenstein, "'That Disposition to Theft, with Which They Have Been Branded'," 429.
[60] Ibid., 428-430.
[61] Thompson, "Toward a More Humane Oppression," 325.

mainstay of the Southern power structure, their eventual accumulation functioning to transform a series of disjunctive monitoring practices into a relatively regimented, fairly ubiquitous method of surveillance.[62]

Passes & Patrols

In antebellum Florida, slaves were constantly required to ask for, affirm, and invoke the authority of their white overseers in order to prove they were not engaging in criminal or unsanctioned activities. Not only did this make them absolutely dependent on white men for trade, mobility, and legal process, but it also structured the ways in which white superiority could be articulated, implemented, and established.

Pass laws provided some of the primary ways in which Floridians subjected their bonded laborers to the dictates of white authority. Florida's territorial lawmakers required slaves to present permission slips in order to trade many goods.[63] Moreover, in most cases, slave owners, according to Joseph Conan Thompson, were prohibited from hiring out their slaves, with only some cities allowing the practice on the condition that slaves carried passes from their masters.[64] Although masters initially ignored many of these restrictions, often by sending slaves off to buy and sell goods or by hiring them out to businessmen through advertisements in local papers,[65] obeying such laws eventually became likened in public discourse to something of a moral duty.

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[62] Ibid., 324.

[63] John P. Duval, *Compilation of the Public Acts of the Legislative Council of the Territory of Florida Passed Prior to 1840* (Tallahassee, Florida: Samuel S. Sibley, Printer, 1839), 234. According to Duval, Florida law also prohibited slaves from selling "cotton, sugar, syrup, or molasses, corn, rice, fodder, or meat," even if they carried permission slips from their masters. See: Duval, *Compilation of the Public Acts*, 234.

[64] Joseph Conan Thompson, "Toward a More Humane Oppression: Florida's Slave Codes, 1821-1861," *The Florida Historical Quarterly* 71, no. 3, 228-231.

[65] One advertisement found by Bates reads: "Negroes Wanted: The Subscriber Wishes to hire by the year, to commence on the 1st of September next, two stout, hearty Negro Men and one Negro Woman. The men must be acquainted with farming and come well recommended in other respects. The woman must be a good cook and family servant. Those from the country would be preferred; and for such answering the above description, liberal wages will be given." See: Bates, "The Legal Status of the Negro in Florida," 167.

According to Clarence Carter, one legislator felt that failing to obey such laws constituted the "relaxation of discipline," resulted in the "forgetfulness of duty," provided slaves with the "means of debauchery," and threatened to lead to the "ultimate ruin of the slave, if not more disastrous consequences to the community."[66] Soon enough, Florida lawmakers approved a number of increasingly severe slave restrictions, not only outlawing the practice of hiring-out,[67] but also prohibiting slaves from being on a plantation without the supervision or written permission of an overseer[68] and prohibiting groups of slaves from traveling without white supervision.[69] Such measures functioned to subject the behaviors and movements of all slaves to scrutiny. Moreover, they clarified the boundaries and spaces separating slaves from citizens.

Constant supervision, Floridians reasoned, deterred slaves not just from forgetting their duties, but also from running away. Runaways, according to Florida statutes, often "lie out hid and lurking in swamps, woods, and other obscure places, killing hogs and committing other injuries to the inhabitants" of Florida.[70] To white Floridians, thus, runaways represented danger. Lawmakers, therefore, sought to establish clear criteria for identifying runaways, reasoning that "any slave who shall absent him or herself a greater distance from his or her usual place of residence or owner's service, without the leave of his or her owner, overseer, or master in writing," could be reliably deemed to be a runaway.[71] To further deter runaways, lawmakers also prohibited slaves from possessing horses and mandated that all ferry and bridge operators check crossing slaves for travel passes.[72]

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[66] Clarence Carter, ed., *Territorial Papers of the United States: Territory of Florida*, Vol. 23 of 26 (Washington, DC: General Services Administration: 1934-1962), 916. As quoted in: Thompson, "Toward a More Humane Oppression," 331.
[67] Bates, "The Legal Status of the Negro in Florida," 171; Duval, *Compilation of the Public Acts*, 219-220.
[68] Duval, *Compilation of Public Acts*, 217.
[69] Ibid., 225.
[70] Ibid., 222.
[71] Ibid., 221.
[72] Ibid., 227-228.

Neighborhood slave patrols perhaps represented the most effective method through which these surveillance laws could be put into practice.[73] Patrol commanders, according to the legislature, were authorized to seize, arrest, and "correct…by a moderate whipping" any slave "found without the limits of their owners' plantation under suspicious circumstances, or at a suspicious distance therefrom."[74] Moreover, according to Thompson, neighborhood patrols were authorized to pursue suspected runaways onto private residences, disperse unlawful assemblies, and seize items from slaves that they could not legally carry.[75] Such patrolling practices not only helped expand the enforcement of state laws and encouraged residents to police slaves on their own, but also helped to create an environment in which slaveowners could be made responsible for the activities of their slaves.

To this effect, Florida lawmakers required slaveowners to pay expensive fines in order to regain custody of captured runaways. The fines, in turn, were used to help fund neighborhood slave patrols, reward local patrolmen, and fund local penal services.[76] According to Thompson, a Florida slaveowner might spend as much as $1500 satisfying fines and paying fees in order to regain custody of their captured runaways.[77] To expedite a runaway's swift return, slave-owners and sheriffs placed advertisements in local newspapers, notifying each other accordingly when a slave became lost or found.[78] In the rare case that a master failed to claim a captured runaway, sheriffs could sell slaves at public auction after six months, after which they would receive a

[73] Bates, "The Legal Status of the Negro in Florida," 163.
[74] Duval, *Compilation of Public Acts*, 62-63.
[75] Thompson, "Toward a More Humane Oppression," 331.
[76] Ibid., 327.
[77] Ibid., 331. It is unclear whether or not Thompson's number has been modified to today's economy.
[78] One advertisement from 1844 reads: "Runaway Negro: Committed to Jail this day, a negro man as a runaway slave. Said negro is about five feet, 8 inches high, about thirty years of age, thick set, and stoops a little when walking, has small scar over the right eye, one under the chin, and on each hand, and a large scar on the left shoulder blade, black slightly scarred by the whip. He was dressed in gray kersey pants and round jacket, and says he belongs to John B. White, of Harris County, Georgia. Had with him, when taken up, a badly written and worded pass, name could not be positively ascertained. Any person owning said negro will please come forward, prove property, pay charges and take him away. C.J. SHEPHARD Sheriff of Franklin County, Florida, Apalachicola, March 1st, 1844." Found in Bates, "The Legal Status of the Negro in Florida," 165-166.

commission for their services.[79] And for the slaves that often disappeared into the sovereign territory of Florida's Native American populations, lawmakers ensured that any "Indian agent" who returned runaways to Florida authorities would receive nominal rewards as well funds for the construction of modern jail cells.[80] Thus, the practice of identifying and capturing runaway slaves was not just legally permitted – it was statutorily incentivized. With a regime of enforcement catalyzed in and through a system of statutorily guaranteed subsidies, citizens and local officials could extend the rule of law throughout Florida's sparsely populated, untamed territory in ways that helped them support themselves, established collectivized methods of policing black men and women, and created an ethos of responsibility directed at shaming careless masters.

Florida lawmakers also concerned themselves with slaves who committed more serious offences. The legislature, for instance, prohibited the importation, sale, and purchase of any slave convicted of any crime. Offending masters could be fined up to $250 and had to post bond until removing the slave from the state.[81] Slaves convicted of crimes within state boundaries faced corporeal punishment. Although masters were charged with disciplining slaves that violated norms within the confines of their masters' plantations, offences and capital crimes committed outside these boundaries often required specific punishments. Less serious offences such as petty larceny and trespassing, for instance, were met with public whippings. More serious offences such as insurrection, assault and battery of a white person with "intent to kill," manslaughter or murder of a white person, assault of a white woman or child with "intent to rape," and arson, might result in bodily mutilation or even execution.[82] According to Thompson, however, slave

[79] Duval, *Compilation of Public Acts*, 221.
[80] Ibid., 222.
[81] Ibid., 216.
[82] Ibid., 223-224.

executions rarely occurred, as Florida law entitled slaveowners to compensation in the event of such sentences.[83] Instead, courts preferred bodily punishments such as nose-splitting and hand-branding, which allowed for the swift return of disobedient slaves without creating substantial economic problems for masters.[84]

Interestingly, corporeal punishments were administered in ways that often established a relationship between the offence and the consequence. For example, slaves convicted of perjury were punished by having their ears nailed to wooden posts.[85] According to Thompson, in a practice known as cropping, slaves' ears were sometimes cut off.[86] Alternatively, slaves convicted of arson could be publicly branded on their hands with hot irons.[87] The mutilations that resulted from such punishments functioned to mark the bodies of slaves in ways that explained the deviations that they had committed. For speaking falsehoods under oath, a slave was marked on the ear, thus warning others to hesitate before listening to him. For using his hands to commit arson rather than to work, a slave's hands were burned, thus reminding others to use their hands appropriately. Such punishments, therefore, functioned not just to humiliate slaves publicly, but also to create legible symbols that identified both the consequences of certain transgressions and the slave's dangerous nature.

Thompson asserts that Florida lawmakers and courts eventually abandoned such overtly cruel practices, realizing instead the need to provide slaves with rights, first as a strategy for

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[83] Thompson, "Toward a More Humane Oppression," 333.
[84] Ibid., 333.
[85] Florida's 1828 code required "[t]hat whenever it shall be found necessary to examine any slave as a witness on any trial, it shall be the duty of the court or justice sitting on such trial, before such witness shall be examined, to charge him to declare to the truth in the following manner: 'You are brought here as a witness, and by the direction of the law, I am to tell you before you give your evidence, that you must tell the truth, and nothing but the truth, and if it be found hereafter that you tell a lie and give false testimony in this matter, you will for so doing receive thirty-nine lashes upon your bare back, and have your ears nailed to posts, there to stand for one hour.'" From Duval, *Compilation of Public Acts*, 224 and 227.
[86] Thompson, "Toward a More Humane Oppression," 333.
[87] Ibid., 333; Duval, *Compilation of Public Acts*, 224.

preventing slave insurrection, then as a procedural tool to legitimize punishment, and finally as a way "to protect the slave's humanity."[88] For example, Thompson points out that masters who administered "cruel and unusual punishment" on their slaves faced up to $500 in fines.[89] Similarly, Florida law mandated that masters provide slaves with adequate food, clothing, medicine, and shelter.[90] Moreover, Thompson notes, Florida's courts, particularly its Supreme Court, extended accused slaves the right to trial by jury, the right to counsel, and additional Constitutional protections. In one case, Florida's Supreme Court granted a retrial to a slave found guilty rape because of concerns over the state's witnesses.[91] Eventually, concludes Thompson, "enlightened legislators and court officials paternalistically clothed their chattel in laws and court decisions that were designed to protect the slave's humanity."[92]

Such measures, however, must not be understood as expressions of a sudden change of heart amongst Florida officials. Rather than representing the growing realization of the slave's humanity, these measures served as innovative approaches to safeguarding the position of white authority. Slavery, thus, did not become "more humane" as the Civil War drew near, but instead was rearticulated, albeit under a banner of humanitarianism.[93] Prohibiting masters from administering cruel and unusual punishment was seen as a method of deterring slaves from rebelling against their masters' by running away, conspiring to commit acts of sedition, or joining forces with Native American tribes.[94] Similarly, although the right to legal counsel and trial by jury might have provided slaves with new opportunities to challenge charges, such rights also provided slaveowners and citizens with new opportunities to practice their dominance over

[88] Thompson, "Toward a More Humane Oppression," 335-338.
[89] Ibid., 335-336. Also see: Duval, *Compilation of Public Acts*, 223.
[90] Thompson, "Toward a More Humane Oppression," 335-336.
[91] Ibid., 336.
[92] Ibid., 338.
[93] Ibid., 324.
[94] Lichtenstein, "'That Disposition to Theft, with Which They Have Been Branded'," 423.

black men and women in new discursive venues, venues that were imbued with notions of judicial precedent, legal process, and the advice of counsel.

Thus, slave labor practices in Florida were enabled by arrangements that extended well beyond the confines of the master's plantation. Indeed, they received ample support and justification from lawmakers, law enforcement, and courthouses, which collectively operated to establish, police, and stabilize the processes by which slaves could be subjected to labor. But if antebellum policing practices operated to maintain the legally-sanctioned institution of slavery, how might they operate to clarify and govern the positions of freemen? In what ways might the labor of freemen be assigned, manipulated, and guarded by Florida's law enforcement officials, lawmakers, and magistrates?

Rearticulating Bondage

Florida's population of so-called free black men, women, and children were subjected to surveillance practices, regulations, and prohibitions in similar ways as their enslaved counterparts. Like slaves, for example, freemen were prohibited from serving as "good witness[es]" in court except in pleadings of "the State for or against negroes or mulattoes, bond or free, or in civil cases where free negroes or mulattoes shall alone be parties."[95] Moreover, just as slaves were required to be in the constant company of white chaperones, freemen similarly were required to register with white guardians, who were charged with representing their subjects in legal proceedings.[96] Additionally, freemen were required register with local

[95] Leslie A. Thompson, *A Manual or Digest of the Statute Law of the State of Florida, of a General and Public Character, in Force at the End of the Second Session of the General Assembly of the State, on the Sixth Day of January, 1847* (Boston, Massachusetts: Charles C. Little and James Brown, 1847), 542.
[96] Bates, "The Legal Status of the Negro in Florida," 169; Thompson, "Toward a More Humane Oppression," 328.

magistrates.[97] Thus, much like slaves, Florida's antebellum laws and practices forced freemen into positions of dependency.

Many of Florida's antebellum laws governing freemen converged around employment. For instance, according to the state's Territorial laws, anyone "wandering or strolling about, able to work, or otherwise able to support himself in a respectable way, or leading an idle, immoral, or profligate course of life" could be arrested by "any justice of the peace, mayor, alderman, or intendant of police" and deemed a "vagrant."[98] Florida's statutes instructed officials to bring suspected vagrants before local magistrates, who could then demand that convicted vagrants post bond for a year in order to ensure their "good behavior and future industry."[99] Vagrants who failed to post bond could be fined as much as $500, while those unable to pay such fines could either be incarcerated for up to one year or could be "sold for twelve months to the highest bidder" as bondsmen.[100]

Although Florida's vagrancy laws do not specifically codify separate processes and punishments for black and white offenders, other laws show that binding out convicted vagrants as bonded laborers was a punishment that was commonly reserved for black offenders, particularly freemen.[101] One Florida statute enacted in 1832 is instructive:

> "Be it further enacted, That whenever any free negro or mulatto shall be convicted of any crime or misdemeanor…and shall be unable to pay the fine and costs of prosecution…it is hereby made **the duty** of the marshal of the district in which the conviction shall take place, to offer the services of such free negro or mulatto at public outcry, to sale; and any person who shall take such free negro or mulatto for the shortest period of time, paying the fine and costs of prosecution, shall be entitled to the services of such

[97] Thompson, "Toward a More Humane Oppression," 328.
[98] Duval, *Compilation of Public Acts*, 122.
[99] Ibid., 122.
[100] Ibid., 122. The term "bondsmen" refers to the court-sanctioned status of bondage, whereby an individual becomes the bonded subject of another.
[101] Adamson, "Punishment after Slavery," 560. Additionally, although black offenders were frequently bound out to the highest bidders as punishment for their crimes, white men, on the other hand, were more likely to be incarcerated. I will discuss the practice of binding out further in the next chapter.

> free negro or mulatto, who shall be held and taken for the said period of time **as a slave** to all intents and purposes whatever."[102] (Emphasis added)

Specifically reserved for punishing free black individuals, the practice, thus, was not just statutorily sanctioned – it was encouraged, and as a kind of duty, even morally required.[103] Florida law, moreover, sanctioned this practice for other violations committed by freemen. Freemen who failed to pay their taxes, for instance, could be seized by local sheriffs and bound out to anyone willing to pay the amount owed.[104] Such court-ordered relationships tellingly demonstrate that the differences between master and employer, between slave and laborer, and between prisoner and bondsman were relatively fluid.

Although antebellum lawmakers subjected freed black men and women to a multitude of requirements, prohibitions, and sanctions, they at the same time sought to limit Florida's population of freemen. Territorial law, for example, strictly forbade freemen and so-called mulattoes from migrating to Florida under all circumstances.[105] A freeman who illegally entered Florida and failed to leave after thirty days could be apprehended by any citizen and brought before a magistrate, who could then require the individual to post bond of $200 in order to secure his departure from the Territory.[106] Freemen failing to pay the fine, moreover, could be jailed, while repeat offenders who were unable to post bond and pay the fines could be bound out by sheriffs to the highest bidder for a year.[107] Thus, the political status of freemen in Florida was inherently insecure, one in which the possibility of bondage loomed imminently over the heads of black individuals.

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[102] Duval, *Compilation of Public Acts*, 125.
[103] Adamson, "Punishment after Slavery," 555-569. Also see: Daniel L. Shafer, "'A Class of People Neither Freemen Nor Slaves': From Spanish to American Race Relations in Florida, 1821-1861," *Journal of Social History* 26, no. 3 (1993): 587-609.
[104] Bates, "The Legal Status of the Negro in Florida," 169.
[105] Thompson, *A Manual or Digest of the Statute Law of the State of Florida*, 534-536.
[106] Duval, *Compilation of Public Acts*, 225-226.
[107] Ibid., 226.

Florida lawmakers also sought to limit the population of freemen internally, most notably by regulating the practice of manumission.[108] An 1829 Territorial law, for example, stated that "any person or persons who shall manumit any slave or slaves, brought into this Territory after the passage of this act, shall forfeit and pay, for every slave so manumitted, the sum of two hundred dollars."[109] After the law's passage, moreover, individuals migrating to Florida intending to manumit their slaves had to post bond "in a sum equal to the value of such slave or slaves…for [the purpose of ensuring] the transportation of every such slave or slaves beyond" Florida's border within thirty days.[110] Slaves manumitted in ways unspecified by the law, furthermore, could sold directly back into slavery by local sheriffs.[111]

Before long, however, Florida lawmakers set aside legal niceties, instead becoming increasingly militant in their attempts to eliminate freemen. According to Thelma Bates, a law passed in 1842, for example, mandated all freemen who had entered Florida after 1832 to permanently remove themselves from the Territory. Freemen remaining in the Territory more than ten days after the law's passage, moreover, could be bound out for ninety-nine years.[112] Recognizing that freemen continued to live in Florida illegally, the state legislature passed a "permissive act" in 1858. The law, interestingly, did not establish additional punishments for freemen, but instead created judicial processes through which the state's non-slave black and so-called mulatto residents could rectify their legal predicaments by choosing masters.[113] According to Bates, freemen seeking to enslave themselves were first required to file a petition with the circuit court naming their prospective masters. Local clerks of the court would then issue

[108] Manumission refers to the practice of masters freeing their slaves. In the US, manumission was often outlined in a master's final will and testament. Many Southern whites believed, or at least promoted the belief, that manumission upon death incentivized slaves to murder their masters.
[109] Duval, *Compilation of the Public Acts*, 228.
[110] Ibid., 228.
[111] Ibid., 228.
[112] Bates, "The Legal Status of the Negro in Florida," 170.
[113] Ibid., 170-171.

summons for the parties to appear before magistrates, who, after scrutinizing the arrangements for integrity, were charged with granting the petitions.[114]

Thus, as the combination of being black and being free became more and more of a legal contradiction, Florida's legislature designed processes through which slavery could be willed and legitimized with the authority of judicial mediation. The very creation of such processes, moreover, demonstrates that Florida lawmakers recognized the fact that these new laws made the lives of freemen incredibly difficult. Their strategy, consequently, was to make slavery more appealing than freedom. And for the stubborn freeman that managed to resist court-prescribed bondage – perhaps because he could pay the taxes and fines required of him – Florida's permissive act presented him with an impossible choice: either choose bondage or leave the state for good. Indeed, as Florida's treatment of freemen became increasingly aggressive, freemen fled the state in droves. For example, as data cited by Schafer indicate, over 150 freemen living in Pensacola fled to Mexico after the state strengthened its freemen laws in the 1840s and 1850s, while nearly half of the 164 freemen living in St. Johns County in 1845 had fled by 1850, bringing the population down to just 86.[115]

The laws and practices described above structured the processes by which the status of freemen could become more closely aligned with that of their enslaved counterparts. As Florida lawmakers passed more and more laws encouraging the re-enslavement of freemen, the subjection of black individuals to both labor and master became part and parcel of an interconnected set of judicial and penal processes – processes that not only positioned black freedom as deviant, but that reified the notion that all of Florida's black residents should desire their own servitude.

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[114] Ibid., 171. Also see: Thompson, "Toward a More Humane Oppression," 329.
[115] Schafer, "A Class of People Neither Freemen Nor Slaves," 591.

Conclusion

A variety of forces in Florida, including laws, agents of law enforcement, surveillance practices, and judicial processes, functioned to stabilize the power relations between black and white Floridians. These laws, practices, and processes, moreover, functioned to police the relations connecting and dividing race, labor, and status, thereby creating new venues through which certain power relations could be practiced while shrouded in the cloak of legitimacy. After the Civil War, federal anti-slavery measures would aim to interrupt some of these power relations, but the ways in which they were practiced would persist, transform, and adapt. In what new ways, then, might these power relations take shape after Emancipation? How might they be granted further sanction in law, process, and discourse? What new sets of practices might emerge as a result? What new types of knowledge would be produced?

CHAPTER II

THE CONVICT, THE WARD, AND THE DEBTOR

After the Civil War ended,[116] Southern leaders frantically worried themselves with the potential criminal, moral, and economic dangers posed by the emancipation of their former slaves. According to Christopher Adamson, the Thirteenth Amendment, which outlawed involuntary servitude except as punishment for a crime, created a "wandering army of ex-slaves, and an immediate crisis in crime control."[117] The problem, Adamson continues, "was not just that crime rates rose, but that the size of the population punishable by some form of custody doubled."[118] However, with much of their economies and many of their institutions ravaged by war, Southern states lacked enough resources to repair, maintain, and expand their prison systems.[119]

More importantly, Southerners largely considered incarceration to be a method of punishment entirely unfit for use on black men and women, who as slaves had either been disciplined on plantations with beatings or in public squares with bodily mutilations.[120] Penitentiaries, Adamson points out, were considered reformative institutions, and as such were reserved primarily for white criminals.[121] "Whereas the white felon was punished for violating norms of freedom," Adamson explains, "slaves were punished for rejecting the rules of

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[116] In the interest of limiting the scope of this paper as much as possible, I unfortunately will not be examining the Civil War.
[117] Adamson, "Punishment After Slavery," 556.
[118] Ibid., 556.
[119] Fletcher M. Green, "Some aspects of the convict lease system in the southern states," in *Democracy in the Old South and Other Essays*, J. Isaac Coperland, ed. (Nashville, Tennessee: Vanderbilt University Press, 1969): 271-287. Cited in Adamson, "Punishment After Slavery," 556.
[120] Adamson, "Punishment After Slavery," 557.
[121] Ibid., 557; Also see: Vivien M. L. Miller, "Reinventing the Penitentiary: Punishment in Florida, 1868-1923," *American Nineteenth Century History* 1, no. 1 (2000): 83. As Miller notes, penal discourses in the US became more reform-focused throughout the 1800s, with many states beginning to replace methods of public punishment with confinement in penitentiaries. By 1850, nearly every state had built penitentiary systems modeled after the Pennsylvania and Auburn facilities.

bondage,"[122] and while white convicts might come to regret their crimes through incarceration, the slave's inherent moral deficiencies meant that he was incapable of reform, and therefore also unfit for incarceration.[123] Imprisoning slaves, moreover, deprived masters of their bondsmen. Thus, the prospect of using imprisonment to punish ex-slaves confronted Southern post-Civil War political leaders not only as a waste of sorely needed public resources, but also as illogical.[124]

During the post-Civil War era, Southern landowners feared their newly-freed laborers would abandon their plantations, instead becoming vagrants. Characterized by "indolence, squalor, thriftlessness [sic] and decay," as one Southern planter explained in 1893, the "negro" raised nothing, depended on "the planter" for "support", and would only work upon being "compelled" with "constant watching."[125] Thus, unless coerced, Southerners reasoned, former slaves would undoubtedly refuse to work, instead choosing dependency and sloth. Southern plantation owners, accordingly, sought to develop methods of securing their labor source. For instance, many farmers coerced ex-slaves into signing yearly labor contracts, which were commonly enforced by local police officers and judges.[126] Farmers and agricultural associations also often encouraged their states' Reconstruction governments to strengthen vagrancy statutes and, in a practice known as convict leasing, for county governments to punish convicts by leasing their labor out to private parties.[127]

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[122] Adamson, "Punishment After Slavery," 557.
[123] Ibid., 557.
[124] Ibid., 567-568; Also see: Joe M. Richardson, "Florida Black Codes," *The Florida Historical Quarterly* 47, no. 4 (1969): 367-368.
[125] Found in: Robert L. Brandfon, "The End of Immigration to the Cotton Fields," *The Mississippi Valley Historical Review* 50, no. 4 (1964): 595.
[126] Although most of these labor contracts were yearly, Douglas Blackmon finds landowners sometimes tried to force ex-slaves to sign "lifetime contracts." See: Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York, New York: Anchor Books, 2009): 27 and 61.
[127] Ibid., 53.

Reconstruction governments quickly embraced convict leasing. Under such arrangements, state and local governments leased the custody and labor of convicted offenders to private employers, many of which had previously owned slaves,[128] and therefore already possessed stockades that could be used as jail cells. Some states gave private contractors custody of their inmates at no cost, while others actually paid private contractors to take responsibility of them.[129]

Reconstruction governments, Adamson explains, largely viewed convict leasing as a means to save money, but when Southern Democrats returned to power in the 1870s, they quickly found ways of making the practice profitable. Influenced by Southern landowners, Northern industrialists, and railroad developers looking to invest in Southern agricultural and extraction industries, Southern lawmakers called for a new set of policies – a "New South" – that would attract the investments of Northern industrialists as a means of lifting the South from the ruins of war.[130] Accordingly, post-Reconstruction state lawmakers sought to promote economic growth with favorable tax rates and cheap land, while investing industrialists and large-scale agriculturalists sought to limit overhead by using plenty of cheap labor. The two efforts converged around the practice of convict leasing.[131]

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[128] Adamson, "Punishment After Slavery," 559.

[129] Reconstruction governments in Georgia and North Carolina allowed their convicts to be employed by railroad contractors, but did not receive anything in return. Arkansas and Mississippi, on the other hand, actually paid private contractors to take control of their states' inmates. See: Dan T. Carter, "Politics and Business: The Convict Lease System in The Post-Civil War South," Master's thesis, University of Wisconsin (1965): 45; Hilda J. Zimmerman, "Penal systems and penal reforms in the South since the Civil War," Unpublished Ph.D. dissertation, University of North Carolina, Chapel Hill (1947): 140. Both are cited in: Adamson, "Punishment After Slavery," 564.

[130] According to Adamson, Redeemer governments in Mississippi, Alabama, North Carolina, Georgia, and Tennessee all leased their convicts to railroad developers, mining companies, and lumbering operations. Often, as Adamson points out, these arrangements were the direct result of corruption. In Tennessee, for instance, Arthur S. Colyar, a state Democratic lawmaker and an attorney for Tennessee Coal Iron & Railroad, spearheaded a deal in which the entire inmate population of Tennessee would be leased to the company he represented for $101,000 per year. See: Adamson, "Punishment After Slavery," 561-563. Also see: Jerrell H. Shofner, "The Legacy of Racial Slavery: Free Enterprise and Forced Labor in Florida in the 1940s," *The Journal of Southern History* 47, no. 3 (1981): 412.

[131] Shofner, "The Legacy of Racial Slavery," 412.

Southern legislatures quickly moved to expand the reach of criminal law, most significantly by revising criminal codes, strengthening fines and sentences, widening the types of behaviors considered criminal, reassigning the severity of certain offences, and empowering local sheriffs.[132] Subsequently, convict leasing markets flourished in nearly every Southern state, as rising arrest rates allowed state and local governments to profitably funnel ex-slaves directly into the hands of the labor agents that were hired by industrialists, mine owners, and railroad developers, who then would sometimes even sublease the convicts to other needy employers.[133] Convict leasing was so profitable that in some states, it constituted as much as ten percent of state revenue.[134]

How did state and local governments justify adopting and implementing convict leasing arrangements? What are the ways in which police officers sought to enforce the new criminal statutes mentioned above? How were those accused of crimes processed in court? In what ways might the punitive practice of hard labor converge or be taken up by broader criminal and penal discourses? Examining such questions within the context of post-bellum Florida proves instructive.

Situating Post-Bellum Florida

As Joe Richardson finds, in an August 1865 issue of the Alachua County publication *Gainesville New Era*, a reporter wrote that Floridians' "hopes for future happiness and prosperity

[132]For example, by defining grand larceny as theft of any property worth more than ten dollars, Mississippi's legislature empowered the state's courts to sentence violators to up five years hard labor. Courts in North Carolina, alternatively, did not differentiate between petty and grand larceny, thereby allowing hard labor sentences of anywhere from three to ten years. See: Adamson, "Punishment After Slavery," 562.
[133] Throughout the South in 1884, about five thousand convicts worked on railroad camps. Prisoners in North Carolina laid more than 1,800 miles of railroad track between 1873 and 1893, while in 1886 all of Mississippi's state prisoners were leased to the Gulf and Ship Island Railroad Company. See: Ibid., 562-563.
[134] Ibid., 567.

are wrapped up" in the idea "that the next Congress will reestablish slavery."[135] The publication's editor, Richardson also finds, asserted that the "inferiority of [the] social and political position for the Negro race…is the natural order of American Society."[136] According to Richardson, even Florida's Republican Reconstruction military commander noted the state's enthusiasm for slavery, with the commander writing that the state's residents "still hug the ghost of slavery, and hope…that the institution may be revised by State laws at some future favorable opportunity."[137] As white Floridians' commitment to slavery became public, rumors spread throughout the country regarding the state's plans for reinstituting slavery. According to one September 1865 *New York Tribune* article, one scheme involved government regulators setting the price of forced labor, a second hinged on deputizing employers so that they could arrest runaway laborers, while a third began with farmers collectively agreeing to only employ ex-slaves.[138] In some ways, elements of each plan would be implemented.

During Florida's 1865 constitutional convention, attendees organized a three-member committee to help design legislation affecting the state's black population. According to the 1865-1866 issue of the *Florida House Journal* (quoted in Richardson 1969 and Shofner 1977), the committee, after equating the status of black Americans to freemen before the war, formally suggested that lawmakers formulate legislation that would "preserve as many as possible" of the "better" elements of that "benign, but much abused and greatly misunderstood institution of slavery."[139] Although the US Congress rejected Florida's 1865 Constitution, the state's political

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[135] Richardson, "Florida Black Codes," 366. Citing: *Gainesville New Era*, August 5, 1865.
[136] Richardson, "Florida Black Codes," 367; Citing: *Gainesville New Era*, June 8, August 19, 1865, July 5, 1866;
[137] Ibid., 366; Citing: a letter from J. G. Foster to G. A. Forsyth dated September 20, 1865.
[138] Ibid., 366-367; Citation 5, Citing: *New York Tribune*, September 5, 1865.
[139] Ibid., 373; Citing: T. B. Wilson, *Black Codes of the South* (Tuscaloosa, Alabama: University of Alabama Press, 1965) 96; Jerrell H. Shofner, "Custom, Law, and History: The Enduring Influence of Florida's 'Black Code'," *The Florida Historical Quarterly* 55, no. 3 (1977): 279. As Richardson notes, the sole "inherent evil" of slavery, according to the committee, was that it allowed slaves' marriage relations to be controlled by masters.

and economic elites clearly thought it favorable to govern and control Florida's black population by maintaining key portions of the state's antebellum framework.

By and large, Florida lawmakers sought to maintain a statutory regime that regulated black men, women, and children in and through labor. Lawmakers, for instance, passed an "Act in relation to Contracts of Persons of Color." The law, according to Jerrell Shofner, required any labor contract to which a black individual was a party to be both made in writing and witnessed by two white individuals.[140] Moreover, the law identified virtually any behavioral misstep on the part of the laborer as a violation of the labor contract. For instance, "willful disobedience" and "disrespect" constituted contractual violations, and as such, black laborers could be punished with beatings, imprisonment, or hard labor.[141]

Although the racial biases of the 1865 contract law were challenged by Florida's attorney general, the legislature simply passed another one the following year, this time removing language that explicitly singled out race and replacing it with language that singled out race in more nuanced ways.[142] Rather than mandate that two white witnesses be present for all contracts involving black laborers, Florida's 1866 contract labor law instead stipulated that all "agricultural, lumber, rafting and milling" contracts be signed "before two credible witnesses."[143] Employment in such industries was dominated by black males, while white men essentially had a monopoly on credibility. And just like the law before it, the 1866 contract labor law prohibited "willful disobedience of orders, wanton imprudence, or disrespect," "idleness, or abandonment of the premises."[144] Moreover, "upon the complaint of his employer, or his agent, made under

[140] Shofner, "Custom, Law, and History," 282.
[141] Ibid., 282.
[142] Ibid., 282.
[143] James F. McClellan, *A Digest of the Laws of the State of Florida, From the Year One Thousand Eight Hundred and Twenty-Two, to the Eleventh Day of March, One Thousand Eight Hundred and Eighty-One, Inclusive* (Tallahassee, Florida: Floridian Book and Job Office, 1891): 208-209.
[144] Ibid., 209.

oath before any Justice of the Peace of the county," any violator could be arrested, tried, and convicted as a vagrant.[145]

Most significantly, the law explicitly provided any employer accusing an employee of violating his contract with the authority "to require that such laborer be remanded to his service, instead of being subjected to the punishment aforesaid."[146] Thus, a black laborer challenging the wages paid out by his white employer faced the possibility of retaliation, as the employer could easily – through legal processes that were no doubt foreign to the employee – seek redress in court, thereby binding his laborer to him as punishment for failing to satisfy contractual obligations.

Just as Florida's antebellum freemen statutes permitted local police officers to seize and bind out freemen who failed to pay their taxes, black men who failed to pay the state's post-Civil War capitation and education taxes could similarly be arrested and bound out as punishment.[147] In fact, anyone unable to pay civil taxes or criminal fines could be sold at public outcry to any citizen who was willing to forfeit the fees levied or costs owed.[148] At the same time, Florida's post-Civil War legislature outlined a litany of new crimes designed to protect public and private property and reaffirm the authority of white men. Such new crimes, according to Richardson, included property-related violations like "cutting timber" on public land, damaging anything "attached to the land," selling certain goods "without evidence of ownership," trespassing, and "unauthorized use of a horses."[149] Moreover, after ratifying a new constitution in 1868, Florida's

[145] Ibid., 209.
[146] Ibid., 209.
[147] According to Bates, the Florida legislature levied an education tax of one dollar on every black man between the ages of twenty-one and fifty-five. See: Bates, "The Legal Status of the Negro in Florida," 177. And according to Shofner, the legislature also levied a three dollar capitation tax on all males between the ages of twenty-one and forty-five. See: Shofner, "Custom, Law, and History," 281.
[148] Richardson, "Florida Black Codes," 373-374.
[149] In two examples cited by Richardson, a young man was arrested for riding his employer's horse without authorization, while another was arrested for selling driftwood found in a river. See: Ibid., 376.

legislature drastically expanded the state's vagrancy statute,[150] which is worth quoting in its entirety:

> Rogues and vagabonds, idle and dissolute persons who go about begging, persons who use juggling or unlawful games or plays, common pipers and fiddlers, stubborn children, runaways, common drunkards, common night-walkers, pilferers, lewd, wanton, and lascivious persons in speech or behavior, common railers [sic] and brawlers, persons who neglect their calling or employment, misspend what they can earn and do not provide for themselves or for the support of their families, and all other idle and disorderly persons, including therein those persons who neglect all lawful business and habitually misspend their time frequenting houses of ill-fame, gaming houses, or tippling shops, may, upon conviction, be committed for a term not exceeding six months, to the county jail.[151]

Such measures subjected black men and women to the broad scrutiny of authorities, rendering the legality of their presence and the permissibility of their actions dependent upon a series of boundaries and presentations: the boundaries restricting free access to public property and resources, the presentation of one's ownership of certain produce, the presentation of one's authorization to use a horse, and the presentation of proof of employment.

Although before the Civil War many of these requirements were used to similarly guard the mobility and agency of slaves and freemen, their recapitulation in the post-Civil War era suggests that rather than loosen the laws affecting black men and women alongside the abolition of chattel slavery, Florida lawmakers instead sought to strengthen such laws, subjecting black men and women to a clearer, more unified set of restrictions and boundaries. And as an expanded criminal code predictably led to more arrests, Florida's penology could subsequently begin taking up hard labor and binding out as the court-sanctioned means through which recently freed black men and women could be more or less returned to bondage. In what ways did Florida's

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[150] According to Richardson, following the suggestions of Marvin, Florida's Provisional Governor, lawmakers also issued a special vagrancy ordinance in 1865, which gave law enforcement officials the ability, upon the complaint of any citizen, to arrest and bind out anyone "wandering or strolling about or leading an idle, profligate, or immoral course of life." See: Ibid., 371.

[151] McClellan, *A Digest*, 410.

penal discourses adopt these practices? What kinds of arrangements did they entail? In what ways did these new practices shape Florida's penal discourses?

Convict Leasing

As noted above, both Emancipation and the expansion of Florida's criminal codes created the expectation that arrest rates would similarly increase. Lawmakers, thus, sought to make accommodations for an expanding population of convicts, many of which, as Governor Harrison Reed declared before the State Assembly in 1868, were languishing in county jails, "confined in idleness" because they could not pay their fines.[152] A central penitentiary, Reed continued, might not only save the state money, but also might accomplish "one of the first objects of punishment – the reformation, and the inculcation of habits of industriousness and systemic labor with the criminal."[153] Accordingly, in 1868, the legislature authorized a military facility in Chattahoochee, located in the northwestern region of the state, to be used as the state's central penitentiary.[154] But, according to Vivien Miller, Florida's post-Civil War government continued to face significant budgetary problems. Governor Reed, consequently, authorized the state's Adjutant General to lease all inmates to railroad developers and plantation owners. [155] Thus, in Florida, convict leasing emerged within a context shaped by the need to alleviate budgetary pressures while at the same time to addressing crime without an organized prison system.

[152] Miller, "Reinventing the Penitentiary," 85.
[153] Ibid., 85.
[154] Ibid., 88.
[155] Ibid., 88. Additionally, according to the State Archives of Florida Online Catalog, the Adjutant General, a post first created in 1832, was an appointee of the governor, served as his chief of staff in his duties as Commander-in-Chief, supervised the state prison, and was in charge of quarantining the coastline. As designated by Florida's 1868 Constitution, the Adjutant General also functioned as both a member of the governor's cabinet and a member of the Board of Commissioners of State Institutions. In Florida's 1885 Constitution, the position would be eliminated. See: Florida Department of State "Adjutant General's Office record group," accessed September 23, 2012, http://dlis.dos.state.fl.us/barm/rediscovery/default.asp?IDCFile=/fsa/DETAILSG.IDC,SPECIFIC=644,DATABASE=GROUP.

By the time Democrats regained control of Florida's government in the late 1870s and early 1880s, convict leasing was well on its way to becoming a stable fixture of penal practice. In 1879, for example, Florida lawmakers gave county commissioners the authority to lease county convicts,[156] while in 1887 they passed legislation charging the Adjutant General with ensuring that all state convicts remain "actively engaged in the work prescribed for them."[157] State prisoners sentenced to hard labor, according to the 1887 law, must be "constantly employed for the benefit of the State."[158] Thus, "in such a manner as he may deem most advantageous to the interests of the State," the Adjutant General, the 1887 law added, was authorized to "enter into contracts with any person or persons for the labor, maintenance and custody of any or all persons sentenced to or confined within the State Prison."[159]

As formal elements of the State Prison system, these "contractors," according to Florida's prison statutes, possessed "full and complete power to control and discipline such prisoners and to maintain order among and enforce obedience from the same…and [to] compel the performance of labor."[160] Moreover, "prisoners held or employed under such [a] contract," Florida's new penal statutes continue, were "considered in law to be in the State Prison."[161] Thus, in and through convict leasing, not only did the private contractor become a kind of agent of the state prison system, but the space in which the private contractor held or employed his convicts became a kind of appendage of the state's central prison facility. The conditions in which Florida's penal policies could be practiced, therefore, extended both spatially and relationally.

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[156] McClellan, *A Digest*, 320-321.
[157] Ibid., 958-959.
[158] Ibid., 960.
[159] Ibid., 962.
[160] Ibid., 963.
[161] Ibid., 963.

In 1879, Governor George Drew and the state legislature took steps to abolish the Chattahoochee prison, preferring instead to prioritize the practice of convict leasing. The Adjutant General was charged with distributing contracts, the winners of which, according to Miller, were selected through a public bidding process. [162] As word of the practice spread through various mediums, Florida's political leaders deployed racial tropes in an effort to shore up public support.[163] For instance, as Miller notes, Governor William Bloxham, Governor Drew's successor, justified convict leasing by asserting that most of Florida's inmates belonged to a "race not characterized by a superior capacity for invention, or manufacturing industries."[164] Thus, for Florida's top politicians, rather than justify the development of compensatory measures, the social and economic legacies of involuntary servitude instead justified the adoption of punitive measures. Stereotypes produced as a result of slavery's regulative practices, consequently, helped politicians rationalize convict leasing.

In 1885, Florida held another constitutional convention, this time with the intention of reversing provisions of state's 1868 constitution, which, according to Shofner, Florida's Democratic leaders criticized as a "carpetbagger" constitution that was forced upon them by Republicans.[165] Not only did the new constitution, as Shofner notes, pave the way for racial disenfranchisement through discriminatory poll taxes, but it also significantly reorganized the state government.[166] Perhaps most importantly, however, the new constitution added the Commissioner of Agriculture and eliminated the Adjutant General from the state's government. Instructed with supervising public lands, immigration, and the state's prison system –

[162] Miller, "Reinventing the Penitentiary," 88.
[163] Ibid., 95.
[164] Ibid., 95.
[165] Shofner, "Custom, Law, and History," 287.
[166] The 1885 constitution instituted poll taxes and required public officials to post large security bonds in order to take office. Revisions passed in 1889, moreover, mandated segregated ballot boxes and strengthened Florida's poll tax by requiring all residents to pay poll taxes two years before voting. See: Ibid., 287.

responsibilities previously afforded largely to the Adjutant General – Florida's newly-created Commissioner of Agriculture was thus in a position to begin coordinating land and prison policies in ways that would attract extractive, development, and agricultural industries to the state.[167]

Such industries found the state's convict leasing arrangements particularly enticing. According to Miller, for instance, the state's Commissioner of Agriculture leased all of its convicts to a phosphate mine operator in 1890. In addition to paying only $22.50 per inmate, the mine owner, Miller points out, subleased several extra convicts to naval stores producers, who used the prisoners to render resins, turpentine, and other products commonly used in the construction of ships.[168] Similarly, adds Miller, in 1900 the Agricultural Commissioner leased nearly 700 convicts to twelve labor camps spanning seven counties, where they worked in phosphate mines and navel stores yards.[169] According to Matthew Mancini, two years later the Florida Naval Stores and Commission bought inmates for $150 each, while the following year the company subleased children, some younger than twelve, from Marion Farms, a state "hospital," to turpentine farms for just fifteen dollars each.[170] With over 1000 inmates confined to twenty-eight privately-run prison labor camps in 1903, Florida's per capita prison population exceeded that of any other Southern state.[171] Thus, as Florida's government aimed to grow its commercial appeal to investors, the state's penal practices became increasingly aligned with the interests of agricultural, manufacturing, and extractive industries.

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[167] To read the constitution in full, see: State Archives of Florida, Division of Library & Information Services "Constitution of 1885," accessed 23 September 2012, http://www.floridamemory.com/items/show/189169.
[168] Miller, "Reinventing the Penitentiary," 88.
[169] Ibid., 88.
[170] Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia, South Carolina: University of South Carolina Press, 1996): 194.
[171] Ibid., 188.

Such collusion, however, did not persist without the interruptions of public scrutiny. According to Zimmerman (cited in Adamson), mortality rates were shockingly high throughout the South's convict labor camps. In some camps, as many as half of the laborers died annually.[172] In an attempt to save Florida's arrangements from the microscope of inquiry, the state's Agricultural Commissioner, according to Miller, contended in 1892 that prisoners were not only in the "charge of sober, reliable, and humane men," but also had access to physicians.[173] Nonetheless, as the public continued to learn of deaths in the labor camps, Florida officials began appointing inspectors, holding hearings, and producing reports.[174] Testifying before the Florida House, one former prisoner recalled guards whipping the skin off of one man's back and beating "sick men" to death.[175] Following investigations prompted by inmate deaths at a phosphate mine, a House Committee, Mancini notes, reported "a system of cruelty and inhumanity at this camp, that it would be hard to realize unless it could be seen and heard direct."[176]

Such gruesome disclosures persuaded lawmakers to pass reform legislation and pressured penal officials to establish mechanisms of oversight,[177] but none of these efforts managed to seriously call into question the practice of convict leasing itself. Instead, public officials considered the problems correctable through stronger regulations. Indeed, poor regulations, Governor William Jennings proclaimed in 1901, "deprived the State of tens of thousands of dollars."[178] Therefore, in order to ensure that the state received "proper remuneration" and prisoners received "more civilized treatment," Jennings continued, the lease system must

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[172] Statistics cited by Adamson demonstrate that according to some accounts, in Alabama over one-third of the prisoners leased to Milner Coal Mine died annually, while over half leased to the Greenwood and Augusta Railroad died annually. See: Adamson, "Punishment After Slavery," 566. Citing: Zimmerman, "Penal systems and penal reforms in the South since the Civil War," 160.
[173] Miller, "Reinventing the Penitentiary," 90.
[174] Ibid., 90-91.
[175] Mancini, *One Dies, Get Another*, 191.
[176] Ibid., 191.
[177] Ibid., 191. Also see: Miller, "Reinventing the Penitentiary," 90-92.
[178] Mancini, *One Dies, Get Another*, 191-192.

continue "under proper management."[179] In fact, "under proper restrictive legislation," Jennings asserted in defense of convict leasing, "the employment of convicts in the open air should have a more humanizing influence on prisoners than confinement within prison walls." It is without question, Jennings concluded, "that the sunlight, healthy and balmy air, and out-door exercise is beter [sic] for the health of convicts" than confinement."[180] Thus, when administered properly, hard labor operated as a kind of therapeutic punishment, producing healthy, humanizing effects for prisoners.

Governor Napoleon Broward, Governor Jennings's successor, further defended convict leasing, concluding that "the purpose of penal laws and prisons" was not to exact "revenge upon the criminal and his offense against society," but "to reform him" by making him "a beneficial and producing element of the social system, rather than a charge upon it."[181] Governor Albert Gilchrist, Broward's successor, similarly defended Florida's penal practices. Speaking before the National Prison Association, Governor Gilchrist argued that the lease system was a healthful method of convict management, one that existed for "the betterment of the prisoner."[182] Convict leasing, thus, was not only understood as a therapeutic way of humanizing inmates – it also became understood as a way of transforming offenders into productive, beneficial members of the social milieu.

Hard labor, however, was almost exclusively reserved for black convicts. As Adamson notes, Florida juries hardly ever sentenced white convicts to hard labor.[183] Moreover, black convicts outnumbered white convicts by a ratio of twenty to one.[184] As Miller points out, black prisoners constituted nearly 90 percent of Florida's prison population in the late 1800s and early

[179] Ibid., 191-192.
[180] Miller, "Reinventing the Penitentiary," 96-97.
[181] Ibid., 97.
[182] Mancini, *One Dies, Get Another*, 193.
[183] Adamson, "Punishment After Slavery," 565.
[184] Ibid., 565.

1900s.[185] Thus, by and large, the therapeutic, humanizing, and transformative effects of convict leasing existed solely for the betterment of the ex-slave-turned-inmate. Perhaps unsurprisingly, then, employers used slave terminology while referring to prisoners. For example, according to Adamson, able-bodied males qualified as "full hands," women and children qualified as "half hands," and the elderly and infirm qualified as "dead hands."[186] Contractors and company representatives, adds Adamson, assigned valued accordingly.[187]

But if physical ability functioned as the standard by which inmates were understood and valued, productivity and obedience functioned as the principles to which inmates were held constantly accountable. Florida's public and private penal officials, for instance, rewarded obedience and productivity by shortening a prisoner's sentence.[188] However, prisoners who misbehaved, for example by refusing to work or not working fast enough, were commonly punished with beatings or locked up for days, often weeks, inside small, hot, unventilated wooden cells known as sweatboxes.[189] According to Jeffrey Drobney, guards also punished disorderly inmates by strapping them down and pouring water into their mouths, forcing their stomachs to expand and extend, causing the inmate excruciating pain and sometimes even death.[190]

Thus, Florida's penal practices were able to humanize the convict inasmuch as they recognized resistance and disorder as obstacles. To reform the inmate into a beneficial member of society, therefore, meant literally to reconstitute him as an obedient and productive laborer. Through the practice of convict leasing, consequently, Florida's population of black inmates,

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[185] Miller, "Reinventing the Penitentiary," 82.
[186] Adamson, "Punishment After Slavery," 560.
[187] Ibid., 560.
[188] McClellan, *A Digest*, 961.
[189] Jeffrey A. Drobney, "Where Palm and Pine Are Blowing: Convict Labor in the North Florida Turpentine Industry, 1877-1923," *The Florida Historical Quarterly* 72, no. 4 (1994): 429.
[190] Ibid., 429.

rather than strictly becoming the subjects of punitive hard labor sentences, instead became the subjects of a reform-oriented penology that sought to remind them of their obligation to work. In what other ways might have Florida's post-Civil War discourses and practices functioned to regulate the lives of the state's black residents? How would such discourses and practices rely on labor as a means of reforming individuals into productive and beneficial elements of society?

Wardship Practices

In 1866, Florida's legislature passed a law assigning marriage certificates to all "colored persons [who] have resided and lived together as husband and wife."[191] Evidently, consent was entirely unnecessary, as the new marriages were solemnized via legislative declaration and in the absence of witnesses. Nonetheless, as part of the same act, the "children born of such parents" were "legitimized" and "made heirs of their parents."[192] Although the distribution of marriage rights might at first seem relatively benign, the absence of both consent and ritual suggests Florida's legislature had more practical objectives in mind.

Indeed, with Florida's black residents now appropriately divided into family units, not only could their moral, social, and economic positions be more effectively assessed, but their relationships with one another could also be more directly interrupted and manipulated in the service of the public good. Soon enough, officials began investigating black couples for moral integrity, the purity of which could be evaluated with reference to their marital status. For example, as N. Gordon Carper notes, in an article published by the *Independent* in 1904, the paper relayed stories of white men paying black women to "entice negro men into their

[191] The legislature had previously passed "An Act to establish and enforce the Marriage Relation between Persons of Color," which required black couples to either separate or marry after nine months of cohabitation. After receiving criticism from the North, Florida's legislature, according to Shofner, simply the solemnization decree discussed above. See: Shofner, "Custom, Law, and History," 281.
[192] McClellan, *A Digest*, 753.

houses."[193] Local police, the article finds, then would arrest the men, charge them with adultery, and profit by leasing the men to nearby labor camp operators.[194]

When it came to scrutinizing intra-familial as opposed to extra-familial relationships, however, local authorities searched for economic solvency. In the absence of economic security, families –black families in particular – could not only be expected to produce uneducated children, but also immoral children, children who were destined for unemployment. Florida's lawmakers had long sought to prevent such children from undermining the state's industriousness. Territorial law, for instance, declared that an orphaned child without an "estate sufficient for his maintenance out of its profits, shall, by order of the Judge of the County Court, be bound out as an apprentice…to some master or mistress, who shall covenant to teach the said apprentice some art, trade, or business."[195] The children of vagrants could similarly be bound out, even if both of the child's parents were still alive. In fact, in any case where a parent with a child under the age of sixteen was convicted of vagrancy, Florida's courts were instructed to "bind out such child as an apprentice."[196] After an apprenticeship's termination, which occurred at sixteen for girls and eighteen for boys, masters were only required to provide their subjects with a "new suit of clothes."[197]

In the post-bellum period, Florida's legislature continued such practices, instructing boards of county commissioners to bind out the children of registered paupers. Commissioners were also instructed to bind out the children of absent and economically unsupportive fathers and

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[193] N. Gordon Carper, "Slavery Revisited: Peonage in the South," *Phylon* 37, no. 1 (1976): 89. Citing: "The New Slavery in the South," *Independent* (February 18, 1904): 413.
[194] Ibid., 413.
[195] McClellan, *A Digest*, 103.
[196] McClellan, *A Digest*, 104. Male orphans were bound out until the age of twenty-one, while female orphans were bound out until the age of sixteen. In return, the master or mistress was obliged to: 1) teach the child an "art, trade, or business, to be particularized by the indenture," 2) instruct the child in "reading, writing, and arithmetic," and 3) give the child "a new suit of clothes" at the end of the "indenture." See: Ibid., 103-105.
[197] Ibid., 103.

neglectful mothers.[198] County judges, on the other hand, could assign a guardian to a child in any case that "appears necessary and proper."[199] Guardians, in turn, exercised all parental rights, including the right to bind out their court-assigned subjects as apprentices.[200] According to Richardson, Florida's apprenticeship laws not only constituted a key part of the state's black codes, but also were some of the most "vigorously enforced" of Florida's discriminatory post-Civil War statutes.[201]

Moreover, according to a law passed in 1886, children were required "to make provisions" for the support of "natural parents" deemed "unable to support themselves." To ensure compliance, the law allowed Justices of the Peace to garnish the child's wages.[202] Thus, by legitimizing the familial relationships of the state's black residents, Florida's legislature also transformed them into objects of legal investigation and evaluation. Such relationships then could become mechanisms through which duties could be assigned, morality could be judged, and rights could be severed and redistributed.

The normative basis upon which such mechanisms were accessed stemmed from the assumption that both economic impropriety and familial disorder bred crime, unemployment, immorality, and racial disharmony, as well as other ills that undermined social and economic progress. The propagation of such behaviors, thus, could not be tolerated. In his 1907 message to the state legislature, Governor Broward proposed his plan for ending such disorder. His speech is worth quoting at length:

> The negroes today have less friendship for the white people than they ever had since the Civil War, and the white people have less tolerance and sympathy for the negro. It is my opinion that the two races will not, for any great length of time,

[198] Ibid., 104.
[199] Ibid., 559.
[200] Ibid., 127 and 753
[201] Richardson, "Florida Black Codes," 377.
[202] McClellan, *A Digest*, 127-128.

> occupy the same territory without friction and outbreaks of disorder between the two…I deem it best, and therefore recommend a resolution memorializing the Congress of the United States to purchase territory, either domestic or foreign, and provide means to purchase the property of the negroes, at reasonable prices, and to transport them to the territory purchased by the United States. **The United States to organize a government for them of the negro race; to protect them from foreign invasion; to prevent white people from living among them on the territory, and to prevent negroes from migrating back to the United States**. I believe this to be the only hope of a solution of the race problem between the white and black races, as I can see no ultimate good results that can accrue from the education of a race, without planting in their being the hope of attaining the highest position in government affairs and society…I believe that we should consider the fact that **the negroes are the wards of the white people, and that it is our duty to make whatever provision for them would be best for their well being;** and it is my opinion that the above recommendation, that they be given a home of their own, where they can hope, by living proper lives, to occupy the highest places in it, **thus educating and civilizing them, may tend toward their happiness and good**.[203] (Emphasis added)

Florida's white residents, thus, believed that the black men and women living in the state were their wards. In the interest of their wards' well-being, Florida's white residents had a duty to both protect and discipline. The message of Broward's speech is clear: either the state's black residents are to behave in a way that does not disturb the social order, or, much like the case of Native Americans, their overseers will have no choice but to forcibly relocate them.

Thus, as hard labor sentences began to be understood as a means through which the deformed morality of the black race could be adequately reformed, Florida's apprenticeship practices began to be understood as a means through which the ill-formed morality of young black children could be similarly addressed. But while Florida's harsh convict leasing practices more or less aimed to reform black men and women by returning them to a former state, the nature of Florida's apprenticeship practices was more pedagogical, designed to properly inform and train black children in the habits of industry and social order by removing them from their

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[203] Florida legislature and Napoleon Bonaparte Broward, *Message of N.B. Broward, Governor of Florida, to the Legislature, regular session of 1907* (Tallahassee, Florida: Capital Pub. Co., 1907): 62-63.

deviant parents. With each set of practices, the freedom, mobility, and citizenship of black Americans was constituted in and through their labor.

What, then, did this labor look like? What are some of the practices enabled by the legally-sanctioned processes described above? In what ways was coercion practiced on some of Florida's black residents who lived in labor camps?

The Micro-Politics of Coerced Labor

As described above, Florida's early contract labor laws proscribed "agricultural, lumber, rafting and milling" laborers from "willful disobedience," "wanton impudence," "disrespect," "failure or refusal to perform work assigned," and "abandonment of the premises or the employment of the party with whom the contract was made."[204] Similarly, Florida's early crop lien law, according to Shofner, permitted landlords to place liens against their tenants' crops for failing to pay rent after ten days of its being due, a law that also allowed landlords to force their delinquent tenants to remain landed until rendering such payments.[205] And as Carper points out, contract labor and fraud laws passed in the early 1900s by the Florida legislature were refined versions of earlier statutes, prohibiting laborers from leaving their employers after promising work in exchange for "goods and money."[206] Such "goods and money," Florida's contract labor statutes clarified, had been procured under "false pretenses," a fraud plainly evidenced by an employee's non-completion of promised services.[207]

Such laws helped create situations of bondage in which, as August Meier and Elliot Rudwick note, "insolvent croppers…were required by law to work indefinitely for the same

[204] McClellan, *A Digest*, 208-209.
[205] Shofner, "Custom, Law, and History," 282.
[206] Carper, "Slavery Revisited," 86; Also see: Shofner, "Custom, Law, and History," 282.
[207] Carper, "Slavery Revisited," 86.

unscrupulous planter."[208] Thus, although these laws were ostensibly aimed at deterring fraud, rather than protecting the process of exchanging labor for goods, money, and housing, they instead provided support for a series of coercive practices that functioned to trap a largely illiterate, poor, and landless class of black farm laborers in debt.

The coercive use of these contract labor and crop lien laws was also supported by Florida's broad vagrancy statutes and the ubiquitous policing practices that made them imminently relevant.[209] Indeed, such laws all but ensured the prompt return of any farm laborer attempting to escape his debt on foot. Understandably, then, the constancy of their enforcement through local police forces served to protect the material interests of the employers who needed their manual laborers to remain as immobile as possible. Thus, as several southern publications reported (quoted in Shofner 1981), in 1906 the Georgia-Florida Sawmill Association passed a resolution imploring lawmakers to make the "vagrancy laws of Georgia and Florida more effective."[210]

Florida's statutes incentivized the enforcement of these vagrancy and contract labor laws. For example, they specifically stipulated that sheriffs, magistrates, and jail wardens be compensated for arrests, convictions, and incarcerations.[211] Moreover, Florida's statutes gave broad and sweeping authorities to the state's local lawmen. Sheriffs, for example, could raise local militias and, as "*ex officio*" "timber agents," could search all public lands for escaped laborers, detain and arrest squatters, and interrogate anyone with produce or wood who could not

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[208] August Meier and Elliot M. Rudwick, *From Plantation to Ghetto* (New York, New York: Hill and Wang, 1966): 141. As quoted in: Adamson, "Punishment after Slavery," 559.
[209] McClellan, *A Digest*, 410.
[210] Jerrell H. Shofner, "Forced Labor in the Florida Forests: 1880-1950," *Journal of Forest History* 25, no. 1 (January 1981), 15-16. Citing: *Southern Lumberman*, 10 September 1906, 10. Also citing: *Tampa Tribune*, July 30 and September 26, 1906.
[211] McClellan, *A Digest*, 943-944. According to Florida's 1882 statutes, sheriffs received fifty cents for each arrest, fifty cents for each jailing, and seventy-five cents for each transporting of a prisoner to jail. For a complete list of the sheriff's powers, salary, and reimbursements, see: Ibid., 936-944.

prove ownership.[212] Perhaps more importantly, sheriffs could also freely appoint deputies,[213] a practice which they performed frequently, particularly by deputizing local employers and their agents. Deputized sheriffs, in turn, possessed almost exactly the same authorities as the sheriffs appointing them. For instance, they could pursue, investigate, interrogate, arrest, and jail suspected criminals.[214] Thus, when laborers escaped, camp officials took care to notify nearby sheriffs and deputy sheriffs, often spreading the word to officials and employers in surrounding counties through letters and telegrams.[215]

Once captured, officers transported runaway laborers to magistrates for trial. According to investigations conducted in the early 1900s by US Attorney Fred Cubberly, such proceedings were frequently informal – sometimes even taking place inside of a judge's home, and often with just a few officials present.[216] During the proceedings, the accused faced trumped-up charges for crimes like "assault and battery" and "violation of labor contract,"[217] and "petit larceny."[218] Often illiterate, without representation, and under duress, the accused frequently signed confessions admitting their guilt in exchange for completing their hard labor sentences under the supervision of their employers, rather than as inmate laborers on the county chain gang.[219]

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[212] Ibid., 939-942.
[213] Ibid., 939.
[214] Ibid., 939.
[215] Letter, Howard P. Wright to Frederick C. Cubberly, 18 July 1922, Frederick C. Cubberly Papers, 1906-1929, box 1, folder 1, Special and Area Studies Collections, Smathers Libraries, University of Florida, Gainesville, Florida (hereafter Cubberly Papers). Also see: Carper, "Slavery Revisited: Peonage in the South," 87-88.
[216] Report of E. J. Cartier, "Peonage," 23 May 1922, Affidavits from investigators re: Brown case, Cubberly Papers, box 1, folder 4, Cubberly Papers.
[217] As one federal agent pointed out, assault and battery charges were often used to supplement contract labor violation charges "to hold these negroes in the event the violation of labor contract failed." See: Carper, "Slavery Revisited," 91 and 96. Also see: Report of John Bonyne, "Peonage," 3 May 1922, Affidavits from investigators re: Brown case, box 1, folder 3, Cubberly Papers.
[218] John Washington, for example, was charged with and convicted of petit larceny for allegedly stealing one pair of overalls "valued at $2.00" and one pair of shoes "valued at $5.00." See: Record of Judge Matthis's Sentence for John Washington, 4 February 1922, Affidavits and documents used in Brown case, newspaper clippings re: Brown case, box 1, folder 7, Cubberly Papers. For a great discussion of how these and other convict peonage processes played out in Alabama, see: Blackmon, *Slavery by Another Name*.
[219] The chain gang was commonly used to threaten laborers. It will be discussed further in the next section. For a good example of an obviously forced confession, see: Signed confession of Ben Doyle to the charge of assault and

For example, according to Cubberly's files, after John Washington was captured for escaping from a Cross City labor camp, local officers brought him before Judge Matthis, where he was charged with contract labor violations and "petit larceny."[220] After pleading guilty, Washington received a fine of $150 plus court costs.[221] Unable to pay, Washington was then presented with a choice: either spend the next fifteen months incarcerated in a prison road camp or allow his employer's agent to pay his fines in exchange for labor.[222] Washington chose the latter option. Such judicial proceedings, thus, not only gave officials and employers the chance to shroud their deceptions in the cloak of judicial legitimacy, but also subjected arrested laborers to the implications of their own confessions.

Camp operators, however, did not simply rely on the complicity of local police officers and magistrates. Indeed, they often sought to capture escaped laborers by dispersing on-site laborers as trackers. The men, known as "woods riders," knew how to scour Florida's thick pinelands on horseback in search of fugitive laborers. For example, according to interviews conducted during Cubberly's investigations, Dan McIntyre, a white, self-identified "woods rider," described how his employer frequently ordered him to hunt down runaway laborers in northern Florida's pine forests.[223] Interestingly, although camp operators considered him a "guard," McIntyre, much like the laborers he sought to find, was also subject to indebtedness. Indeed, while camp overseers often rewarded guards, foremen, and woods riders – sometimes

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battery, 17 May 1922, Affidavits and documents used in Brown case, newspaper clippings re: Brown case, box 1, folder 7, Cubberly Papers.

[220] Affidavit of M.L. Brown, 4 February 1922, Affidavits and documents used in Brown case, newspaper clippings re: Brown case, box 1, folder 7, Cubberly Papers.

[221] The fines were $50 for violation of labor contract and $100 for petit larceny, plus court costs. See: Record of Sentence for John Washington, 4 February 1922, Affidavits and documents used in Brown case, newspaper clippings re: Brown case, Box 1, folder 7, Cubberly Papers.

[222] The sentences were six months for violation of labor contract and nine months for larceny. See: Record of Sentence and Commitment for John Washington, 4 February 1922, Affidavits and documents used in Brown case, newspaper clippings re: Brown case, box 1, folder 7, Cubberly Papers.

[223] Report of Bonyne, "Peonage," 3 May 1922, Affidavits from investigators re: Brown case, box 1, file 3, Cubberly Papers.

referred to as trusties – with privileges, such men were also held responsible for the debts of laborers who escaped under their watch.[224] Thus, the trusty functioned as a sort of security bond for camp operators, who could more or less assume that their trusties' self-interest would deter them from helping laborers escape and incentivize them to find escaped laborers.

Within the confines of Florida's backwoods bondage and peonage labor camps, operators compelled laborers to purchase exorbitantly priced food, clothing, and tools from camp commissaries. Soon, laborers would discover that their wages failed to cover even the most basic daily necessities.[225] But before trapping laborers in debt, camp operators first lured them to camps, sometimes from miles away. For instance, according to Carper, labor agents for Henry Flagler regularly advanced transportation costs to out-of-state laborers who were willing to sign labor contracts. The men would soon be paid substandard wages for dangerous work, but the contracts they signed and the transportation costs advanced obstructed their capacity to depart, not to mention the obstacles presented by Flagler's allies at local sheriffs' departments.[226]

Once laborers arrived at the camps, overseers began a process of manipulation. For some operators, this involved providing laborers with entertainment. Minstrel shows, gambling, and alcoholic beverages were common. Such was the case with Captain Brown, the operator of the North Florida labor camp that became the subject of Cubberly's anti-peonage investigations. Cubberly's files show how Brown not only encouraged his laborers to drink and gamble, but also

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[224] Nathan Mayo, *Twentieth Biennial Report of the Prison Division of the Department of Agriculture of the State of Florida for the Years, 1927 and 1928* (Tallahassee, Florida: T.J. Appleyard, Inc., 1929), 56, in Nathan Mayo Papers, 1923-1960, box 7, Subject File on Prisons, Special and Area Studies Collections, University of Florida Smathers Libraries, Gainesville, Florida (hereafter Mayo Papers). McIntyre was held responsible for the debt of prisoners escaping under his watch. See: Report of Bonyne, "Peonage," 3 May 1922, Affidavits from investigators re: Brown case, box 1, folder 3, Cubberly Papers,

[225] Report of Bonyne, "Peonage," 3 May 1922, Affidavits from investigators re: Brown case, box 1, subject folder 3, Cubberly Papers. Also see: Carper, "Slavery Revisited: Peonage in the South," 97.

[226] Carper, "Slavery Revisited," 90-91.

organized so-called juke dances for them.[227] For Brown, providing such entertainment served as an opportunity in which to practice power over laborers. For example, as Cubberly's files show, a laborer by the name of George Finch describes how – during one of the dances – Brown ordered Finch to dance with a woman. When Finch refused, Brown, according to Finch, beat him.[228] Thus, although camp operators like Brown gave laborers access to fleeting pleasures and forbidden beverages, they frequently deployed these goods and services in ways that established, affirmed, and perpetuated their authority.

Brown sought to structure the everyday lives of his laborers in ways that reinforced their bondage, conditioned their immobility, and intensified their debt. For instance, when laborers wanted to briefly leave the camp, Brown used it as an opportunity to remind them of the camp's hierarchy. Some laborers seeking to briefly leave the camp were chaperoned by guards and chaperones, while others were simply beaten.[229] Before allowing Rena French to leave the camp, Brown wrote her a permission slip and confiscated her Liberty Bond.[230] When Eve Johnson wanted to visit her mother in Georgia, Brown advanced her some money for transportation. Shortly after she left, however, Brown swore out a warrant for her arrest, and she was soon returned to him by Georgia police.[231] Such practices are notable not merely because they exemplify Brown's cruelty, but because they illustrate the ways in which Brown articulated his power – by showing laborers the distance of his reach, by making their travels contingent on his sole permission, and by exploiting pre-existing investments like Liberty Bonds.

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[227] Report of Bonyne, "Peonage," 3 May 1922, Affidavits from investigators re: Brown case, box 1, folder 3. Cubberly Papers, In particular, see the information on Eddie Whitlock and Ed Graham.
[228] Ibid. In particular, see: George Finch.
[229] Ibid.
[230] Liberty Bonds were sold during World War I to help with the war effort. In fact, during World War I, Brown forced many of his laborers to purchase Liberty Bonds, from which he could deduct money for rent and furniture. See: Ibid. In particular, see the sections on Salina Jones and Rena French.
[231] Ibid.

Brown's treatment of women is particularly revealing. Although less common than male laborers, it was not abnormal for black women like Johnson and French to work in Florida's labor camps. Many of them performed domestic work, such as washing clothes and cooking. Such work, however, was almost always coupled with sex work. For example, as Eve Johnson describes to investigators, Brown forced her to have sex with him and the other men at the camp for over a decade.[232] Similarly, Lira Jackson describes how, after coming to Brown's camp in search of her daughter, Brown refused to let her leave, instead beating her regularly and forcing her to have sex with the camp's men.[233]

Brown organized sex work in ways that were profitable for him. As Eddie Whitlock describes, when male laborers wanted to have sex with the camp's women, Brown wrote them "scripts," which they then gave to the women. When the women returned the scripts to the commissary, Brown credited their women's accounts and debited the men's accounts accordingly.[234] When women failed to return the scripts to the commissary, however, Brown often beat them and forced them to work in the fields.[235] Brown's methods even extended to children, at least one of which was as young as eight years old.[236] According to one woman, after she and her two young daughters came to Brown's camp in search of work, Brown made the girls work as his personal servants, forcing one of the girls to have sex with him when she was thirteen and the other to have sex with him "once every week." Perhaps unsurprisingly, both of the girls became pregnant.[237]

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[232] Ibid.
[233] Ibid.
[234] Ibid.
[235] Ibid. In particular, see the sections on Willie Reynolds, Della Green, Salina Jones, Hattie Johnson, and Flossie Henderson.
[236] Ibid. See: Luther James Thomas.
[237] Ibid. In particular, see: Vina Lee Wright and Lillie Johnson.

The purpose of reiterating such horrific stories is not to be gratuitous, but rather to demonstrate that Florida's labor camps were governed in and through an insidiously regimented articulation of power. Forced pregnancy, for example, was not merely the unintended consequence of sexual predation. Rather, it was also a mechanism through which men, women, and children – entire families – could be bound to a camp relationally, temporally, and spatially. It meant not only that they would develop complicated, entangling relationships with camp residents, but also that they would feel dependent on the camp for medical assistance. Moreover, it undermined any expectations that they might have of being in control of their lives. Similarly, the use of scripts for Brown's prostitution rings functioned not simply to produce profits – it also made women aware that their illegal, socially despised activities were being recorded, that their sexual indiscretions were being documented and filed. In this sense, Brown made his prisoners complicit in their own bondage, disciplined in both the protection of their own secrets and incentivized in the obedient performance of their assigned tasks.

Although Brown was eventually arrested and convicted for violating federal anti-forced labor statutes, the ways in which he sought to manipulate his subjects indicate that his efforts were sanctioned, at the very least, by a significant degree of local impunity. When it comes to how this impunity was bound up with racism, however, the example of Henry Jones stands out as particularly instructive. Jones, a black man who was in charge of the commissary at Brown's camp, describes how Brown owed him close to $600. Brown, however, refused to pay – not because he denied owing Jones the money, but rather because, as Jones recalls, Brown thought he would "squander it."[238] In other words, as far as Brown was concerned, giving black men and women money – even when they deserved it – was an imprudent and futile exercise. Thus, it was not so much indebtedness that allowed operators like Brown to flourish, but rather the privilege,

[238] Ibid. In particular, see: Henry Jones.

authority, and credibility that came with being white, propertied, and male. The micro-politics of coerced labor, therefore, relied not so much on deception, physical threats, and debt as much as they relied on the assumption that black men and women were irresponsible, immoral, and dangerous without white supervision.

An Emerging Penology

In *Discipline and Punish*, Foucault identifies three models of penal confinement. In the Ghent model, the *maisons de force*, or wardens, sought to reform criminals by prescribing them training in various vocations. This, in effect, reflected "a universal pedagogy of work for those who had proven to be resistant to it."[239] The English model, similarly, sought to reform inmates by isolating them and assigning them repetitive tasks. Through solitary, repetitive introspection, an inmate, Foucault writes, might "go into himself and rediscover in the depths of his conscience the voice of good," eventually achieving "spiritual conversion." Finally, in the Pennsylvania model, inmates worked collectively while officials regimented their activities with constant surveillance and strict time-tables. In this model, Foucault explains, the "studied manipulation of the individual" – through various "schemata of constraint" and "compulsory movements, regular activities, solitary meditation, work in common, silence, application, respect, good habits" – constituted a "technique of correction" aimed at producing "the obedient subject, the individual subjected to habits, rules, [and] orders."[240]

As Foucault explains, the strategic application of these sets of practices reflected, produced, and engaged with ongoing scientific discourses.[241] Although the prisons in Ghent,

[239] Michel Foucault, *Discipline and Punish: The Birth of The Prison*, 2nd Vintage Books ed., trans. Alan Sheridan (New York, New York: Random House, 1995): 121.
[240] Ibid., 128.
[241] Ibid., 130-131.

England, and Pennsylvania deployed different practices for different purposes, the knowledge that these practices produced converged through emerging discourses on penology and punishment, thus having a dramatic influence on the disposition of the modern prison, in which labor and incarceration now function as the primary methods of practicing punitive power.[242]

In Florida, traces of Foucault's models can be found. For example, apprenticeship practices functioned as a pedagogical technique through which the moral deviances of young black individuals could be eliminated through close supervision and labor. Convict leasing, on the other hand, operated as a corrective technology through which the disruptors of racial harmony could be transformed, reformed through regimes of hard labor and various schemata of constraint into obedient subjects. Within the camps, disorderly laborers would sometimes be put in solitary confinement – locked inside small sweatboxes – granted release only after admitting their transgressions and pledging their obedience. Arrested fugitives, meanwhile, were expected to confess their crimes and admit their guilt before being remanded to the employers they had wronged.

However, it is not clear whether and how such practices converged, discursively or institutionally, to produce a coherent, stabilized set of power and knowledge relations. Important questions, therefore, remain unanswered. In what ways did the power and knowledge relations between black and white Americans in Florida become institutionalized? What kinds of practices did this involve? What technologies of power were deployed?

[242] Ibid., 131.

CHAPTER III

ROAD GANGS, PRISON FARMS, AND REFORMATORIES

At the beginning of the 20th Century, a series of high-profile federal anti-peonage investigations brought negative attention to the South's brutal forced labor operations. Northerners looked disdainfully upon convict leasing as an emblem of Southern corruption, while progressive Southern politicians regarded it as uncivilized. In 1911, the US Supreme Court declared an Alabama labor law unconstitutional, ruling that forcing someone to "labor for another in payment of debt" violated the 13th Amendment.[243] According to Carper, the ruling substantially undermined the "legal framework" from which convict leasing derived its legitimacy.[244]

As Mancini notes, a variety of additional factors explain the eventual demise of convict leasing throughout the South, and, as Alex Lichtenstein also demonstrates, abolishing the practice became as a rallying cry for Southern progressive movements, the leaders of which often campaigned on promises to implement penal reforms.[245] However, rather than eliminate the practice of penal labor in its entirety, state and local governments imbued it with new life and purpose – the public good. But before interrogating how and in what way they did this, it is first necessary to provide some context.

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[243] According to Carper, under Alabama's contract labor law, which was similar to Florida's, unfulfilled contracts constituted evidence of the crime of fraud. As such, labor contract 'violators' could be found guilty of fraud and forced to perform hard labor with little evidence other than their employers' accusations. See: Carper, "Slavery Revisited: Peonage in the South," 93. Quoting: *Bailey v. Alabama*, 219 U.S. 244 (1911).
[244] Carper, "Slavery Revisited: Peonage in the South," 93.
[245] Matthew J. Mancini, "Race, Economics, and the Abandonment of Convict Leasing," *The Journal of Negro History* 63, no. 4 (1978): 339-352; Alex Lichtenstein, "Good Roads and Chain Gangs in the Progressive South: 'The Negro Convict if a Slave'," *The Journal of Southern History* 59, no. 1 (1993): 85-110.

As Lichtenstein explains, throughout much of the 19th Century, public roads were constructed and maintained with a system of statutory labor.[246] For example, in Florida, the legislature ordered local governments to appoint road commissioners and supervisors, who were instructed to assign male residents with mandatory road duties each year.[247] However, according to Lichtenstein, as the US underwent intense industrialization at the turn of the 20th Century, politicians, advocates, and government agents began pushing for a more effective, faster way of building public roads. Interest groups, known as "good roads" associations, formed in almost every state, their calls vociferously echoed by an entourage of progressive politicians, engineers, and government geologists.[248] Their message was clear: the forces of industrialization and modernization demanded the construction of reliable, paved roads.

The federal government, as Lichtenstein notes, initiated its own plans to subsidize the construction of public roads, first creating the Office of Road Inquiry (ORI) in 1893 and then the Office of Public Roads (OPR) in 1905, both of which operated under the Department of Agriculture.[249] Throughout the country, federal engineers teamed up with local good roads advocates and state officials to tout the value of modern roads, often, as Lichtenstein explains, by providing professional construction and engineering advice.[250]

These federally-funded analyses promoted the use of convict labor in the construction of public roads. The most "rational solution" to the "road question," argued one federally-funded civil engineer from the University of Georgia quoted by Lichtenstein, would be "the employment of convicts upon the public roads."[251] The "negro," moreover, was already "accustomed" to

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[246] Lichtenstein, "Good Roads and Chain Gangs in the Progressive South," 87.
[247] McClellan, *A Digest*, 900-902.
[248] Lichtenstein, "Good Roads and Chain Gangs in the Progressive South," 86-88.
[249] Ibid., 86. For a chronology, see: National Archives, "Records of the Bureau of Public Roads," accessed September 25, 2012, http://www.archives.gov/research/guide-fed-records/groups/030.html.
[250] Lichtenstein, "Good Roads and Chain Gangs in the Progressive South," 89-90.
[251] Ibid., 90. Citing: O. H. Sheffield.

"outdoor occupations" and "experienced in manual labor," and therefore did not "possess the same aversion to working in public" as the "white race," argued the Assistant Director of the OPR.[252]

According to one OPR report quoted in Lichtenstein, road prison labor camps were much more efficient, primarily because the overseer had the ability to "develop the maximum efficiency of each man to an extent which is not possible with shifting free labor."[253] Whereas "free labor" might "strike for higher wages" if asked to work for ten hours a day in road camps, argued road engineer William L. Spoon, "convict labor is far more easily controlled," as the "convict," he continued, "is forced to do regular work." Moreover, he added, such "regular work results in the upbuilding of the convict, the upbuilding of the public roads, and the upbuilding of the state."[254] "If you hire that kind of nigger" for road work, wrote one federal road engineer in reference to free black labor (as quoted in Lichtenstein 1993), "he won't do much and you can't make him," but with road camps, "the convict is kept in his place, sleeping at night," and therefore "must obey."[255]

Soon enough, the use of convict labor in the construction of good roads became a mantra of the progressive movement, symbolizing both the end of the barbaric practice of convict leasing and the beginning of a modern system of public highways. The public, one good roads advocate argued in *Southern Good Roads* (as quoted in Lichtenstein 1993), "should demand that their criminals be worked on the roads," while the state, he continued, "should receive the profit

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[252] Lichtenstein, "Good Roads and Chain Gangs in the Progressive South," 106. Citing: P. St. Julien Wilson, Asst. Director of the Office of Public Roads.
[253] Lichtenstein, "Good Roads and Chain Gangs in the Progressive South," 103. Citing: J. E. Pennybacker, Jr., H. S. Fairbank, and W. F. Draper, *Convict Labor for Road Work.*
[254] Lichtenstein, "Good Roads and Chain Gangs in the Progressive South," 103. Citing: W. L. Spoon, "Road Work and the Convict," *Southern Good Roads*, II (November 1910), 15.
[255] Lichtenstein, "Good Roads and Chain Gangs in the Progressive South," 109. Citing: J. H. Dodge to A. N. Johnson.

of their labor" – not just "a few individuals," as with convict leasing.[256] By 1913, twenty-five state governors voiced support for the use of convict labor in the construction of public roads.[257] "There is no question," the governor of Nevada argued, that convict road labor "has had a wholesome effect on our prison system, and has been the means of giving a new start in life to a large portion of the discharged and paroled men."[258] The "healthful nature of such work," one newspaper stated,[259] would teach the convict "to be cleanly, industrious and orderly."[260]

Road camps presented an opportunity for governments to kill several birds with one stone. Not only was inmate labor more efficient and reliable than previous road labor arrangements – it was also cost-effective. Moreover, it helped achieve the objectives of penology: the reformation and rehabilitation of criminals. Additionally, road camps, popularly known as chain gangs, were both infamously brutal and publicly visible. Accordingly, many advocates also found that road prison camps deterred black laborers from idleness or migrating north in search of better wages. As Lichtenstein finds, one road engineer claimed that the chain gangs resulted in "an abundance of labor" on plantations, producing "a wholesome effect on a race" that was "not noted for either industry or thrift."[261] Thus, as good roads movements continued gaining momentum, local advocates aggressively pressured county and state officials to institute reliable convict road force programs.

As mentioned above, good roads advocates made their case by positioning themselves as reformers of the penal system, specifically targeting the practice of leasing convicts to private businesses. But while they certainly challenged the corrupt nature of the lease system, reformers,

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[256] "What is Coming," *Southern Good Roads*, II (August 1910), 17. As cited in: Ibid., 107.
[257] "Twenty-Five Governors Go on Record as Favoring Convict Labor on Roads," *The Spokesman-Review*, December 20, 1913, 7.
[258] Ibid., 7.
[259] Ibid.
[260] Ibid.
[261] Lichtenstein, "Good Roads and Chain Gangs in the Progressive South," 109. Citing: D. H. Winslow, "Defects in Southern Road Laws," *Southern Good Roads*, VI (July 1912), 11.

Lichtenstein finds, were much more concerned with properly distributing the benefits of convict labor.[262] The convict, one reformer argued (as quoted by Lichtenstein 1993), was just "as much the property of the state as the slave before the war was the property of the slave owner." Therefore, his labor, the advocate concluded, must be used "to the end that the community at large may be served."[263] According to progressive Georgia Governor Joseph Brown, the new system of chain gangs and road camps symbolized "the closer binding of the common interests of the farmer and the merchant."[264] Thus, rather than ending compulsory prison labor, the good roads movement, as Lichtenstein pointedly contends, simply rationalized its administration, placing its purpose within the context of race relations and state modernization.[265]

While a serpentine network of road camps would soon grow to support the calculated modernization of public infrastructure, Southern penal officials, now in charge of larger prisoner populations, would soon need new prison facilities in which to house a growing number of offenders. Influenced in part by race and eugenics discourses, state hospitals and mental health asylums would incarcerate and often sterilize insane and so-called feeble-minded prisoners.[266] Prison farms, on the other hand, would function as places in which prisoners could work on public lands and in publicly-run industries. First-offender and juvenile facilities, alternatively, would serve as sites in which special classes of inmates could be rehabilitated, educated, and given job training. What did Florida's prisons look like? What motivated their growth? What kinds of power and knowledge relations became institutionalized as a result? What practices did they produce, and how were these practices justified?

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[262] Ibid., 90-91.
[263] Ibid., 107. Citing: E. Stagg Whitin, "Convicts and Road Building," *Southern Good Roads*, V (June 1912): 16.
[264] Ibid., 86. Citing: Joseph Brown in *Southern Good Roads*, I (March 1910), 17.
[265] Ibid., 89-90.
[266] For a good history of the institutionalization of individuals with mental 'disabilities' in the South, see: Steven Noll, *Feeble-Minded in Our Midst: Institutions for the Mentally Retarded in the South, 1900-1940* (Chapel Hill, North Carolina: University of North Carolina Press, 1995).

The Demise of Convict Leasing in Florida

In the early 1900s, federal investigators tried on numerous occasions to abolish Florida's notorious convict leasing and debt bondage operations. In 1902, for example, federal investigators working with Cubberly uncovered Samuel Clyatt's forced labor operation in Georgia and the Florida panhandle. Ultimately, Florida courts convicted Clyatt of violating the 13th Amendment's anti-peonage protections. However, upon reviewing the case in 1904, the US Supreme Court, while upholding federal anti-peonage statutes, moved to grant Clyatt a new trial, finding that transporting men with the intent to force them to work did not necessarily prove the existence of peonage.[267]

In 1908, federal prosecutors again charged Florida labor agents with violating anti-peonage protections. The men, employed by railroad developer Henry Flagler, were accused of luring migrant workers to the state for the purposes of holding them in bondage. However, during their trial, United Groceries and the Florida Turpentine Association pressured jury members for acquittal. In fact, according to Carper, the jury's foreman was the president of United Groceries, a company that supplied goods to camp commissaries throughout the state. Arguing that prosecutors failed to prove "an agreement of minds with evil intent to conspire," the judge advised the jury to find the men not guilty. They were acquitted.[268]

Such defeats illustrate that eliminating Florida's forced labor operations constituted an especially stubborn proposition. Although the ultimate ruling of Alabama's contract labor law as unconstitutional – mentioned in the beginning of this chapter – jeopardized convict leasing practices throughout the South, Florida lawmakers, rather than abolishing their state's statutory support of the practice – simply recast such support in different legal language. In 1907, for

[267] Shofner, "Forced Labor in the Florida Forests," 16-18.
[268] Carper, "Slavery Revisited," 90-91.

example, Florida lawmakers, according to Shofner, revised the state's contract labor statute to read that unsatisfied labor contracts constituted "prima facie evidence of intent to fraud," thereby shifting the burden of proof from employers, who previously had to provide evidence of guilt, to laborers, who now had to provide evidence of innocence.[269]

The penetrating gaze of media scrutiny certainly brought increasingly contentious attention to the prevalence of convict leasing and forced labor in Florida.[270] A typical newspaper editorial, for example, contended that convict leasing was "a disgrace to any civilized country" and constituted "legalized barbarity."[271] Controlling the practice of convict leasing, thus, became a political pertinent issue. In 1917, for example, lawmakers passed a bill that prohibited private lessees from subleasing convicts, leasing convicts that were physically unable to perform hard labor, and leasing female convicts unless for "domestic or agricultural" purposes.[272] Interestingly, however, the new statutes explicitly permitted the state to lease "able-bodied negro male prisoners" who were "not needed by the Board of Commissioners of State Institutions" – as long as a "satisfactory price" could be obtained.[273] In 1919, the legislature brought all state prisoners under the control of public institutions, though leasing county prisoners remained legal.[274] Thus, as Florida lawmakers experimented with penal reforms, they were sure to provide a series of workable exceptions.

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[269] Shofner, "Forced Labor in the Florida Forests," 19. Citing: *Laws of Florida, 1907,* Chapter 5678, Section 182.
[270] Media-led investigations show the extent of Florida's peonage operations. For example, in 1921, Sydney Catts, the state's former governor, was arrested in Atlanta after federal officials received information that he had been holding ex-convicts in bondage. Although officials eventually dropped the charges, this and other high-profile peonage cases illustrate the political climate fostering peonage in Florida. See: "Federal Warrants for Catts Issued," *The Spartanburg Herald*, May 20, 1921, 4.
[271] "The Convict Lease System," *The Miami Metropolis*, July 12, 1911, 4. The *Metropolis* was in part reprinting and endorsing an earlier editorial published in *The Tampa Tribune*.
[272] *General Acts and Resolutions Adopted by the Legislature of Florida at its Sixteenth Regular Session, April 3 to June 1, 1917* (Tallahassee, Florida: T. J. Appleyard, 1917): 151-156.
[273] Ibid., 152-153.
[274] Ibid., 101-103.

In 1922, Florida's convict leasing practices would be dealt another blow. Following Cubberly's investigations of Brown's labor camp, described above, federal prosecutors charged Brown and his brother with murder and peonage violations. Public controversy surrounded the trial, as a deputy sheriff shot one of the prosecution's witnesses before he could testify.[275] In another case that year, Martin Tabert, a white traveler sentenced to hard labor, was beaten to death by a guard at a camp in North Florida.[276] Tabert quickly became the symbol of an abolitionist crusade that grew to include nationally syndicated reporters, well-connected attorneys, and a Congressional investigation.[277] Although Florida's Supreme Court ultimately threw out the guard's conviction, the unprecedented level of attention surrounding the case streamlined public outrage.[278] In Florida alone, according to Carper, nearly fifty newspapers condemned convict leasing.[279] Finally, on May 25th, 1923, Governor Hardee signed legislation abolishing the practice of convict leasing.[280]

The Convict Road Force

Carper's account of peonage in the South largely depicts the demise of Florida's system of convict leasing as the understandable consequence of increased public criticism. However, as Lichtenstein's analysis clearly demonstrates, the declining popularity of convict leasing in the South proceeded alongside rises in the use of road prison camps.[281] In what ways, then, did road camps emerge in Florida, and how might they have come to take the place of convict leasing?

[275] Carper, "Slavery Revisited," 96.
[276] Ibid., 97.
[277] Ibid., 97.
[278] Shofner, "Forced Labor in the Florida Forests," 21-22.
[279] Carper, "Slavery Revisited," 97.
[280] Ibid., 98.
[281] Lichtenstein, "Good Roads and Chain Gangs in the Progressive South," 87-88.

Public discourses in Florida during the early 1900s show that long before the state abolished convict leasing in 1923, legislators and politicians were actively seeking to substitute the practice with some form of a publicly-rub replacement.[282] As early as 1912, for instance, replacing convict leasing was already operating as a central political issue. In his gubernatorial platform, for instance, one Democratic candidate – a self-described "conservative and progressive" – proposed eliminating the "brutalizing convict lease system" and replacing it with a more publicly beneficial system of inmate labor. Although the state had "no right" to profit from the "misfortune" of its citizens, he contended, it was nonetheless "entitled" to use the convict's labor for road construction. All profits rendered by the state, he continued, "should be set aside" and distributed to the convict's family, who, rather than suffer, must instead be "supported" by the convict's labor.[283]

According to another 1912 gubernatorial candidate, however, the convict road force was impractical and expensive. While "good roads" were "essential" to "the upbuilding [sic] of Florida," he conceded, using free labor would simply be cheaper. Instead, he suggested working convicts on publicly-run "prison farms," where they could produce goods that the state could then sell at a profit.[284] Thus, forcing inmates to work constituted a moral problem only inasmuch as its benefits remained restricted to private parties. The question, then, was how to design a system through which the benefits of forced inmate labor could be distributed most equitably.

Although convict leasing was a much more popular solution, since the 1870s, Florida law technically permitted County Commissioners to employ prisoners on public works projects. According to statutes passed in 1877, for example, commissioners could employ all "persons

[282] For example, see the bill proposed on April 11, 1911 by Representative Angle from Polk County: "Abolition of Convict Lease is Provided in Bill," *The Weekly Miami Metropolis*, 14 April 1911, 1.
[283] "Col. Cromwell Gibbons: Candidate for Governor of Florida," *The Miami Metropolis*, 22 April 1912, 3.
[284] "Milton's Message to the People: More Facts and Figures about Good Roads, Convicts and Taxation," *The Miami Metropolis*, 30 March 1912, 2.

imprisoned" in jail for "crime, or for a failure to pay a fine and costs imposed…at labor upon the streets of incorporated cities or towns, upon the roads, bridges and public works."[285] In 1917, the public works model would be adopted state-wide, as Florida lawmakers authorized the Board of State Institutions to employ state prisoners on roads and created the State Convict Road Force.[286] In 1919, lawmakers instructed the State Convict Road Force to employ "all male State or felony prisoners…capable of performing any of the several duties incident to road construction."[287] When lawmakers abolished convict leasing entirely in 1923, they gave County Commissioners the authority to work prisoners on all "public works owned and operated by the county."[288] Thus, before convict leasing had even been abolished, the state had already put legions of primarily black inmates to work on road prison camps, where they worked under grueling conditions to modernize the state's transportation infrastructure.

Perhaps most interesting is that County Commissioners could also lease county prisoners to other public entities such as neighboring county governments.[289] In other words, Florida's politicians and lawmakers considered convict leasing brutalizing and barbaric only inasmuch as private employers remained its sole beneficiaries. However, if inmate labor contracts remained exclusively between public entities, the practice ceased to be problematic. Thus, not only would the buying and selling of inmate labor survive under the progressive banner of modernization and government regulation, but Florida lawmakers aiming to reform the practice would champion a model that harnessed its benefits in the service of the public good.

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[285] McClellan, *A Digest*, 320.
[286] *General Acts and Resolutions…1917*, 156-158.
[287] *General Acts and Resolutions Adopted by the Legislature of Florida at its Seventeenth Regular Session (April 8th to June 6th, 1919)* (Tallahassee, Florida: T. J. Appleyard, 1919): 65-66.
[288] Mayo, *Twentieth Biennial Report*, box 7, Subject File on Prisons, Mayo Papers, 71-72. Also see: Section 2 of "An ACT to Amend Sections 6217 and 6218 of the Revised General Statutes Relating to Working County Convicts," Approved by the Florida legislature on June 7, 1923.
[289] Ibid., 71-72.

Within Florida's prison road camps, efficiency and productivity were paramount. As such, penal officials and lawmakers readied camp operators with a litany of coercive tools. If a convict refused to behave in a "proper and workmanlike manner," officials, according to a Florida prison report published in 1929, could lock him in a "solitary confinement" cell, where he could be fed a restricted diet of only bread and water until "faithfully" promising "to do his work in the best manner in which he is capable of performing."[290] Known as sweatboxes, such cells were not even large enough for prisoners to sit down, and although camp guards removed separation boards at night so prisoners could lie down, inmates were as a policy deprived of "bedding or bed covering except in cold or chilly weather."[291]

Such practices confirm that the economic value of convict labor – and the violence required to extract it – not only persisted under Florida's penal reforms, but in fact were key components of such reforms. Some limitations, however, applied. For example, according to the 1929 report, prisoners could neither be starved to death nor malnourished to the point of permanent injury, and administrators were required to allow inmates to recuperate after releasing them from sweatboxes.[292] Additionally, officials were prohibited from working most convicts more than ten hours a day, sixty hours a week, or on Sundays.[293]

Moreover, according to the 1929 report, only public prison officials – not trusties – could administer punishments,[294] while administrators were made "strictly responsible for the conduct

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[290] Ibid., 53-54.
[291] "Let's Stamp Out This Disgrace," *Daytona Beach Evening News*, 4 September 1945, 4. Found in: Box 10, Newspaper Clippings on Prison Reform, Mayo Papers. For sweatbox policies regarding weather, see: Mayo, *Twentieth Biennial Report*, Page 55, Box 7, Subject File on Prisons, Mayo Papers.
[292] Mayo, *Twentieth Biennial Report*, Page 54, Box 7, Subject File on Prisons, Mayo Papers. For a full description of the sweatbox and other prison regulations, see pages 52-57.
[293] According to the 1929 Florida prison report, cooks and yard men were given every other Sunday off. See: Ibid., 57 and 73.
[294] Ibid., 72.

of all prisoners in their charge, whether trusties or not."[295] Meanwhile, trusties conducting off-camp errands were required to be chaperoned by guards rather than simply given permission slips,[296] and after releasing any prisoner, officials were required to provide him with transportation funds, ostensibly to prevent local police from immediately re-arresting poor, jobless ex-convicts as vagrants.[297] Thus, although the state was entitled to harness the inmate's labor with violent force, penal officials and policymakers recognized some custodial obligation of care, however marginal.

Such regulations, however, should not be mistaken for altruism. Indeed, they were designed not so much with the intention of preventing abuse as much as ensuring efficiency. This much is made clear in articles written by road camp inspectors for the 1929 prison report mentioned above. Recognizing high rates of inmate recidivism and escape, Inspector Dickson, for example, speculated that a monthly stipend reward system might be "very effective, especially with negro convicts."[298] Replacing unsanitary mobile stockades with "permanent barracks in some centrally located place," Dickson continued, would keep prisoners "healthy and in better working condition."[299] Improvements in penal care, thus, were justified according to the positive effects they might have on the state's prison workforce.

After noticing inefficiencies in inmate labor performance, one inspector suggested constructing special facilities for convicts who are "mentally and physically unfit to perform labor of any kind."[300] But while some inspectors suggested better care or specialized facilities, other inspectors made no suggestions at all. For example, according to one inspector, "the success of the [punishment] system depends largely upon the ability, common sense and

[295] Ibid., 56.
[296] Ibid., 56.
[297] Ibid., 71.
[298] Ibid., 8.
[299] Ibid., 7-8.
[300] Ibid., 9.

discretion of the prison officials who are actually in charge of the prisoners and looking after their work." If a camp is run by a "good man," the inspector wrote, then "good discipline and good work and good prison conditions" follow, but "when a man who has not the proper qualifications" serves as camp captain, then "the conditions are not so good." "I have no recommendations or suggestions" regarding "any changes in the present system," he concluded.[301] Thus, the state's internal mechanisms for managing and evaluating prison road camps were linked with facilitating prisoner obedience, utilizing inmates efficiently and according to their physical capabilities, and strengthening productivity by improving inmate health.

At the same time that inspectors monitored prisons with an eye for economics, the state's newspapers used different standards to evaluate the treatment of prisoners in road camp. For example, after thirteen white convict slashed their heels to protest abuses in one road camp, newspapers repeatedly referenced race as they criticized the "brutality" of the camp system.[302] In another well-reported incident, newspapers admonished camp guards for putting a military veteran sentenced for vagrancy in a sweatbox. The veteran, according to one paper, was unable to keep up with the "seasoned native prisoners," most of which, the paper noted nonchalantly, were "negroes."[303]

According to Florida's newspapers and politicians, certain convicts always required the strong hand of the state. When "administered by men of proper character and standing,"

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[301] Ibid., 6.

[302] See: Box 10, Newspaper Clippings on Prison Reform, on Prison Youth, on Prisons – Raiford, on Prisons – Road Camps, on Prisons – Sweatboxes, all at the Mayo Papers collection. In particular, see: "A Hangover From The Dark Age," *The Florida Times-Union*, Date not visible, Box 10, Newspaper Clippings on Road Camps and "Convict Guard to Stand Trial for Brutality," *Pensacola Journal*, 30 July 1942, Box 10, Newspaper Clippings on Prison Reform, Mayo Papers.

[303] "Let's Stamp Out This Disgrace," *Daytona Beach Evening News*, 4 September 1945, 4; "Mayo Orders Full Supervision of All State Prison Road Camps," *Orlando Morning Sentinel,* 1 September 1945. Both articles found in: Box 10, Newspaper Clippings on Prison Reform, Mayo Papers.

Governor Millard Caldwell argued in a radio address broadcast in the wake of the veteran scandal, corporal punishment and solitary confinement constituted the best means "in the world" for controlling inmates, particularly road camps inmates, who, Caldwell added, had been "hardened" by lives of crime.[304]

Perhaps the practice of forcing inmates to work constituted one of these timeless necessities of penology described by Governor Caldwell. According to one editorialist writing in 1958, for example, when prisoners failed to "produce a greater amount of articles and commodities," then penal official "deprived" Floridians "of the most essential means of rehabilitating their prisoners – hard, honest and useful work." Training prisoners in the "habits of industry," the editorialist continued, was a fundamental component of ensuring their "well-being." Therefore, the editorialist concluded, the state must work to create a "prison industrial program" capable of "the labor of prisoners to some way other than on road maintenance."[305]

In what other ways might Florida's penal officials have managed the state's prison population in the 1900s? How might these practices have functioned in relation to discourses on labor? In what ways might Florida's prison system have evolved into a so-called prison industrial program?

The State Prison Farm

According to an article printed in a Florida government publication, Florida's prison system developed over three eras. During the "formative years" (1885-1914), the article reads, the state "was confronted with a sudden and dangerous influx" of "transient," "impoverished,"

[304] Text of "Radio Address to State of Florida" by Governor Millard F. Caldwell," 13 November 1945, Box 7, Subject File on Prison Conditions, Mayo Papers.
[305] "Divided Authority, Idle Prisoners," *Miami Herald*, November 17 1958, Box 10: Newspaper Clippings on Prisons – Raiford, Mayo Papers.

and "demoralized" criminals, making the need for a central prison "acute." Although convict leasing brought Florida "remarkable good fortune," the article continues, the state was compelled by "[p]rogress through enlightenment and improvement" to modernize its prison system. Florida responded by constructing Raiford. During the prison's "constructive years" (1918 -1932), Raiford, the article explains, was "endowed with physical stature and dimension," while during the "years of fulfillment," L.F. Chapman, the prison's superintendent, sought "to run the place for the maximum benefit of the majority." Under such forward-looking policies, the article concludes, "Raiford has seen the perfection of one of the nation's most outstanding programs of prison humanitarianism."[306]

Designed as a prison farm, Raiford would eventually sprawl across 18,000 acres of land in rural North-central Florida.[307] According to inventory lists printed in a 1929 publication, inmates raised hundreds of swine, including sows, boars, pigs, gilts, and shoats; hundreds of cattle, including heifers, calves, bulls, and steers; nearly one hundred horses, including mares, geldings, colts, studs, and mules; and over ten thousand fowls, including hens, chicks, roosters, turkeys, and ducks.[308] The penitentiary provided separate dormitories for black, white, male, and female inmates, and was home to numerous facilities, including a commissary, a hospital, a tuberculosis ward, a blacksmith and carpentry shop, a cane mill, a corn barn, a smoke house, several power plants, a license tag and road sign plant, an underwear factory, a leather tannery and shoe factory, a saw mill, a barrel factory, a shirt factory, a gin house, a plumbing shop, a rice barn, a freight depot, two pump houses, a bee house, a locomotive shed, three stucco cottages, a

[306] Report, "Activities of the Florida State Department of Agriculture: A Review of the Departments and Divisions, The Activities and Functions, The Growth and Enlargements That Have Marked Its Progress for a Quarter of a Century," Pages 75-78, Box 7, Folder title: "Activities of the Dept. of Agriculture, 1955," Mayo Papers.
[307] By 1955, all 18,000 acres at Raiford were in production or under cultivation. See: Ibid., 77.
[308] Mayo, *Twentieth Biennial Report*, Pages 11-24, Box 7, Subject File on Prisons, Mayo Papers.

railroad station, tin and electric shops, a dairy department, a poultry plant, an apiary, vineyards, an ice plant, a wheelwright shop, a blacksmith shop, and a grits and rice mill.[309]

Prisoners built, maintained, and operated almost all of Raiford's facilities. When employed "at a useful and intelligent trade," explains the 1929 report, prisoners assisted "most materially in keeping down the cost of maintenance," while through "the production of commodities," the report continues, such activities contributed "a large annual saving to the State."[310] The prison, the report's introduction explains, both provided prisoners with "pleasant and instructive employment" and went "a long way toward meeting the expense of the upkeep of the Institution."[311] Between 1927 and 1928, Raiford's garment factory employed nearly 400 prisoners and contributed over $150,000 to the State Industries Fund, while the tag plant, described as "one of the most interesting and productive of the industrial units," manufactured over one million license plates and earned the state almost $100,000.[312] Thus, as Florida's government became increasingly engaged in prison administration, penal officials sought to design a self-sufficient, labor-intensive, vocation-oriented prison industry program.

With Raiford's expansive industrial and agricultural operations, state officials found themselves able to build additional facilities.[313] Indeed, Florida's prison system not only evolved to accommodate an expanding population, but also began deploying specialized methods of classifying prisoners. For example, in 1921, officials opened the Florida Farm Colony for the Feeble-Minded and Epileptic, which immediately began receiving so-called incompetent patient-prisoners. The facility, located near Raiford, allowed the state's mental asylum to receive larger

[309] Ibid., 11-24.
[310] Ibid., 21.
[311] Ibid., 5.
[312] Ibid., 23.
[313] Prisoners at Raiford supported public facilities throughout the state. As a small example, the leather tannery and shoe factory produced shoes for the Road Department, State Industrial Schools, the State Hospital, and the State Farm Colony. See: Ibid., 21.

numbers of criminally insane patient-prisoners.[314] To relieve overcrowding at Raiford, officials opened a satellite prison in 1935 in Belle Glade, where male inmates, according to a government report, engaged "in year-round farm production under the most modern agricultural methods."[315] In 1957, a Central Florida facility was opened for less dangerous, "physically handicapped" prisoners,[316] while in 1965, yet another facility was opened for "minimum and medium custody" juvenile male offenders.[317]

Florida's newspapers also facilitated such expansions, often by harshly criticizing the mixing of various classes of inmates. In 1945, for instance, public outrage emerged regarding the confinement of seventy-three young males at the Chattahoochee adult camp. The "minds and characters" of the young boys, the editor of *The Tampa Morning Tribune* argued, are "still in a formative state." Subjecting them to the "demoralizing and corrupting influence of adult criminals," he concluded, constituted "an evil even more intolerable than the sweat-box."[318]

Thus, as inmates filled Florida's production and profit-oriented prison facilities, the construction of additional facilities was justified not only with calls to relieve prison overcrowding, but also with calls to perfect the policy of penal segregation. At one such facility, officials hoped to immerse juvenile offenders in highly-structured, vocational rehabilitation programs. As detailed below, the facility illustrates how the institutional disposition of Florida's prisons aimed to discipline offenders in ways that were intimately bound up with the state's industrializing and agricultural economy.

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[314] Noll, *Feeble-Minded in Our Midst*, 94-95.
[315] Report, "Activities of the Florida State Department of Agriculture," 77
[316] "In 8,000-Word Report: Culver Says State Prisons Have Come Up A Long Way, But Still Have Far To Go," *Tampa Morning Tribune*, 28 November 1958, Box 10, Newspaper Clippings on Prison Reform, Mayo Papers.
[317] "Sumter Site For Prison Is Approved," *Florida Times-Union*, 23 August 1958, Box 10, Newspaper Clippings on Prison Reform, Mayo Papers. Also see: "Money Group Urged to Okay Sumter Prison," *St. Petersburg Times*, 27 March 1959, 4A; "Sumter Correctional Institution," Florida Department of Corrections, accessed October 9, 2012, http://www.dc.state.fl.us/facilities/region3/307.html.
[318] E. D. Lambright, "Officials Stirred to Action," *Tampa Morning Tribune*, 8 November 1945, Box 10, Newspaper Clippings on Prison Reform, Mayo Papers.

The Correctional Facility

Opened in 1950, the Apalachee Correctional Institution, according to a 1955 Florida government report, operated "in conjunction with other farm and camp units" across the state, utilized "comprehensive segregation and classification procedures," and deployed "the most modern methods" of the "science of penology."[319] According to one prison publication celebrating Apalachee, the facility accepted inmates between the ages of fourteen and twenty-five as well as certain inmates redirected from the State Industrial School for Boys.[320] Although many young inmates, the publication explains, "developed the habit of running away when faced with difficult or unpleasant situations," such inmates also constituted the most "desirable" candidates for a program aimed at "curbing criminal tendencies."[321] Too young to be housed with the so-called hardened criminals in road camps or at Raiford, the reformation of these troubled inmates, the publication argues, demanded the most sophisticated calibration of penology. Exactly what this penology entailed requires a closer examination of Apalachee, "an institution," as the publication states, "whereby the youthful offender" was to be "exposed to another type of parental guidance."[322]

Trained to understand "how attitudes are formed," Apalachee officials, according to the publication, encouraged "positive" and "socially acceptable behavior patterns" in their efforts to "guide" inmates through the rehabilitation process. Like doctors in a hospital, the publication continues, officials studied the inmate closely to "determine his symptoms," taking care to understand his "background" before beginning "treatment." Although "complications" sometimes emerged, the publication explains, "it must be remembered that in most cases it has

[319] Mayo, "Activities of the Florida State Department of Agriculture," 77, Mayo Papers.
[320] Report of the State of Florida Prison Division, *From Dreams to Reality at Apalachee Correctional Institution* (1955): 14, Box 7, Subject File on Prison Conditions, Mayo Papers.
[321] Ibid., 15.
[322] Ibid., 15.

taken many years" for inmates to develop the "habits and attitudes" that led them to commit crimes. Thus, to "overcome" their "anti-social traits," inmates, the publication adds, sometimes require "many months and perhaps years" of treatment.[323]

The best treatment demanded the most reliable methods of evaluating the subject. In order to fully "understand the inmate," the publication continues, officials would conduct "personal interviews" and "testing programs," including a "mental ability test, vocational preference tests, and general achievement tests."[324] Before assigning him to a department, according to the publication, the inmate would be "constantly observed," with staff members "comparing notes" as he worked in different departments of the institution.[325] Various interviews would then be conducted by the Service Committee, which, the publication explains, included "the Superintendent, the Director of Education, the Chief Custodial Officer, and other staff members who are especially interested with the case at hand." After finally determining the "type of program" for an inmate, officials would then monitor his performance with "monthly progress reports."[326]

The programs, officials hoped, would "return the inmate to society with a more wholesome attitude toward living," "better prepared to meet his obligations as a citizens," and possessing the skills and knowledge necessary to "maintain himself and his dependents through an honest day's work."[327] Such an ambitious pedagogy of rehabilitation, officials reasoned, required a strategy with vocational, academic, health, religious, and social elements.

The most prominent of these features was vocational. As the publication explains, Apalachee was technically classified as an "apprenticeship training center" under the Industrial

[323] Ibid., 15-16.
[324] Ibid., 8.
[325] Ibid., 15-16.
[326] Ibid., 15-16.
[327] Ibid., 8 and 15-16.

Commission's Department of Apprenticeship.[328] Accordingly, the facility provided a variety of vocational training programs for inmates. The programs, however, were also designed to offset public sector expenses. Inmates, consequently, typically participated in programs that supported state public institutions. Inmates assigned to the Horticulture Department, for example, learned "modern methods of farm practice and management" while at the same time producing "truck crops" for the Culinary Department."[329] Offering courses in "poultry production and management, poultry processing, and egg production," the Poultry Department's 2,000 hens and 18,000 fryers also helped supply food to inmates at nearby institutions.[330] Inmates working the Sanitary Department, on the other hand, learned how to manufacture "detergents, waxes, [and] insecticides," which were then distributed to public facilities throughout the state.[331] Thus, not only did Florida penal officials aim to reform juvenile inmates in and through labor, but they did so in a way that directly supported the institutional needs of the state's public sector.

Apalachee's academic and vocational programs complemented the facility's labor-oriented penal pedagogy. The facility's education staff, for example, designed course material that went "along with the on-the-job training," while its vocational staff imparted "operational and technical" knowledge of specific jobs and discussed post-release "employment possibilities, remuneration, apprentice and journeyman requirements."[332] The goal, according to the publication, was to develop within the inmate "the will and desire to do a day's work in giving his employer a just return, through his labor." The staff, therefore, stressed the importance of "[l]oyalty to one's employer."[333] Apalachee's pedagogy, thus, reflected more than just the

[328] Ibid., 13.
[329] Ibid., 10.
[330] Ibid., 10-11.
[331] Ibid., 13.
[332] Ibid., 16-18.
[333] Ibid., 18.

various institutional needs of the state's public economy or the sentiments of penal reformers – it embodied the interests of employers.

The basis of Apalachee's pedagogy assumes that unless thoroughly trained, juvenile inmates would neither muster the will nor express the desire to engage in honest labor practices. Such sentiments can be found within the curricula of the institution's recreational, religious, social, and fitness programs. As the publication explains, although Apalachee's juvenile inmates "come for many reasons…one of the most important is that they do not know how to properly use their spare time." If these inmates had developed "constructive hobbies or other social interests," the publication speculates, "the course of their lives MIGHT have been considerably different."[334] Accordingly, officials hoped recreational activities like baseball, basketball, and football, would help inmates develop a "keen sense of sportsmanship and competition, so necessary in our society."[335]

By hosting "Bible correspondence courses," church services, and hobby programs like glee club, reading groups, movie screenings, and music, Apalachee's staff hoped inmates would develop "constructive hobbies" and beliefs that were sanctioned by the prevailing moral and legal norms.[336] Such activities, the publication explains, "should have some definite 'carry-over' value'" for the inmate "in his home and community life." If inmates became "interested in some worthwhile hobby," the publication reasons, then perhaps they would have a "potential means of extra income" after release. More pointedly, officials, according to the publication, sought to teach inmates "to accept the rules of law and order" and "respect the property rights of others, both public and private."[337] Apalachee's pedagogy, thus, relied on the assumption that without

[334] Ibid., 21.
[335] Ibid., 20.
[336] Ibid., 21.
[337] Ibid., 21-22.

rehabilitation, inmates were determined to undermine law, order, and the rights of citizens. Correction, therefore, demanded a set of technologies designed to make the inmate both employable and obedient, both skillful and subservient, both respectful and productive.

Eventually, the penal pedagogy deployed at Apalachee – which took up as its objective a strategy of reforming and forming respectable citizens in and through labor and submission to one's employer – emerged within institutions throughout Florida's prison system. The "prime responsibility" of the state's prisons, argued Florida's Corrections chief in 1957, was to help inmates become "better equipped to make an honest living."[338] And as Raiford Superintendent Chapman explains in a 1955 prison publication, even though Raiford's manufacturing operations were impressive, the facility's "finest and most important product is citizens!"[339] Accordingly, in addition to "a religious program embracing more than twenty different faiths," the 1955 publication explains, Raiford provided "daily classes in all grades through high school," courses in "printing, commercial art, and typing," various "sports and physical training program[s]" with full-time coaches, "an officially chartered Senior Scouts troop" for juveniles, an Alcoholics Anonymous group, and even music and dramatics clubs. Raiford, the publication concludes, symbolized "a shining monument to man's faith in his fellow man." Its "end product," of course, was "the rehabilitated individual."[340]

The rehabilitated individual, thus, was simultaneously both the responsible citizen and the productive laborer. The time he spent incarcerated was part and parcel of a pedagogy aimed at inculcating him in the habits, behaviors, beliefs, and virtues of the ideal political and economic subject.

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[338] "Greene Relieved At Prison; Culver Seeks Improvement of State Penal System," *Belle Glade Herald*, 16 August 1957, Box 10, Newspaper Clippings on Prison Reform, Mayo Papers.
[339] Report, *Activities of the Florida State Department of Agriculture*, 78, Mayo Papers.
[340] Ibid., 77-78.

Undoubtedly, Florida's penal programs helped a great number prisoners avoid permanent incarceration. Nonetheless, the pedagogical strategy upon which they were based relied fundamentally on the assumption that inmates were morally corrosive agents, irresponsible economic subjects, and unentitled to the rights and privileges of citizenship. Thus, rather than serve as spaces in which inmates might help penal officials understand the myriad problems of Florida's law enforcement and criminal justices practices, Florida's prisons instead assumed that the inmate was the problem. Consequently, Florida's penal programs took the place of educational and civic curricula, celebrating submission to one's employer as honest work and promoting constant employment as a primary virtue of good citizenship.

Clearly, Florida's penal practices reflected the desires and ideologies of employers, but important questions remain. How did these penal practices reflect interests that were more structural in nature, such as the long-term objectives of the state's political-economy? How did inmate labor function in relation to the state's economic development and agricultural industrialization?

Florida's New Agriculture

During the first three decades of the 1900s, Florida's agricultural sector produced well below the output of other agriculturally-oriented states.[341] As Nathan Mayo, Florida's Commissioner of Agriculture, explains in an interview, California's agricultural system, for example, was divided into "solid blocks," allowing the state's products to be efficiently transferred to distributors for "packing, shipping and selling." Florida's agricultural sector, on the other hand, "enjoyed no such tailored situation," with citrus growers "intermingled with

[341] See: L. LeMar Stephan, "Vegetable Production in the Northern Everglades," *Economic Geography* 20, no. 2 (1944): 79-101. Also see: Mayo to Donald Brenham McKay, correspondence of memo or text of a speech, 29 May 1957, Box 7, Folder title: History of Florida Agriculture, 1957, Mayo Papers.

general farming" and cattlemen "scattered" throughout the state. Moreover, Florida's growers, Mayo continues, depended on rates set by "commission houses in New York, Chicago and elsewhere," the sales from which unfortunately "often…paid little more than the cost of transportation."[342]

Mayo's strategy to fix Florida's agricultural economy relied on a system of paved roads connecting rural farmers with urban centers. Not only would this allow growers to transport farmworkers more efficiently, but it would also serve as the basis for what Mayo hoped would become a thriving state Farmers Market System. "Realizing that agriculture is one of the state's most valuable assets," writes one reporter who interviewed Mayo,[343] "the State Road Department in every instance cooperated fully with Mr. Mayo in improving marketing facilities."[344] Indeed, the reporter continues, Alfred McKethan, Florida citrus grower and Chairman of the State Road Department during Mayo's tenure, "consistently recognized the farmers' need for easy access to markets," taking advantage of "every effort to provide adequate highway facilities." Such "cooperation," the reporter explains, resulted in the construction of "farm-to-market roads," which were "essential to the distribution of the state's agricultural products."[345] By the 1951, the Market System consisted of over 80 buildings in at least twenty-five locations throughout the state, many in previously undeveloped regions, with over $35,000,000 in sales.[346]

But the Market System was not just a matter of business – during World War II (WWII), it was a matter of national defense, eventually becoming a crucial component of military supply operations. After "training quarters for selective service draftees and National Guardsmen were

[342] Mayo, text from an interview with Allen Morris, unspecified date in 1952, Box 7, Folder title: State Farmers Markets and Pavilions, Mayo Papers.
[343] "Florida State Farmers Markets," *Florida Highways*, January 1951, Pages 20-23, Box 7, Folder tite: State Farmers Markets and Pavilions, Mayo Papers.
[344] Ibid., 21.
[345] Ibid., 21.
[346] Ibid., 20 and 22.

established," procuring agricultural goods, according to a 1941 article, "became a chief concern" for army supply officers. Farmers Market officials, accordingly, developed a purchasing system to support Florida's military bases and distributed advertisements to growers "stressing the part that Florida agriculture might play in national defense." Army officials then installed a purchasing office above the Market System's headquarters in Jacksonville, and at a "temporary purchasing division" in Orlando, the army purchased winter crops from South Florida growers.[347] The arrangement, according to the article, allowed the army's buyers to negotiate directly with the Director of the State Farmers Market system.[348] More importantly, it provided incredible security for Florida's agricultural economy. Some farmers even sold their products exclusively to the army.[349]

Florida's inmates, many of which were confined in mobile road prison camps, constructed and maintained the roads with which the state's agricultural sector and its Farmers Market system could support the nation's wartime production efforts. At the same time, Florida's prisons supplied the state's agricultural industry with laborers. The vocational programs at Raiford and Apalachee, for example, successfully transferred ex-prisoners directly into the state's agricultural labor force. According to one newspaper article, out of the 508 prisoners released in 1942, 70 found jobs as farm hands, 45 as famers or farm managers, 66 as day laborers, and 28 as turpentine workers.[350]

More broadly, prisons also played an important role in changing the state's agricultural management and cultivation methods. For instance, "agricultural experiment stations,"

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[347] Jefferson Thomas, "So This Is Florida: State's Farm Market Service Most Outstanding in Nation," *Orlando Sentinel*, 12 November 1941, Box 7, Folder title: State Farmers Markets and Pavilions, Mayo Papers,.
[348] Ibid.
[349] Ibid. In 1943, for example, snap bean growers supplied their goods exclusively to the military, according to Stephan. See: Stephan, "Vegetable Production in the Northern Everglades," 100.
[350] Nine found jobs as longshoremen and three found jobs on ships. See: "Parolees Earn $74,000, Saving Florida $4,000: Most of Money Sent to Dependents," *Tampa Tribune*, 28 July 1942, Box 10, Newspaper Clippings on Prison Reform, Mayo Papers.

established through the state's federal land grant colleges, tested agricultural products such as pesticides, insecticides, and fertilizers. The experiment stations helped the state's Agricultural Department develop its inspection practices, which, according to Mayo, guarded "the health and welfare of the farmer and the consuming public."[351] These and other practices, Mayo explains, were in part "made possible through continued scientific experimentation, practical application of crop diversification, and the full facilities of the State of Florida and the agricultural extension and experiment stations."[352] Some of the more important agricultural experiments, according to documents archived at University of Florida, occurred at Florida's Everglades Experiment Station, whose researchers, significantly, worked in direct cooperation with the Belle Glades Prison Farm and its prisoners.[353]

Florida's prisons, therefore, served as elements of the state's strategy to research, understand, mitigate, and control the environmental issues affecting large-scale agricultural industrialization in the state. As such, inmates worked within a division of labor that supported the construction of scientific knowledge, the state's premier educational institutions, and the tactics deployed in the state's regulatory efforts. The practices and standards with which prison officials disciplined inmate labor, thus, converged in very practical ways with the long-term political-economic objectives of the state – objectives which also happened to support the nation's WWII military efforts.

But if the development of Florida's agricultural economy partially relied on a federal support – vis-à-vis the state's federal land grant colleges, agricultural experiment stations,

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[351] Mayo to Donald Brenham McKay, correspondence of memo or text of a speech, 29 May 1957, Box 7, Folder title: History of Florida Agriculture, 1957, Mayo Papers. Inspectors examined products such as "seed, feed, fertilizer, insecticides, food and drugs, fruits, vegetables."
[352] Ibid.
[353] Everglades Experiment Station, "Everglades Experiment Station: animal husbandry and nutrition research," 16 March 1960, outline of program research, accessed 10 October 2012, http://ufdc.ufl.edu/UF00094255/00001/citation. For an example, see: State project 922.

prisons, and agreements between the federal government and the Market System – how would the state's agricultural sector converge with other national policies and practices? How would these national policies and practices affect or support the labor-related discourses and practices permeating Florida's prison system? In order to answer these questions, it is necessary to first examine the ways in which labor and agricultural discourses and practices formed in the decades prior to WWII.

CHAPTER IV

THE INSTITUTIONALIZATION OF MARGINALIZED LABOR

As described above, in the early 1900s, Southern landowners and authorities hoped to control irresponsible black workers by expanding and enforcing vagrancy and contract labor statutes, while Southern penal officials aimed to reform and correct convicted offenders through prison labor and vocation programs. Many black Southerners, however, managed to avoid incarceration. As Cindy Hahamovitch describes, these men and women often fought for and benefited from rising wages, particularly as farm labor markets tightened during the urbanization and industrialization of the early 1900s.[354]

As the labor supply upon which Southern agriculturalists depended tightened, they began to worry, particularly when the US entered WWI. The "whole South," writes one journalist (quoted in Hahamovitch 1997), "now fears a shortage of farm labor at the precise time when it is most sorely needed."[355] With farm labor worries spreading across the country, Southern agriculturalists demanded solutions capable of preventing black men and women from migrating north.

In an address to civic organizations and businessmen, for example, a representative from a Georgia lumber company, according to one Georgia paper, discussed the "imperative need" to "check the outgoing tide of Negroes and attract additional Negro laborers."[356] A "laboring negro," writes one newspaper editorialist, is an "honorable negro."[357] Not only were such measures necessary, but black workers, many Southern whites argued, belonged in the South.

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[354] Hahamovitch, *The Fruits of Their Labor*, 85. As Hahamovitch notes, between 1916 and 1921, nearly 500,000 black men and women migrated north – more than the previous forty years combined.
[355] *Southern Cultivator*, July 1, 1917. Found in: Hahamovitch, *The Fruits of Their Labor*, 87.
[356] National Association for the Advancement of Colored People (NAACP), "The Looking Glass," *The Crisis: A Record of the Darker Races* (November 1917): 33.
[357] *Memphis Commercial Appeal*, October 31, 1918. Quoted in: Hahamovitch, *The Fruits of Their Labor*, 99.

"So long as the Negro remains in his place in the Southland," one editorialist argues, "he is going to be treated right by the whites, who know and understand him."[358] Southern business leaders agreed. For example, according to Hahamovitch, in a letter to USDA Secretary Clarence Ousley, the director of a North Carolina town chamber of commerce pleaded for Ousley's help, arguing that "As you know, the logical home for the negro is in the South, where he was born, receives best treatment and where he has always found his best friends."[359] Thus, the black men and women who migrated north or refused to work were not just understood as dishonorable workers, but were also construed as illogically acting against their own best interests.

Southern growers eventually sought legislative assistance. "Additional legislation," opines one editorialist quoted by Hahamovitch, "may be necessary to reach the drifting Negros, but all should be rounded up without delay" and either "sent to France" or "placed under guard and forced to get busy on the Southern farm."[360] Referring to the alleged wartime farm labor shortage emergency, one high-ranking USDA official argued that "unless farmers can be given immediate assurance that the Government will do everything in its power to supply them with labor, the planting program for the coming year will be seriously interfered with."[361] USDA Secretary Ousley agreed, contending that anyone working "less than 20 days a month, regardless of wealth, should be considered a vagrant in a time of war."[362]

According to agriculturalists and government officials, the constancy with which farmworkers labored needed to reflect both the rhythmic requirements of the planting program and the objectives of the military. Free migration and unexplained idleness, consequently, were

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[358] NAACP, *The Crisis*, 28-35.
[359] Mandel Sener, Secretary-Manager, New Bern, N.C., Chamber of Commerce, to Clarence Ousley, Assistant Secretary of Agriculture. As quoted in: Hahamovitch, *The Fruits of Their Labor*, 101-102.
[360] NAACP, *The Crisis*, 32.
[361] W. J. Spillman to the Secretary of Agriculture, general correspondence. As quoted in: Hahamovitch, *The Fruits of Their Labor*, 99-100.
[362] "Farm Workers from City/Volunteers Relied upon to Help Make Bumper Crops This Year," *New York Times*, March 31, 1918. As quoted in: Ibid., 100.

understood as un-American interferences that jeopardized the nation's planting program. Accordingly, Hahamovitch illustrates, conscription became justifiable. Southern authorities, Secretary Ousley suggested, should seriously consider employing laborers on a "go to work or go to jail basis."[363] The message, thus, was clear – coercion would be necessary to correct the dishonorable and illogical behavior of the South's drifting negroes.

In 1918, Maryland implemented the nation's first compulsory wartime labor law. Male residents, according to the law, could be "fined or jailed for failing to work," and the state's attorney general ordered police to pay "special attention to the needs of the farmers."[364] Within a few months, three additional states passed similar statutes, and in May, the Selective Service issued a national order compelling unemployed and noneffectively employed men to find jobs in "essential" sectors or face conscription, galvanizing more eight states follow suit with similar measures.[365]

As Hahamovitch also notes, in rural parts of the South, police threatened to arrest uncooperative workers as vagrants, while local compulsory labor ordinances found traction with racist organizations. Members of local chapters of racist groups like the Ku Klux Klan, for example, regularly patrolled the streets in search of 'slackers,' unemployed black men and women, labor organizers, and draft dodgers.[366] Submission to obedient and constant

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[363] "The Farm Labor Problem," Office of the Assistant Secretary of Agriculture, Feb. 11, 1918. As quoted in: Hahamovitch, *The Fruits of Their Labor*, 101.

[364] Phillip B. Perlman, "Maryland Law Which Makes Everybody Work / Conscription of the Unemployed Rich and Poor Has Begun in One State, and Congress Has Before It A Similar Plan for the Nation," *New York Times*, January 13, 1918. As quoted in: Ibid., 103.

[365] Ibid., 103-104. According to Hahamovitch, "noneffective" positions included "waiters, elevator operators, doormen, sales clerks, servants, and athletes. Hahamovitch also notes that after the Selective Service passed the national work or fight order, tens of thousands of men lined up outside employment agencies almost immediately. In New York, for example, ten thousand men applied for essential work the day that the order took effect. See: Ibid., 106.

[366] Ibid., 107. Although cities with strong black communities sometimes defeated these ordinances, Hahamovitch also points out that they were often used successfully in rural areas. See: Ibid., 111-112.

employment, thus, functioned as an obligation born of patriotism, particularly for black men and women.

In Florida, authorities similarly doubled-down on black residents by enforcing vagrancy and contract labor statutes. Those who refused to work or sought to try their luck in urbanizing centers like Miami, thus, had to contend with the possibility of being arrested and forced to work through leasing arrangements or other penal labor programs.[367] As Hahamovitch points out, Florida lawmakers also revamped the state's anti-enticement laws, criminalizing out-of-state labor recruiters for operating without special licenses. As Robert Zeiger points out, according to one federal official, Florida police arrested "numerous" recruiters from the United States Employment Service (USES) for conducting wartime labor drives without the license. In one town, police jailed at least two USES agents for "recruiting common labor for the Army projects at Norfolk."[368] And as Robert Cassanello finds, in Jacksonville, after black porters gathered at a labor recruiter's office and threatened to leave the state, the city sheriff arrested the men as vagrants while the mayor ordered black recruiting agencies closed.[369] Thus, in addition to targeting laborers themselves, Florida's police officers, agriculturalists, and lawmakers sought to undermine the processes by which economic and social mobility were even made possible.

In sum, during WWI, state authorities and agriculturalists, particularly in the South, and much like the penal officials described in the previous sections, implemented a variety of practices aimed at correcting the various social and moral interruptions posed by uncooperative black men and women. Not only did this include making unemployment illegal, but, at least in

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[367] Robert Cassanello, "We Are White Men and Haven't Got Black Hearts: Racialized Gender and the Labor Movement in Florida, 1900-1920," in *Florida's Working-Class Past: Current Perspectives on Labor, Race, and Gender from Spanish Florida to the New Immigration* (Gainesville, Florida: University Press of Florida, 2009): 127.
[368] Robert H. Zieger, "Grudgingly, Unwillingly, Almost Insultingly: Racial Progress in the Era of the Great War," *Journal of Florida Studies* 1, no. 1 (Fall 2011), accessed 12 October 2012, http://www.journaloffloridastudies.org/racialprogress.html.
[369] Cassanello, "We Are White Men and Haven't Got Black Hearts," 127.

Southern states like Florida, it also included effectively criminalizing free black labor and mobility. In doing so, Southern state authorities and farmers both relied on racially-infused discourses on labor, citizenship, and morality and made use of the opportunities posed by wartime mobilization and nationalism.

But if the success of these practices and the discourses upon which they relied was partially aided by wartime conditions, how would they function after WWI ended? What new practices would emerge, and in what ways would they correlate or converge with other discourses and policies concerning labor, agriculture, and citizenship? What role would prisons take in relation to such discourses and practices, and how would all of these elements take shape in Florida?

Marginalizing Migrant Labor

As Hahamovitch explains, after WWI, the nation's agricultural sector underwent a number of significant changes. Agricultural exports dropped sharply, especially cotton exports from the South. In Georgia, for example, cotton prices plummeted from thirty-five cents per pound in 1919 to seventeen cents per pound in 1920 and then to just five cents per pound when the stock market crashed in 1929. Moreover, with land and equipment bought on credit during wartime inflation, farmers were trapped in debt. Soon, the Dust Bowl would drive small and medium-sized farmers throughout the Midwest into bankruptcy, while increased agricultural mechanization – such as machine cotton harvesting – would foster staggering levels of job insecurity, leading to farm labor migration on a massive scale. Collectively, these changes, Hahamovitch argues, created unprecedented economic contractions that transformed hundreds of

thousands of tenant farmers into a growing stream of landless migrant workers, their movements dictated more than ever by the rhythms of seasonal agriculture.[370]

To offset the tragic conditions of the Depression, Congress and the executive branch sought to provide relief. Government relief, however, often excluded migrant farmworkers. For example, the Federal Emergency Relief Administration (FERA), which was designed to help small farmers and farmworkers, explicitly prohibited transient farmworkers from accessing relief, which FERA officials believed, as Hahamovitch notes, would subsidize agriculture's growing use of cheap, seasonal work.[371]

Instead, federal officials sought to stabilize agricultural employment by mandating that farmers distribute relief payments directly to tenant employees. Rather than use the relief to aid their employees, however, many farmers simply replaced their landed workforces with wage laborers.[372] For example, according to American sociologist Arthur Raper, in Georgia's Black Belt, sharecropping declined fifteen percent between 1927 and 1934, while wage labor increased fourteen percent.[373] Thus, as Hahamovitch contends, Depression-era farm relief efforts in fact facilitated the growth of migrant labor.

Although many of them were dispossessed of their land, farmworkers nonetheless began to organize. For example, as Hahamovitch finds, over 55,000 farmworkers had gone on strike in

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[370] Hahamovitch, *The Fruits of Their Labor*, 113-116; Donald H. Grubbs, "The Story of Migrant Farm Workers," *The Florida Historical Quarterly* 40, no. 2 (1961): 106.

[371] Interestingly, according to Hahamovitch, FERA defined transients as "needy persons" without legal residency in any community or state. See: Hahamovitch, *The Fruits of Their Labor*, 138.

[372] As Jack Kirby notes, in the early-to-mid 1930s, some agriculturalists – in Texas, Oklahoma, and even Missouri – began replacing evicted sharecroppers with Mexican and Mexican-American laborers, who often would work by the day or week. The majority of cotton laborers, however, were not migrants that had travelled long distance in search of labor. Rather, many, Kirby points out, were former sharecroppers whose status had suddenly become dictated by wages. See: Jack Temple Kirby, "The Transformation of Southern Plantations c. 1920-1960," *Agricultural History* 42, no. 3 (1983): 267-268. Also see: Hahamovitch, *The Fruits of Their Labor*, 155, 199.

[373] Arthur Raper, *Preface to Peasantry: A Tale of Two Black Belt Counties* (1936; reprint, New York, New York: Atheneum, 1968), 34. Found in: Kirby, "The Transformation of Southern Plantations," 266.

seventeen states by 1933, prompting growers to pressure police into making arrests.[374] But migrancy was dramatically changing the nature of the country's agricultural labor market. In a quickly organizing migrant labor market, completely restricting the movement of laborers would be counterproductive, as migrant farmworkers might strike, demand higher wages, or even settle and become permanent community residents. Agriculturalists and authorities, consequently, quickly realized the need to periodically push undesirable migrant farmworkers out of their communities in exchange for new, less entrenched workers. Large-scale agricultural producers and their allies in law enforcement implemented new practices aimed at controlling their labor supplies, often cooperating to manipulate the influx of farmworkers. For example, as Hahamovitch carefully takes note, when South Florida bean pickers struck for higher wages in the 1930s, the state's police officers stopped enforcing policies restricting migration into the state, thereby allowing South Florida's migrant labor market to become saturated with thousands of new workers and thus weakening the striking workers' strategy.[375]

Florida's US Sugar Corporation, on the other hand, sought to over-recruit and then trap cane harvesters during harvest seasons. As Shofner finds, US Sugar agents advertised exaggerated wage rates through government-run job boards. When the harvesters arrived, the company's agents then forced them to work off transportation advances and equipment costs. Meanwhile, to control mobility, armed guards stood watch over the sugar camps, agents regularly inspected company-owned trains for runaways, and local police officers patrolled the roads.[376]

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[374] For example, after workers went on strike at Seabrook farms in New Jersey, the local sheriff deputized twenty-seven members of a hired vigilante committee hired by Seabrook, thereby allowing the men to use their weapons and arrest strikers legally. For a great discussion of the Seabrook fiasco, see: Hahamovitch, *The Fruits of Their Labor*, 139-143.

[375] Hahamovitch, *The Fruits of Their Labor*, 154.

[376] Shofner, "The Legacy of Racial Slavery," 415-416. Company agents were soon arrested, tried, and convicted in a case that eventually landed before the US Supreme Court.

In Miami, police officers played a particularly important role in keeping the labor market in check and pliable. Local officers, for example, commonly patrolled the city's black neighborhoods in search of so-called idle negroes. Shofner also points out that when Miami's government lacked funds to pay its garbage men, many of the men arrested during these sweeps would subsequently be charged with vagrancy and then sentenced to work as city trash collectors. Officers deployed similar tactics when South Florida's winter crops were in season. For example, according to Shofner, when tomato growers had trouble finding workers during winter harvests, Miami officers responded by travelling to the city's black neighborhoods. In 1937, officers arrested 77 men and then threatened them with prison sentences until they agreed to pick vegetables for local growers.[377]

Thus, rather than relying solely on practices through which migrant workers could be forced into debt bondage and made vulnerable with physical violence, Florida's large-scale agriculturalists and their allies in law enforcement found ways to make use of farm labor migrancy, often by controlling the state's highways and public roads, attracting workers through government-sponsored employment boards, and coupling law enforcement practices with the undulating demands of seasonal agriculture. Instead of capturing, confining, and assigning workers as with slavery and convict leasing, these practices functioned more or less like pressure valves, the appropriate manipulations of which could draw in migrant laborers, seal off their modes of escape, dilute problem concentrations, and weaken solidarity by attracting desperate workers.

Farm labor management strategies during the Depression, thus, were characterized by careful, almost scientific efforts to manipulate the ways in which laborers entered, travelled within, and exited state borders. These new technologies of power made strategic use of various

[377] Ibid., 417.

jurisdictional boundaries, targeting the flows of people traversing through and the concentrations of people residing within such boundaries.

In what ways would these practices function in the years preceding World War II? Would they become institutionalized, or would the technologies of coerced labor persist through less organized channels? How would these practices operate in Florida?

Institutionalizing Dependency

As Hahamovitch describes, the relations between farmers and their increasingly unionizing workforce became particularly caustic in the 1930s, ultimately driving federal officials and lawmakers to intervene by mediating strikes and passing labor laws like the National Industrial Recovery Act (NIRA) and the Wagner Act. The NIRA, however, excluded "agricultural" workers, which labor officials defined as workers "employed by farmers on the farm" that were "engaged in growing and preparing" produce, livestock, or "perishable agricultural commodities for market in original perishable form." In other words, although workers employed outside the "area of production" could unionize, those working on the farm could not.[378] Similarly, the Wagner Act, which established the National Labor Relations Board (NLRB) to mediate labor disputes, excluded farm and domestic laborers, most of which, Hahamovitch points out, were African American.[379]

Rather than trusting farmworkers to articulate their own interests, federal lawmakers and officials, as Hahamovitch contends, regarded them as wards of the state. While recognizing that

[378] Language is attributed to Dr. Leo Wolman. See: Austin P. Morris, "Agricultural Labor and National Labor Legislation," *California Law Review* 54, no. 5 (1966), 1949. Found in: Hahamovitch, *The Fruits of Their Labor*, 146 and 234.

[379] The exclusion of agricultural and domestic workers from labor protections, Hahamovitch illustrates, was grounded in the paternalistic assumption that the employee-employer relationships unique to these sectors would be corrupted by federal regulations and unions. This assumption, according to Hahamovitch, was upheld in 1940 by the Ninth Circuit Federal Court of Appeals in its ruling on the Wagner Act's exclusion of domestic and agricultural workers. See: Hahamovitch, *The Fruits of Their Labor*, 153.

some form of government assistance was necessary in order to address the Depression-era needs of migrant farmworkers, President Roosevelt empowered the Resettlement Administration, soon renamed the Farm Security Administration (FSA), to protect the interests of farmers and farmworkers.[380] FSA officials embarked on an ambitious program to build a series of temporary and permanent farm labor camps across the country.[381] The permanent camps would be built in concentrated farming areas, while the temporary camps would follow migrants from region to region and deploy collapsible tents supplied by the military.[382]

Within a few years, the FSA had completed nearly one hundred migrant labor camps, accommodating a total of about 75,000 people, including workers and their families.[383] According to Hahamovitch, in 1940, Belle Glade, Florida became one of the first areas on the East Coast to witness the construction of these camps.[384] Soon, the FSA would build additional camps in Florida in Pahokee, Pompano, Homestead, Canal Point, and Okeechobee.[385] Though segregated, the camps, as Hahamovitch explains, provided migrant workers and their families with a variety of facilities, including dormitories, assembly buildings, health clinics, schools, nurseries, canning kitchens, and laundry facilities, as well as numerous of services, including sewing classes and immunizations. Moreover, residents could sell goods at convenience store co-ops and make clothing for their families with on-site sewing machines. Meanwhile, elected camp

[380] Hahamovitch, *The Fruits of Their Labor*, 156.
[381] Ibid., 151 and 156-157.
[382] Ibid., 156. Permanent camps would provide housing and other facilities, while mobile units would literally follow migrants and distribute collapsible shelters. See: "7 Labor Camps Set Up In State," *The Miami News*, 23 February 1944, 7-C.
[383] Hahamovitch, *The Fruits of Their Labor*, 156.
[384] As Hahamovitch notes, the camps were segregated, with 176 units in the white camp and 356 units in the black camp. See: Ibid., 156.
[385] Ibid., 156-157.

councils consisting of residents would hold meetings and discuss various issues such as camp rules, domestic abuse reports, potential holiday activities, and special events.[386]

Although the camps certainly provided an impressive array of facilities and services, they often functioned as spaces in which residents could be disciplined in the practices of self-government, hygiene, and self-sufficiency. For example, because migrant farmworkers were thought to be sexually promiscuous and unclean, all camp residents had to be tested and treated for venereal diseases. Alcohol was also prohibited, and camp assembly buildings could only host "wholesome recreational activities" like church services, card games, movie screenings, and dances. Meanwhile, home economics courses and assembly meetings were designed to transform residents into thrifty economic subjects and upstanding citizens.[387]

Such practices underscore the notion that government officials sought to discipline rather than empower migrant farmworkers. Moreover, they illustrate that migrant farmworkers constituted a problem population – a population that offended public health, morality, and social harmony. Intentional or otherwise, this population's offenses, according to the pedagogy embraced by camp officials, needed to be corrected, their pathologies mitigated, their civic duties taught to them, and their free time busied with wholesome activities and hobbies.

Interestingly, however, if residents were unable to pay their weekly residency fees, FSA officials allowed them to help maintain camp facilities instead. Farmworkers, consequently, could strike, demand higher wages, and avoid dangerous labor conditions without being arrested or forced to relocate. The camps, Hahamovitch convincingly contends, therefore also functioned as strategic spaces from which farmworkers could organize their interests.[388] Thus, although

[386] Ibid., 157-159. Residents at one Florida camp, Hahamovitch notes, voted to help fund tuition for camp youths hoping to attend the state's black educational institution, Florida Agricultural & Mechanical College.
[387] Ibid., 157-159.
[388] Ibid., 161-162.

some growers originally supported the camps – one Florida grower, for example, felt they provided "a much more reliable type of laborer" – growers became frustrated with the camps as more and more workers used camp privileges to their advantage.[389]

When labor markets tightened during WWII, such frustrations would become amplified. What form would these frustrations take? What practices and policies would emerge in response? How would they take form in Florida and with which discourses and institutions would they cooperate? To answer these questions, it will be helpful for us to examine how discourses and practices concerning labor during WWII formed on both the national and Florida state-level.

The Disapprobation of the American Farmworker

After the US entered WWII, growers and public officials became increasingly concerned over farm labor shortages, and as Hahamovitch finds, they did not shy away from proposing solutions. Massachusetts officials, for example, debated conscripting conscientious objectors. Maryland and Alabama lawmakers, alternatively, passed compulsory labor legislation, and a similar proposal was debated in Congress. Elsewhere, state officials suggested closing schools during harvests, conscripting draft-exempt men, and even reviving the convict leasing system.[390]

Perhaps as a response to these concerns, federal labor officials developed a plan aimed at more effectively managing the distribution and movement of migrant farmworkers. Under the plan, United States Employment Service (USES) agents would identify local farm labor needs while FSA officials would use their organization's resources and camps to transport and house

[389] From: Hearings Before the Select Committee investigating National Defense Migration, House of Representatives, 77 Congress, 2nd Session, 12603. Found in: Ibid., 163.
[390] Ibid., 163.

farmworkers to known areas of need.[391] However, as Hahamovitch argues, growers and state officials commonly associated USES agents, FSA camps, and camp residents with labor organizing. Thus, a number of states sought to undermine the USES-FSA plan. The governor of South Carolina, for example, threatened to arrest USES agents, while in Virginia, growers protested the construction of a camp, decrying it as a source of "organized labor trouble."[392]

According to Hahamovitch, state officials, growers, and local authorities in Florida were particularly overt in their efforts to delegitimize the farm labor redistribution plan. For example, police officers arrested several USES agents for soliciting labor without state licenses.[393] However, according to Shofner, Florida growers and local authorities also heavily targeted workers. One officer, for example, defended the practice of arresting idle black men, contending that "vegetables [were] rotting in the fields" because they were "paid so much per day" that "they could live on three days [sic] work and loaf the rest of the week."[394] Hahamovitch finds that growers made similar criticisms against FSA camp residents, who, according to a US Sugar agent's complaint written to FSA officials, had "stopped all work and were loafing."[395] And as the Chairman of Florida's Vegetable Committee explained in a letter to the USDA (quoted in Hahamovitch 1997), camp residents were regularly "employing delaying tactics."[396] American farmworkers, another farmer argued, refused to "stay on the job long enough to do any work." The "illiterate irresponsible American Negro," concluded yet another farmer, "will not work regularly."[397]

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[391] Ibid., 166.
[392] Attributed to Fred Wallace. As quoted in: Ibid., 172.
[393] Ibid., 170.
[394] Attributed to Walter R. Clark. As quoted in: Shofner, "The Legacy of Racial Slavery," 420-421.
[395] Attributed to Paul Vander Schouw, Supervisor, Florida Migratory Labor Camps. As quoted in: Hahamovitch, *The Fruits of Their Labor*, 172.
[396] Attributed to L. L. Stuckey, Chairman of the Vegetable Committee of the Florida Farm Bureau Federation, Pahokee, Florida. As quoted in: Ibid., 171.
[397] As quoted in: Ibid., 171. See citation 60, Chapter 8.

Thus, growers, agricultural representatives, and public authorities throughout Florida bemoaned the unsatisfactory cooperation of able-bodied black American farmworkers. As Shofner finds, Governor Millard Caldwell responded by ordering the state's sheriffs "to see that loitering and vagrancy are eliminated" so that "those who are able but not inclined to work" contributed to the war effort.[398] Local police readily obliged. The governor's "work or fight" directive, editorialized one sheriff, applied "to all citrus workers."[399] Before long, the sheriff's deputies had brought dozens of vagrants before the courts, where they were then convinced by judges to work for area farmers instead of going to jail.[400] Some local police officers, adds Shofner, went well beyond Caldwell's directive. For example, when officers from one Florida town were questioned by an investigator with the Workers' Defense League regarding their enforcement of the state's vagrancy statutes, the officers arrested the investigator himself, jailing him for several days for "investigation of vagrancy."[401]

For Florida's agricultural workforce, refusing to work, therefore, was understood as neither a right nor a justifiable attempt to increase wages, but rather as an expression of irresponsibility and anti-nationalism. Such behaviors, moreover, served as anecdotal evidence for the need to compel black men and women to work. American farmworkers, thus, became increasingly identified as undesirable and uncooperative, while FSA camps became increasingly understood as an irresponsible use of public resources. Confronted with the steadfast resistance of public and private agricultural representatives, the USES-FSA farm labor redistribution plan – along with American farmworkers – eventually fell into disfavor.

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[398] *Fort Lauderdale Daily News and Sentinel*, 24 January 1945. As quoted in: Shofner, "The Legacy of Racial Slavery," 420.
[399] *Leesburg Commercial*, 19 January 1945. As quoted in: Ibid., 421.
[400] Ibid., 421.
[401] Affidavit of Joe Felmet, 22 August 1944. As quoted in: Ibid., 419.

But if growers had become resolute in their disapprobation of American farmworkers, what alternate measures might emerge to mitigate such concerns? What practices would such measures involve? What effects would these practices have on labor discourses and policies in Florida and on the national level?

WWII Farm Labor Importation

Almost immediately after the US entered WWII, federal officials began developing plans to supplement the American farm labor force with foreign farmworkers. As Hahamovitch notes, USDA Secretary Claude Wickard, while meeting with Mexican officials in Mexico City in 1942, formed an agreement with the Mexican government to facilitate the wartime importation of farmworkers, who, according to the agreement, would be transported from the border by FSA officials to camps and farms in the West.[402]

The intergovernmental agreement, Hahamovitch points out, provided Mexican farmworkers with several protections. Prior to entry, for instance, workers and employers were required to sign FSA-authorized contracts in which employers promised to provide workers housed on-site with dormitory, cooking, laundry, bathing, and waste services. Employers, moreover, were required to list housing costs prior to recruitment, pay workers prevailing wage rates, and cover transportation costs, all of which were designed to limit dishonest employment practices. Workers, additionally, were entitled to at least thirty days of employment, and if their employment was cut short, employers were still obligated to pay them 75% of the wages that they would have earned if they had worked the entirety of the contracted period.[403]

[402] Hahamovitch, *The Fruits of Their Labor*, 168-169.
[403] Ibid., 168-169.

However, as Hahamovitch also notes, many of these protections were undermined by other factors. For instance, not only were imported farmworkers – like all US farmworkers – prohibited from accessing the protections afforded by federal union law, but they were also contractually obligated to work only in the agricultural sector. Thus, if foreign farmworkers stopped working, their immigration status became unauthorized. Moreover, federal officials enforced the agreements in ways that ensured foreign farmworkers would be both constantly working and eventually repatriated. For example, to ensure their eventual return to Mexico, federal officials mandated that a portion of the imported workers' wages be deposited into Mexican bank accounts. Imported farmworkers could also be promptly deported for insubordination and poor job performance, while those fired by their employers before their contracts ended were liable to pay for their own deportations.[404] Constant labor, therefore, served as the primary criteria with which imported farmworkers were policed and evaluated.

The intention of such labor and policing practices, Hahamovitch contends, became even more explicit as the war progressed, when Congress passed legislation that was increasingly pro-agriculture. For example, one important law written by the American Farm Bureau Federation, the nation's largest agricultural lobby, gave the War Food Administration (WFA) complete control over the FSA's camp system. Moreover, the law stipulated that – unless required by existing contracts – federal officials were prohibited from regulating minimum wages, monitoring housing, and enforcing labor agreements in the agricultural sector.[405] The measure also explicitly prohibited federal officials from using government resources to relocate American farmworkers without first obtaining consent from county USDA agents. And as these agents

[404] Ibid., 168-169.
[405] The bill was also supported by the Associated Farmers, the National Council of Farmers Cooperatives, and the National Grange of the Patrons of Husbandry. See: Grubbs, "The Story of Florida's Migrant Farmworkers," 109; Hahamovitch, *The Fruits of Their Labor*, 174.

frequently had close political and social ties to local agriculturalists, they often denied such requests.[406] Moreover, by placing the camps under WFA control and rendering the movement of American farmworkers contingent upon the consent of county USDA agents, the law effectively created the conditions in which American farmworkers could be replaced. Indeed, as Hahamovitch explains, the WFA began using migrant labor camps to house imported farmworkers almost immediately after gaining control of them.[407] Thus, as WFA officials pushed American farmworkers out of the camps, foreign farmworkers began to take their place.

Before long, federal officials had arranged importation agreements with a number of additional countries, one of the first of which brought Jamaicans to farms in the Northeast.[408] Often isolated from large cities, many of these men, according to data cited by Nancy Foner and Richard Napoli in an article printed several years after WWII, paid over twenty dollars per week for housing, slept in crowded barracks containing up to thirty beds, and worked as many as ten hours per day for six days every week. Foner and Napoli also find that some Jamaican workers were contractually required to satisfy daily quotas,[409] while many others became indebted to their supervisors, who often charged high fees for basic supplies and services – a problem exacerbated by a compulsory savings program that transferred as much as twenty-five percent of the Jamaicans' wages into West Indian bank accounts.[410]

According to Hahamovitch, during WWII, Florida farmers vociferously demanded the assistance of imported farmworkers. Testifying before Congress, for example, one Florida Farm

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[406] Hahamovitch, *The Fruits of Their Labor*, 174.
[407] Ibid., 175.
[408] Cindy Hahamovitch, "'In America Life Is Given Away': Jamaican Farmworkers and the Making of Agricultural Immigration Policy," in *Florida's Working-Class Past*, 207-208.
[409] King Farms, for example, was about one mile from a small grocery store and post office and about fifteen miles from the nearest town. See: Nancy Foner and Richard Napoli, "Jamaican and Black-American Migrant Farm Workers: A Comparative Analysis," *Social Problems* 25, no. 5 (1978): 494. Additionally, Foner & Napoli extensively reference the work of Friedland and Dorothy. See: William H. Friedland and Dorothy Nelkin, *Migrant Agricultural Workers in America's Northeast* (New York, New York: Holt, Rinehart and Winston, 1971).
[410] Foner and Napoli, "Jamaican and Black-American Migrant Farm Workers," 494-495.

Bureau official complained that even though "Mexican labor is permitted" on Western farms, "we haven't had one Bahamian offered to us."[411] Alleging labor shortages as high as "85 percent," the Florida Vegetable Committee argued that the "importation of labor from the British West Indies" was the only way to avoid economic disaster.[412] Subsequently, foreign farmworkers, particularly Jamaicans, would soon be brought to Florida, where they would be obligated to cooperate with the state's Southern customs. According to Hahamovitch, their contracts contained "misconduct and indiscipline" clauses, which stipulated that they could be deported for overstepping the boundaries of the South's so-called racial traditions.[413]

Perhaps unsurprisingly, many Jamaicans despised their stints in Florida's fields. As Hahamovitch finds, one Jamaican farmworker, in a letter to his mother, described America as "a one man's place" where everything "belongs to no one else but him." "[W]orking here," he added, only put "money in some one [sic] else's pocket."[414] But while foreign workers often experienced disappointment in Florida, federal officials celebrated the labor importation agreements. Eventually, similar agreements would be signed with several additional countries, including Barbados, St. Lucia, British Honduras, and the Bahamas.[415] Florida growers and officials were also quite satisfied. As Hahamovitch finds, one camp manager argued that foreign black farmworkers were "by nature" better workers than American black farmworkers. The

[411] Hahamovitch, "'In America Life Is Given Away'," 204.
[412] *Daily Gleaner*, May 17 and 19, 1943. Found in: Ibid., 213.
[413] Ibid., 214-215.
[414] Ibid., 217.
[415] In 1945, nearly 62,000 Mexican, 5,800 Bahamian, and 38,000 Jamaican, Barbadian, St. Lucian, and British Honduran imported workers, along with a large number of Puerto Ricans were employed in the US. See: Hahamovitch, *The Fruits of Their Labor*, 219-220.

imported farmworkers who refused to work, argued another camp manager, were "becoming Americanized to the extent that they are choosing the days they work."[416]

However, if imported farmworkers truly outperformed their American counterparts, they did so not because of their nature, but rather because of the unique ways in which the particularities of their status could be manipulated. Their precarious legal status, for example, afforded growers the ability to eliminate inefficiency and disobedience through deportation. For this reason, the WFA hoped to avoid importing Puerto Ricans, who as citizens could not be controlled in the same way that Jamaicans or Bahamians could. Indeed, according to a letter written by one WFA official, as citizens, Puerto Ricans were undesirable for the sole reason that they could not be deported "against their will."[417] Government officials and growers, thus, not only considered deportation a fundamental component of the wartime importation agreements, but also understood that the constant threat of deportation coerced imported farm laborers into accepting the work given to them. Moreover, by grounding the difference between foreign and American farmworkers in nature, growers and government officials were simultaneously able to justify expanding the wartime labor importation programs and avoid discussing publicly the programs' coercive qualities.

At the same time, federal immigration agents enthusiastically cooperated Florida's farmers, officers, and camp officials in policing farmworkers brought into the country under the wartime agreements.[418] According to Hahamovitch, one Florida camp manager described the state as being particularly "fortunate in having immigration officers" willing to find imported

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[416] Attributed to S. C. Merritt, Manager at the Fort Pierce Farm Labor Supply Center; John V. Wright, Manager at the Fort Pierce Farm Labor Supply Center; Redland, Florida Farm Labor Supply Center Monthly Report for Feb. 1945. As quoted in: Hahamovitch, *The Fruits of Their Labor*, 175 and 177.
[417] Attributed to communications between American and British Colonial officials, as quoted in: Ibid., 219.
[418] As Hahamovitch notes, Florida camp officials turned striking workers over to Border Patrol officials for deportation, while camp officials in Maryland deported Bahamians for complaining about living conditions, wages, and food debts. See: Ibid., 177.

farmworkers that had gone "A.W.O.L."[419] Within weeks of their arrival, hundreds of undesirable imported Caribbean farmworkers awaited deportation in local Florida jails.[420] As more and more undesirable foreign workers were slated for deportation, the federal government was forced to build several repatriation centers, where detainees sometimes waited months, often spending their earnings on basic supplies before returning home.[421] As Hahamovitch notes, in one Florida repatriation center, conditions were so bad that Bahamians and Jamaicans fought each other and rioted over which group would leave first.[422]

The successful nature of the policy of deportable labor, however, stemmed from more than just the precarious legal status of imported workers, who were more legally vulnerable than domestic farmworkers. Indeed, deportable labor was the logical extension of an even deeper understanding in which farmworkers' bodies had been reduced to agricultural tools. Accordingly, while foreign farmworkers were certainly deported because of disobedience and insubordination, they were much more often deported because of injury. For example, as Hahamovitch's research helpfully details, forty-nine imported Bahamian farmworkers were deported from Florida in September of 1943. While seven were deported "voluntarily," nine for "refusing to work," and five for being "disorderly," a total of twenty-four were deported for having sustained injury or becoming sick – one, tellingly, was deported for being pregnant.[423] Thus, the ability of an imported farmworker to remain in the country relied not simply on the submission of the will, but also on the submission of the body. Imported farmworkers, consequently, had to be both willing and able, both careful and tireless, both dedicated and

[419] Roy Litchfield, Manager of the Gould, Florida Farm Labor Supply Center. As quoted in: Ibid., 179.
[420] Hahamovitch, "'In America Life Is Given Away'," 215.
[421] Ibid., 216. Facilities were located in several areas on the Eastern US, including Virginia and West Palm Beach.
[422] Ibid., 216-217.
[423] Hahamovitch, *The Fruits of Their Labor*, 180.

physically durable. Their value to farmers resided in the ease with which they could be dispensed should they deviate in any way from such requirements.

The policy of deporting pregnant women is particularly illustrative of how growers and federal officials viewed imported farmworkers. According Hahamovitch, one camp medical officer noted the policy had resulted in a "number of induced abortions."[424] Nevertheless, WFA officials defended the policy. For example, according to one WFA official, the policy was necessary because "conditions" were too "hazardous" for childbirth. Moreover, pregnancy, the official added, raised a "question" regarding the citizenship of the infant, who would be constitutionally guaranteed the rights of citizenship.[425]

Thus, although WFA officials stated that hazardous conditions made the practice of deporting pregnant women necessary, it was the infant's existence that constituted a kind of legal hazard. Pregnant women, therefore, were deported not simply because childbirth was unsafe, nor even because pregnancy might affect work performance, but rather because procreation would undermine the temporary nature of the program. A woman's reproductive capacity, consequently, contradicted her role as an obedient imported laborer, provoking unexpected and potentially problematic questions regarding constitutional rights during wartime and creating undeniable, legal relationships between foreign farmworkers and the nation.

Thus, during WWII, importation and deportation functioned as mechanisms through which Florida growers and wartime officials could cultivate an obedient, able-bodied, and decidedly temporary workforce.

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[424] Ibid., 179.
[425] Ibid., 179.

Police & Prisons as Strategic

The sections above trace the discourses and practices animating the eventual replacement of American farmworkers with a more controllable, foreign workforce. Moreover, they highlight the ways in which the positions of both domestic and foreign farmworkers were compromised and conditioned by community policing practices and emerging modes of incarceration such as detention.

As mentioned in the previous chapter, jails and prisons functioned as spaces in which the criminality of deviant offenders could be corrected and rehabilitated through various labor-based programs. In these spaces and through these programs, obedience was positioned as virtuous and constant employment was positioned as morally upright. For imprisoned individuals, then, incarceration facilities served as locations in which individuals could be monitored and disciplined through labor.

For the majority of farmworkers living and working outside of the prison system, however, incarceration functioned differently, as was made apparent by the policing practices implemented during WWII. On the one hand, for American farmworkers outside the prison system, incarceration operated as a symbolic threat. Once successfully internalized by workers, this threat then could function to modify behavior, interrupt resistance, and limit the mobility of potentially uncooperative farmworkers. Moreover, it represented the punitive consequence of un-American, unpatriotic labor practices like striking or engaging in collective bargaining. By mediating and moderating the modalities in which migrant farmworkers could enter, leave, and mobilize within the state, state and local police officers could then give immediate form to both the symbolic threat of incarceration and the punitive consequences of disobedience.

For imported farmworkers, on the other hand, incarceration functioned as both a symbolic threat and as a kind of workforce exchange. Inasmuch as foreign farmworkers feared deportation and managed to avoid injury, this new form of incarceration – detention – could, like incarceration-as-punishment, encourage obedience and interrupt resistance. At the same time, however, incarceration as detention involved the delimitation of spaces in which undesirable laborers could be managed appropriately. Thus, for large-scale agriculturalists during WWII, the repatriation center served as a kind of triage facility, wherein farmworkers with injured bodies or insubordinate dispositions could be isolated, processed for removal, and replaced. Coupled with the constant influx of healthy, able-bodied foreign farmworkers and the diligent enthusiasm of state and local police officers, federal authorities, and WFA camp officials, such practices created the conditions in which problematic elements of the farm labor supply could be *neutralized* rather than rehabilitated, *replaced* rather than corrected, *reassembled* rather than reformed.

If importation, deportation, and incarceration/detention fundamentally supported the processes by which officials evaluated, law enforcement officers policed, and employers manipulated agricultural labor supplies during WWII, how would such processes fair after the war? In what ways would these policing and labor practices survive? Would their wartime success influence the disposition of national policies concerning agriculture and labor migration? Answering these questions requires a close examination of the ways in which immigration and labor practices and discourses converged in the post-WWII era.

CHAPTER V

CONTEMPORARY PRACTICES OF DISCIPLINING LABOR

Until the early-to-mid 1900s, Mexican citizens crossed relatively freely into the Southwestern US, with the border's fluidity more or less a practical reflection of the region's historically convergent and interconnected cultures, environments, and agricultural economies. However, in the mid-1900s, particularly in the years after WWII, an assemblage of forces including Cold War-era federal law enforcement officials, powerful and nationally-active labor unions, and sensationalist and widely-syndicated journalists and reporting agencies gave form to discourses that identified the porousness of the US-Mexican border, along with the Mexican's who traversed across it, to constitute prescient national problems.

These discourses regularly linked Mexican immigrants, specifically so-called illegal Mexican immigrants, with illicit crime. Just as bootleggers smuggled illegal and stolen goods into the black market, syndicates of "*enganchadores*" and "*pateros*," according to one journalist, smuggled "wetbacks" across the border.[426] The professional "man smuggler," the journalist continues, "peers furtively through the darkness," then "creeps down the bank" of the Rio Grande as he leads a "[c]onsignment of smuggled Mexican farm workers" to Southwestern agriculturalists.[427] In public media, the descriptive milieus of the immigrant and the criminal had converged. Like any other illegal good, the labor of Mexican "wetbacks," as one journalist explains, constituted "a sort of contraband."[428]

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[426] "U.S. Labor Needs Keep Smugglers Prosperous," *Sarasota Herald-Tribune*, 31 May 1950, 13.
[427] Ibid.
[428] Marquis Childes, "Wetbacks Are Manpower Pool For Vast Southwest Farming," *Pittsburgh Post-Gazette*, 6 November 1951, 10. For a great discussion of the evolution of US immigration discourses, see: Mae M. Ngai, "The Strange Career of the Illegal Alien: Immigration Restriction and Deportation Policy in the United States, 1921-1965," *Law and History Review* 21, no. 1 (2003): 69-107. Also highly recommended is Ngai's book: Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, New Jersey: Princeton University Press, 2004).

But unauthorized immigrants were not just characterized as agents of criminality – they were also identified as uncontrollable pathogens to national security. One reporter, for instance, describes Mexicans "swarming" across the border into Texas, where they overwhelmed federal agents by staging a "dramatic invasion."[429] Speculating about the "500,000 to 1,500,000" "wetbacks" that could have "crossed the Mexican border by stealth" in 1952, another journalist speciously adds that there "is no check on what smuggled goods, contagious diseases or Soviet agents" that these unauthorized entrants "may bring with them."[430]

The increasingly urgent tone of such discursive patterns, moreover, was accompanied by a similarly aggressive set of immigration enforcement practices. Indeed, as Thomas Espenshade notes, immigration agents arrested approximately 128,000 unauthorized immigrants in the 1920s and 147,000 in the 1930s, but his number increased sharply to 1.4 million in the 1940s. Between 1951 and 1953, immigration agents arrested nearly two million unauthorized immigrants – more than all previous years combined.[431]

Such discourses and practices provided captivating material for federal officials interested in expanding enforcement mandates. The Border Patrol, one reporter writes while paraphrasing Attorney General Herbert Brownell, "is no longer able to cope with the rising tide of illegal entrants from Mexico who swarm across the sparsely guarded border every night." These "illegal Mexican aliens," the reporter adds, "live outside the law," often becoming the "victims of lawless elements in Southern California," where "dope and prostitution rings" cause "serious local problems."[432] Advising Congress in 1954, the Immigration and Naturalization Service (INS) reported that unauthorized border entries "cannot be [anything] other than a threat

[429] "Mexicans swarm over Rio while officials dicker," *Ellensburg Daily Record*, 15 October 1948, 1.
[430] "Mexican 'Wetbacks' to Test Ike's Latin American Policy," *The Spokesman-Review*, 15 January 1953, 16.
[431] Thomas J. Espenshade, "Unauthorized Immigration to the United States," *Annual Review of Sociology* 21 (1995): 197-198.
[432] "Ike Indorses Strong Policy On 'Wetbacks'," *Oxnard Press Courier*, 18 August 1953, 6.

to the security of the United States."[433] To prevent such dangers, Brownell and Eisenhower demanded the ability to use government resources "to the fullest possible extent,"[434] even going so far as to suggest deploying "armed forces" to the US-Mexican border.[435]

Although Eisenhower officials never deployed the military to the border, they nonetheless initiated one of the largest immigration enforcement campaigns in US history. In 1954, under an infamous INS effort known officially as "Operation Wetback," well over one million Mexicans and Mexican-Americans – many of whom were American citizens and legal US residents – were arrested and forcibly removed from the country.[436] Sensationalized news reports followed accordingly, providing militaristic accounts of the over 1,000 Border Patrol agents who, in cooperation with state and local law enforcement, conducted door-to-door raids, citizenship checks, and traffic stops in Southwest border towns, rounding up and deporting so-called Mexican wetbacks.[437] The enforcement operation, according to David Manuel Hernández, resulted in the detention of over 500,000 people – the largest number of people ever to be detained by the INS in a single year.[438]

"Operation Wetback," according to one newspaper article, was a "major offensive" in the fight against illegal immigration,[439] and according to a top Border Patrol official, illegal immigration constituted "the greatest peacetime invasion in this nation's history."[440] As unauthorized immigrants headed to the nation's "industrial areas" in larger numbers, warned

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[433] "Illegal Entries Cause Alarm," *Saskatoon Star-Phoenix*, 9 February 1954, 2.
[434] "Ike Indorses Strong Policy On 'Wetbacks'," *Oxnard Press Courier*, 18 August 1953, 6.
[435] James Marlow, "'Wetbacks' Get By Guards," *Times-Daily* (Florence, AL), 24 August 1953, 3.
[436] David Manuel Hernandez, "Pursuant to Deportation: Latinos and Immigrant Detention," *Latino Studies* 6, no. 1-2 (2008): 50-51; Kelly Lytle Hernández, "The Crimes and Consequences of Illegal Immigration: A Cross-Border Examination of Operation Wetback, 1943 to 1954," *The Western Historical Quarterly* 37, no. 4 (2006): 421.
[437] "Border Patrol Hits Wetbacks For Fare home," *The Deseret News*, 19 July 1954, 6-A.
[438] Hernández, "Pursuant to Deportation," 51. Citing statistics from: Joseph M. Swing, *Annual Report of the Immigration and Naturalization Service* (Washington, DC: Government Printing Office, 1954): 31 and 36
[439] "Border Patrol To Triple Force," *Oxnard Press-Courier*, 10 June 6 1954, 2.
[440] Ibid.

Attorney General Brownell, they were "displacing domestic workers, affecting working conditions, spreading disease and contributing" to crime.[441] Stopping these "subversives," Brownell contended, required the most "effective weapons."[442]

As an "elite, handpicked group," reports one journalist, the nation's Border Patrol trainees underwent a "rigorous 14-week" program that "makes boot camp look easy." After completing their training at a former Navy base in Texas, the men, the journalist adds, would then be deployed to guard "America's frontiers."[443] From a separate military base in Port Isabel, Texas, overcrowded ships run by the Immigration Service – known as "hell ships" – ferried deportees to Veracruz, Mexico, where immigration officials hoped the 700-mile distance would discourage attempted reentries. The conditions aboard these so-called hell ships, according to one article, were so "deplorable" that deportees sometimes rioted and jumped overboard to their deaths in protest.[444] Thus, in the so-called war against illegal immigration, the border functioned as strategic point that needed to be held, the illegal immigrant became the enemy-invader, and the Border Patrolman became the soldier.

By the 1950s, many Americans had become firmly convinced that immigrant laborers, particularly migrant laborers from Mexico, threatened the integrity and strength of domestic political and economic institutions. Labor organizations were especially aggressive in criticizing Mexican migrant laborers, targeting both Mexican workers who had been imported legally under the Bracero Program and Mexican migrant workers who had entered the US without authorization.[445] In 1963, the AFL-CIO initiated a campaign against the Bracero program. "The

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[441] Ibid.
[442] "U.S. To Mop Up On 'Wetbacks': Border Patrol To Be Augmented," *The Victoria Advocate*, 9 June 1954, 1.
[443] Bob M. Gassaway, "Border Patrol Elite Group," *The Victoria Advocate*, 28 April 1966.
[444] "Investigates Report of Ship Riot: Solon Hears Of Alleged Action On Ship Deporting 'Wetbacks'," *The Times-News* (Hendersonville, NC), 27 August 1956, 4.
[445] According to Phillip Martin, somewhere around 4.6 million Mexican farmworkers entered the US to work on farms and ranches between 1942 and 1964 under the Bracero arrangements. See: Phillip Martin, "Factors That

Mexican contract labor program," contended the AFL-CIO's legislative director, "has undermined wage and work standards for American farm workers on a wholesale basis."[446] Moreover, added the director of the AFL-CIO Agricultural Workers Organizing Committee, the program "is the force that is keeping down" the American farm worker's "opportunities, wages, and working conditions."[447] The "deplorable wages and unemployment perpetuated by the bracero program," another AFL-CIO representative claimed, produced "staggering health and welfare costs."[448]

When Congress finally ended the Bracero program in 1964, growers in the Southwest first would supplement their labor supplies with Mexican green card holders and then with unauthorized Mexican immigrants.[449] Such practices, argued labor leaders, weakened domestic farmworkers. "Something like 44,000 people cross the international boundary line every day to work on American farms," asserted AFL-CIO director César Chávez in 1967. "Many of these workers," he continued, "are used as strikebreakers whenever we strike any of the farms." Chávez demanded that federal immigration agents take action to eliminate such hiring practices, accusing local INS agents of being "unwilling" to "investigate" such labor violations out of fear that they would "incur the wrath of the growers."[450]

The immigration discourses described above illustrate several important discursive developments. First, the border became an indisputable symbol of national sovereignty. Border fortification, therefore, functioned as a necessary element of national security. Second,

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Influence Migration: Guest Workers: Past and Present," in Vol. 3 of *The Binational Study on Migration Between Mexico and the United States*, JV7401.M54, Mexico Ministry of Foreign Affairs and U.S. Commission on Immigration Reform (Austin, Texas: Morgan Printing, 1998): 877-895.

[446] "Union makes new attack on bracero plan," *The Press-Courier*, 8 August 1963, 17.

[447] Dale Polissar, "Labor Director Blasts Bracero Program," *Lodi News-Sentinel*, 27 August 1963, 7.

[448] "State Labor Aide Warns Against Use of Braceros," *The Modesto Bee*, 24 March 1965, B-4.

[449] Philip Martin, "Mexican Workers and U.S. Agriculture: The Revolving Door," *International Migration Review* 36, no. 4, Host Societies and the Reception of Immigrants: Institutions, Markets and Policies (Winter 2002): 1129.

[450] "Chavez Charges: Illegal Workers Used on Farms," *The Spokesman-Review*, 18 October 1967, 2.

immigrants – particularly Mexican migrant laborers – were identified as threats to American institutions and workers. A successful regime of enforcement, therefore, would necessarily include a regime that could identify, isolate, and remove such threats. Third, unauthorized immigration constituted an affront to the nation's sovereignty, security, and laws. The extent to which immigrants entered and worked in the US without authorization, consequently, became a kind of barometer for evaluating the integrity of economic, political, and social institutions. Finally, as a policy question, immigration was understood in terms of its effects on the domestic labor market, public resources, and crime. Designing mechanisms to control immigration, therefore, required policymakers to keep these effects in mind.

How did the discursive developments mentioned above play out in Florida? In what ways would Florida's agriculturalists, residents, and labor organizations seek to understand immigration and migrant laborers? In what ways would those participating in Florida's immigration discourses aim to problematize foreign migration?

Immigration Discourses and Practices in Florida Post-WWII

In the years immediately following WWII, public and private agricultural organizations pressured Congress and federal officials to consider farmers' interests while reorganizing the programs and policies that had so successfully bolstered wartime agricultural production. In Florida, where wartime foreign farmworker importation arrangements had helped growers supply the nation's military with foodstuffs, the intentions behind such requests were particularly apparent.

In a 1945 memo written to USDA Secretary Clinton Anderson on behalf of Florida growers, for example, the Agricultural Division of the Florida Chamber of Commerce argued that the "nature of Florida's fruit and vegetable crops is such that large numbers of migratory

laborers are required." A "policy and program" involving "local control of migrant camps," the memo continues, "will better serve" the industry "and will be helpful to the migrant." Moreover, the Agricultural Division recommended "that arrangements be made" for an "adequate number of foreign farmworkers" to remain "in Florida and available for work for the remainder of the current season."[451]

With other state agricultural and business organizations making similar requests, Congress responded by passing a law placing the camps under the control of the USDA. However, as Hahamovitch notes, rather than requiring the USDA to use the camps as the FSA had before WWII, the law instead instructed the USDA to sell each camp to "any public or semi-public agency or nonprofit" agricultural association for a "reasonable" price.[452] Ever so attuned to the interests of local agriculturalists, the USDA subsequently sold the camps to growers' associations across the country at a rate of just one dollar each.[453]

Congressional lawmakers also extended the foreign farm labor importation arrangements, eventually permanently incorporating them into law. East Coast growers, accordingly, could continue importing Caribbean farmworkers under what became known as the H-2 guestworker visa program, while Southwest growers and ranchers would continue importing Mexican farmworkers under what became known as the Bracero program. With the camps now owned and operated by local agricultural groups, and with various importation agreements stimulating the influx of foreign farmworkers, growers, thus, had successfully extended their ability to import, control, and house foreign farmworkers.

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[451] Florida State Chamber of Commerce, Memo Presented to USDA Secretary Clinton Anderson, "Recommendations," 11 November 1945, Box 7, Folder Title: US Dept. of Agriculture, 1945 memo, Mayo Papers.
[452] Hahamovitch, *The Fruits of Their Labor*, 197.
[453] Ibid., 197-198.

Florida's growers benefitted enormously from the H-2 guestworker program, particularly the state's sugarcane growers. As one reporter noted, Florida's agricultural sector employed close to 13,500 guestworkers in 1964 – roughly 17% of the state's agricultural workforce. That year, the sugar industry relied on the H-2 guestworker program for as many as 9,200 farmworkers. [454] Thus, when pro-union Department of Labor (DOL) officials threatened to limit the H-2 program in 1965, Florida's Agricultural Commissioner implored Vice President Humphrey to recognize the state's need for foreign farmworkers. "We cannot operate," he contended, without "offshore labor" from the Caribbean.[455] "Domestic laborers," he added, "no matter how many are unemployed, are not going to cut sugarcane" – such work, he reasoned, required "somebody from a hot climate."[456]

When the DOL ordered imported farmworkers to be returned to the British West Indies, Florida growers responded with anger, even going so far as to challenge the order in federal court.[457] The court's rejection of the challenge, argued a representative from the Florida Fruit and Vegetable Association (FFVA), constituted "a tremendous blow to the agricultural industry of this state – and the nation."[458] According to FFVA President John Evans, the DOL was "destroying" Florida's "$15 to $18-million…celery and corn" harvest.[459] American workers, argued Florida growers to one reporter, "refused to do 'stoop' labor in the fields regardless of wage levels."[460] Florida's public and private agricultural leaders, thus, continued to justify their reliance on foreign farmworkers by claiming that the group's natural predisposition to stooped

[454] "Florida To Get Foreign Labor," *St. Petersburg Times*, 21 August 1965, 1-B.
[455] "Florida Farm Need Told To Humphrey," *The Miami News*, 14 September 1965, 7-A.
[456] "Humphrey Urged To Help In Offshore Labor Squabble," *Ocala Star-Banner*, 14 September 1965, 9.
[457] Peter Trammer, "Offshore Labor Fight Weighed By U.S. Court," *St. Petersburg Times*, 7 May 1965, 9-A.
[458] "Court Rules No Power In Farm Labor Dispute," *Ocala Star-Banner*, 16 May 1965, 27.
[459] Trammer, "Offshore Labor Fight Weighed By U.S. Court," *St. Petersburg Times*, 7 May 1965, 9-A.
[460] "Court Rules No Power In Farm Labor Dispute," *Ocala Star-Banner*, 16 May 1965, 27.

labor in hot climates made them better employees than the unreasonably stubborn, incorrigible American farmworkers.

If growers truly disdained domestic farmworkers, however, it was not so much because domestic farmworkers refused to work as much as it because they refused to work for the wages growers offered. Even USDA representatives acknowledged this much, albeit infrequently. For example, in a 1956 speech to a meat packers' association, USDA Secretary Ezra Benson asserted that "excessive" wage increases and "round after round of soft wage settlements" had caused "increased costs" for the nation's agribusinesses – costs that had, he noted, "outrun labor productivity."[461] Similarly, when Belle Glade celery growers criticized the DOL's 1965 plan to discontinue importing Caribbean farmworkers, at least one journalist noted that "[o]ther reports from the Glades area" described how domestic farmworkers, rather than refusing to perform stoop labor, instead had organized "sitdown strikes…in the fields for higher wages."[462] Florida's farm labor shortages, therefore, were not induced by the unwillingness of domestic farmworkers, but rather by the ability of domestic farmworkers to collectively bargain.

Domestic farmworkers themselves often argued this point when they contested growers' proclaimed dependency on imported farm labor. Based on "information coming to us," argued the president of the Florida Citrus Workers Council in a 1954, "even without foreign farmworkers…there will be adequate labor supply to harvest the citrus crop." The H2 guestworker program, he added, was being "abused" by the industry, which did not give "proper consideration to citizens" migrating from neighboring states.[463] Thus, although growers claimed imported labor was necessary to avoid labor shortages and financial losses, they also refused to

[461] "Farm Plight Attributed to Payload: Benson Holds Situation Due To Heavy Wage Increases," *The Times-News* (Hendersonville, NC), 16 February 1956, 1.
[462] Trammer, "Offshore Labor Fight Weighed By U.S. Court," *St. Petersburg Times*, 7 May 1965, 9-A.
[463] "Citrus Union Eyes Import Of Labor," *Daytona Beach Morning Journal*, 2 November 1954, 12.

address the wage demands of striking domestic farmworkers. More than just financial loses, therefore, caving to domestic farmworkers meant opening the door to a potential litany of costly organized labor demands, including wage increases, workers' compensation, and perhaps eventually even federal union recognition.

While Florida's farmworkers blamed their problems on stagnant wages and Caribbean guestworkers, some Floridians attributed causality elsewhere. For example, when a labor shortage delayed South Florida's avocado and lime harvest in 1963, one reporter concluded that the shortage had "resulted from the present stress [placed] on educating the migrant children." Education, the reporter explained, led migrant children to find "other jobs rather than replacing the older workers."[464] In other words, maintaining adequate farm labor supplies depended on the inability of farmworkers' to participate in institutions that would allow them to join other labor markets.

For some Floridians, allowing migrant farmworkers to access such institutions created serious problems. In 1954, for example, a group of Dade County residents refused to let their children attend a school that had enrolled Puerto Rican and Mexican migrant children. The migrant children's attendance at the school, according to a resolution signed by the group of nearly 500 angry parents, not only lowered education quality, but also "constituted a health menace to the children of permanent residents." However, according to the school's superintendent, the problem was an issue of race. "I regard this," the superintendent stated, "as a problem of segregation," which "must be handled with understanding and patience."[465] Thus, as migrant farmworkers struggled for higher wages and sought to increase their access to public resources, Floridians saw such efforts as menacing threats. Segregation, therefore, was not just

[464] Howard Van Smith, "Laborer Shortage A Threat," *The Miami News*, 25 October 1963, 1-B.
[465] Jack W. Roberts, "Migrants Ousted At Redlands School," *The Miami Daily News*, 23 March 1954, 1-A; "Migrants' Children Ousted," *Daytona Beach Morning Journal*, 25 March 1954, 6.

practiced upon Latin American, Caribbean, and African American farmworkers, but upon migrants in general. Moreover, it was articulated in and through debates over public health and the proper distribution of resources.

Interestingly, however, Floridians also voiced concerns over the many former migrant farmworkers who had become permanent residents of the state. For example, while DOL Secretary Willard Wirtz visited Florida's farms in 1965, one South Florida school employee discussed the problems caused by settling migrants. "Florida is becoming a base for the migrant," he contended, adding that migrants were "putting their roots down," becoming "seasonal agricultural workers instead of migrant workers," and moving "out of the labor camps and into permanent housing."[466] Floridians, accordingly, mistrusted migrant and seasonal farmworkers not simply because of their migration from place to place, but also because of their migration from job to job. Seasonal farmworkers, therefore, threatened to undermine Florida communities inasmuch as they failed to migrate elsewhere.

Thus, in resisting the social integration of seasonal and migrant farmworkers, Florida residents often portrayed such populations as impoverished, unhealthy, and un-American. Meanwhile, as growers and agricultural industry representatives characterized domestic farmworkers as stubborn and ill-equipped for modern farm labor, they simultaneously contended that foreign farmworkers, who were naturally more able and willing to perform farm labor, constituted a more appropriate labor source. Accordingly, in order for the farmworker to meet the standards set forth by the dominant discourses, not only did he need to be migratory, but he also needed to be foreign and to prevent himself from becoming a drain on public resources.

The effects of the discursive developments mentioned above would be made apparent when Congress passed the Immigration and Nationality Act of 1952, which replaced racial

[466] "Wirtz Asks Closer Ties for Growers, Migrants," *The Sarasota Herald-Tribune*, 16 April 1965, 3.

immigration restrictions with restrictions based on nationality, region, and skill, and the Immigration and Nationality Act of 1965, which largely replaced national origins restrictions with a system of preferences based on the immigrant's skill and US citizen family members. The provisions of these laws were designed to protect American workers, domestic resources, and the nation's social, political, and economic institutions. They sought to regulate and structure the ways in which non-citizens living in the US could interact with the labor market, gain access to public resources, and participate in various institutions. In doing so, the laws paved the way for the emergence of a new set of enforcement, security, and surveillance policies and practices, policies and practices aimed at monitoring, governing, and disciplining the lives of non-citizens.

What new regulatory, security, and surveillance practices and policies would emerge? How would they aim to discipline non-citizens? In what ways would they rely on or reiterate the normative claims regarding the value and importance of obedient labor mentioned in the previous chapters? How might penal institutions and law enforcement agencies affect and be affected by these new regulatory, security, and surveillance practices and policies?

The Reduction of Status

Politicians advocating stricter immigration enforcement frequently temper their hawkish messages with support for legal immigration. "There is a way to get a temporary worker here," argued Mississippi Governor Phil Bryant in 2012 while endorsing his state's version of the state-based immigration enforcement measures proposed and passed in recent years.[467] However, "the people we're talking about," he lamented, "don't want to go through that process.[468] Similarly,

[467] These state-based measures are very similar to Arizona SB 1070, which is discussed in detail below.
[468] Cheryl Lasseter, "Governor seeks to 'rock the boat' in support of immigration bill," *WBTV News*, 29 February 2012, accessed 14 October 2012, http://www.wbtv.com/story/17047986/governor-seeks-to-rock-the-boat-in-support-of-immigration-bill.

Rep. Becky Curry, the Mississippi bill's co-sponsor, stated that the measure was "just a way of saying you're welcome to live in our country; you're welcome to work in our country, but be legal." "That's all we're asking," she added.[469]

These types of comments are worth noting for several reasons. First, they identify unauthorized non-citizens as unwilling to enter the US legally, thereby rendering them irresponsible, disrespectful, and culpable. Second, they reiterate the myth that legal ways for entering the US are readily available, thus allowing speakers to successfully avoid addressing any potential problems with how visa practices might affect non-citizens. Third, by neglecting a discussion of visa practices, these types of comments allow speakers to avoid having to explain the conditions that non-citizens must satisfy in order to enter the country legally. Such comments, thus, actually serve to obfuscate rather than clarify the public's understanding of US immigration policies and practices. An exegesis of some of these processes, therefore, is in order.

Depending on whether the applicant is seeking a family, employment, "special" immigration, or one of a number of non-immigrant visas, he or she will have to satisfy different requirements, produce different documents, and navigate different processes. In general, however, the typical prospective resident must satisfy a litany of pre-entry requirements, including: filing an initial petition form, producing a number of documents including photo identification and financial records, completing a visa application and a so-called alien registration form, forfeiting non-refundable application, filing, and processing fees, completing an interview with a US embassy or consular official, obtaining a medical examination from an "authorized panel physician," procuring as many as a dozen vaccinations, and, upon arrival,

[469] Mike McDaniel, "Lawmakers Consider New Immigration Law," *WTOK News*, 15 February 2012, accessed 14 October 2012, http://www.wtok.com/news/headlines/139397298.html.

submitting to a Customs and Border Patrol (CBP) inspection.[470] The satisfaction of pre-entry visa practices, thus, is not only a process defined by rigor, but also by cost.

After entry, an additional set of requirements set out by the INA of 1965 must be satisfied. For instance, non-citizens who "willfully" fail to "apply for registration" and submit fingerprints within thirty days of entry can be charged with a misdemeanor and fined up to $1,000, imprisoned for up to six months, or both. Typically, registration requires a non-citizen to list the "activities in which he has been and intends to be engaged," the amount of time "he expects to remain" in the country, and any "police and criminal record." A non-citizen must also "notify the Attorney General" of an address change and keep possession of "any certificate of alien registration or alien receipt card." Failure to do so can result in a $100 fine, thirty days in prison, or both. Thus, while pre-entry practices involve processes of interrogation, post-entry practices involve processes of notification.[471] Such practices operate as a sort of panopticon for non-citizens, reminding them that their locations and activities are subject to documentation, surveillance, and inquiry.

Non-citizens entering in order to work, however, experience an additional set of surveillance practices. A request for an employment-based visa, for instance, must be initiated by an employer, who is required to submit on behalf of the potential entrant an "affidavit of support" pledging "to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line." The affidavit, according to the INA, is "legally enforceable against the sponsor by the sponsored alien" as well as any government entity that provides "any means-tested public benefit." As such, local, state, and federal government representatives are empowered to sue the non-citizen's employer-sponsor for reimbursement if an imported

[470] See: U.S. Department of State, Bureau of Consular Affairs, "Temporary Worker Visas," accessed 5 December 2012.
[471] *Immigration and Nationality Act, U.S. Code* 2 (1965), § 262-266.

employee receives income-based public benefits.[472] Federal immigration law, thus, not only limits the ways in which imported employees are able to interact with certain public entities, but does so in a way that renders employer-sponsors legally and economically responsible for their imported employees. Employers, consequently, are incentivized to sponsor foreign employees presenting the lowest risk.

The employment-based immigration visa system explicitly demonstrates the ways in which employers are incentivized to sponsor risk-adverse foreign employees. First preference EB-1 visas, for instance, are reserved for applicants with an "extraordinary ability in the sciences, arts, education, business, or athletics," academics pursuing tenure, and certain multinational managers and executives, while EB-2 visas are reserved for degree-holding professionals with job offers and "five years of progressive experience" in their field, experts "in the sciences, arts, or business," and individuals whose employment is in the "national interest." Interestingly, EB-5 visas are reserved for applicants investing between "$500,000 and $1,000,000" in either a "targeted employment area" or a "new commercial enterprise" that creates jobs for domestic workers.[473] The preference-based visa system, thus, not only prioritizes the importation of educated, career-oriented, and skilled professionals, but also provides exceptions for those with ample financial means. Moreover, such a system reiterates the ideologically infused notion that jobs are created from the top down, that the economy is driven by the investment of capital and not by the activities of workers.

Employment-based visas are also distributed according to domestic labor need. Before most employment-based visas can even be approved, the DOL must confirm first that there are not enough domestic workers "who are able, willing, qualified and available" to occupy the

[472] Ibid., § 213A.
[473] See: U.S. Department of State, "Employment-Based Immigrant Visas," accessed 16 October 2012, http://travel.state.gov/visa/immigrants/types/types_1323.html.

positions at hand, and second that the imported laborers will not "adversely affect the wages and working conditions" of domestic workers in similar positions. In this sense, employment-based immigration aims to correct deficiencies in the American workforce. By targeting sectors in which the need for labor can be best demonstrated and the effects of imported labor can be best mitigated, the employment-based visa system, consequently, functions to reform the American workforce. Although such practices represent deference to the domestic workforce, they also reflect the assumption that the nation's workforce can and should be designed in ways that accommodate the needs of American businesses. Legal status, thus, becomes subsumed by employability.

An additional set of visas known as employment-based non-immigration visas further demonstrates the ways in which visa status is subjected to the needs of employers. Often distributed to sponsored individuals with "specialized knowledge" of a "company product" or an "advanced level of knowledge" of a company's "processes and procedures,"[474] these visas, which expire after either five or seven years, come with strict employment limitations. For instance, if a non-immigration visa holder is found to be "controlled and supervised principally" by an "unaffiliated employer," immigration officials can charge both the employee and the sponsor with immigration fraud. Moreover, if a sponsor fires an imported employee, not only can the employee's visa be revoked, but both parties can be held "jointly and severally liable" for the cost of the non-citizen's removal from the country. Employment-based non-immigration visa holders, thus, are formed, regulated, and evaluated almost exclusively in terms of their relationships with their employer-sponsors.

[474] Applicants included under the latter category obtain work authorization for seven years, while those under the former obtain work authorization for up to five years.

The J-1 visa makes the consequences of such requirements especially clear. Originally created in 1961 as a method of fostering educational and cultural exchange, J-1 visas are issued to more than 300,000 young adults each year by the State Department. Through special Work-Travel programs, J-1 visa holders can find temporary employment in the US, and after completing their work, their visas allow them to remain in the country as visitors for up to thirty days.[475] Such visas, consequently, are quite popular amongst young adults looking to gain experience in the workforce while at the same time exploring US culture.

Private labor organizations and employers, however, have found the programs to be a convenient source of cheap, deportable labor. Employers, for instance, are not required to pay Medicare, Social Security, or unemployment fees for imported Work-Travel participants.[476] Moreover, unlike most employment-based visas, the DOL does not certify the need for or monitor the labor conditions of employers who participate in the J-1 Work-Travel programs. Rather, oversight responsibility lies solely with the State Department, an executive body that not only lacks experience navigating the nuances of labor relations, but also specializes in diplomatic issues with foreign countries. According to a 2010 article investigating the J-1 visa program, the State Department did not even record participants' complaints or consistently archive employer data before 2010.[477]

Although the State Department requires visa sponsors to inform participants of their labor and housing arrangements before they enter the US, the program's lack of oversight means that participants often find themselves in highly coercive situations with employers and housing

[475] See: U.S. Department of State, "Nonimmigrant Visa Statistics," accessed 16 October 2012, http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html.
[476] The State Department requires participants to have health insurance, but employers are not obligated to provide coverage. See: Holbrook Mohr, Mitch Weiss, and Mike Baker, "J-1 Student Visa Abuse: Foreign Students Forced To Work In Strip Clubs, Eat On Floor," *The Huffington Post*, 6 December 2010, accessed 16 October 2012, http://www.huffingtonpost.com/2010/12/06/j1-student-visa-abuse-for_n_792354.html.
[477] Ibid.

providers. According to the 2010 article, for instance, employers subtracted inflated charges for "lodging, transportation and other necessities" from paychecks, driving down some participants' hourly wages to just one dollar. The article also describes participants who were trafficked into prostitution, while another describes participants who were duped into working in dangerous, labor-intensive factories.[478] Such accounts illustrate the ways in which predatory employers consistently threaten participants with termination, and as continued employment is required in order for one's visa status to remain valid, terminated participants often must immediately return home.[479] The legal status of J-1 Work-Travel program participants, thus, derives almost entirely from their relationship with employers and sponsors. Obedient employment, therefore, easily becomes compulsory.

However, even when administered under the moniker of government oversight, the way in which non-immigrant employment-based visas allow employers to categorically subject their workers to employment is apparent. For instance, under H-2 visa arrangements, employer-sponsors and labor recruiters import temporary guestworkers for employment in seasonal industries. While H-2B visa holders commonly work in hotels, restaurants, private clubs, and theme parks, H-2A visa holders work exclusively in seasonal agricultural industries.[480] Although the DOL ostensibly certifies employers and monitors the labor conditions of guestworkers, they are nonetheless required by law to work in the sector and for the employer outlined in their

[478] Ibid. Also see: Julia Preston, "Foreign Students in Work Visa Program Stage Walkout at Plant," *New York Times*, 18 August 2011, A-11, accessed 16 October 2012, http://www.nytimes.com/2011/08/18/us/18immig.html?pagewanted=all&_r=0.

[479] See: U.S. Department of State, "Rights and Protections for Temporary Workers," accessed 16 October 2012, http://travel.state.gov/visa/temp/pamphlet/pamphlet_4578.html. Also see: U.S. Department of State, "Rights, Protections and Resources Pamphlet," accessed 16 October 2012, http://www.travel.state.gov/pdf/Pamphlet-Order.pdf.

[480] Under the H2-B program, seasonal businesses such as hotels, restaurants, and private clubs can import temporary guestworkers to perform peak, service-related tasks.

contracts.[481] It is perhaps unsurprising, then, that guestworkers – particularly H-2A visa holders – who raise concerns to their employers about missing wages, unsanitary housing conditions, or unsafe working environments are often threatened with deportation.

In a study conducted by the Carnegie Endowment for International Peace, for example, researchers discovered that employers had regularly engaged in the "widespread" and "highly organized" practice of blacklisting H-2A guestworkers "at all stages" of the process.[482] In a study conducted by Human Rights Watch, researchers noted that agricultural employers sometimes even called the police on publicly-funded advocates attempting to distribute labor rights literature to imported guestworkers, while other employers reportedly compelled agricultural guestworkers to burn their labor rights manuals.[483] The ways in which temporary guestworker visas subject legal status to employment, thus, directly inform conditions in which employers can discipline workers into performing labor obediently, efficiently, and without resistance.

According to Michael Holley, US courts and federal legislation also directly supports such coercive labor practices. As Holley explains, although the Agricultural Worker Protection Act (AWPA) empowers domestic and undocumented farmworkers to sue employers in federal court, the law specifically excludes H-2A workers.[484] Holley notes that this exclusion is partially justified on the basis, according to one federal appeals court, that "neither the INA, nor the WPA, nor the H-2 regulations were intended to especially benefit alien workers," but rather that "their

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[481] Michael Holley, "Disadvantaged by Design: How the Law Inhibits Agricultural Guest Workers from Enforcing their Rights," *Hofstra Labor & Employment Law Journal* 18 (2001): 593.
[482] Demetrios G. Papademetriou and Monica S. Heppel, *Balancing Acts: Toward a fair bargain on seasonal agricultural workers*, International Migration Policy Program, Carnegie Endowment for International Peace (1999): 13. Found in: Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards* (New York, New York: Human Rights Watch, 2000): 221. The Human Rights Watch report was also found in: Ibid., 594-595.
[483] Human Rights Watch, *Unfair Advantage*, 203. Found in: Ibid., 595.
[484] Ibid., 603-604.

stated purpose is to protect the jobs of United States citizens."[485] Guestworkers seeking relief, consequently, must file suit in state and local court jurisdictions, where the large-scale employers against whom they seek remediation frequently occupy significant positions of political power. Thus, although federal and local laws technically provide H-2A workers with rights – under, for example, the Fair Labor Standards Act – guestworkers are prevented from taking action to enforce such rights. Rather than being the beneficiaries of these supposed rights, therefore, H-2A workers, as Holley notes, instead function "essentially as trustees for their domestic counterparts."[486]

As Holley explains, administrative obstacles similarly limit the ways in which agricultural guestworkers can challenge their employers. For example, although DOL agents are permitted to investigate guestworkers' allegations of unfair labor practices, the DOL's policies fail to outline specific procedures for such investigations. Instead, they state only that, "pursuant to a complaint or otherwise," the Secretary "may investigate to determine" an employer's compliance with DOL regulations "as may be [determined] appropriate."[487] Moreover, Holley further notes that the DOL neither establishes a time-frame for handling complaints nor requires that complainants be notified of responses, and rather than outline a framework with which DOL officials might levy punishments against an employer found culpable, the DOL's policies refer only to the possibility of administrative or injunctive consequences.[488]

Tellingly, such obstacles do not exist for growers. As Holley explains, not only does the DOL outline a precise framework for processing an employer's H-2A guestworker applications, but if the DOL denies such a request, the employer is entitled to petition an administrative judge

[485] *Nieto-Santos v. Fletcher Farms*, 743 F.2d 638 (1984). Found in: Ibid., 604.
[486] Ibid., 604-605.
[487] *U.S. Code of Federal Regulations, U.S. Code* 29 (2011), §501.6(a). As quoted in: Ibid., 597.
[488] Ibid., 597-598.

to review the decision through either a *de novo* hearing, to be held within five days of the petition's receipt, or in a written record, to be issued within five days of the petition's receipt. An administrative judge, moreover, must thoroughly explain any such ruling. Should he request, the petitioner is entitled to an administrative appellate hearing within sixty days, the results of which can then be challenged once again in federal court.[489] Thus, while agricultural guestworkers are provided with procedurally vague, imprecise legal tools with which to seek relief, employers are afforded multiple, procedurally specific legal tools with which to establish their need for imported guestworkers. The hiring practices and labor needs of employers, therefore, take precedent in determining the status, standing, and credibility of guestworkers.

The paragraphs above demonstrate how US immigration policies and practices document, monitor, and govern non-citizens residing in the US. By and large, these practices and policies seek to understand, mediate, and evaluate non-citizens in and through their labor and employers. However, as Florida's history demonstrates, the disciplinary practices surrounding marginalized labor have always relied on much more than just the legal and administrative manipulation of employer-employee relationships. They have also relied on important changes in criminal codes, persistent patterns in community policing practices, and the institutional support of prisons. Thus, if Florida's history is to be pedagogically instructive for examining contemporary immigrant labor practices, it is necessary to investigate whether the criminal laws, policing practices, and penal institutions surrounding non-citizens support the processes by which labor is disciplined.

[489] Ibid., 600-601.

Criminalizing Immigration

During the spring of 1980, a massive influx of Cuban refugees arrived on the shores of Florida. As Jonathan Simon notes, in just over a month during the so-called Mariel Boatlift, close to 100,000 *marielitos* landed in the state. But, Simon notes, these men, women, and children differed in appearance from the whiter, wealthier Cuban émigrés that had arrived in Florida in previous years. Moreover, press reports repeatedly alleged that the émigrés included a large number of violent criminals and people with mentally disabilities.[490]

Amidst "reports that criminals, mental patients, and possibly even Cuban intelligence agents were being planted among the refugees," one journalist writes, federal officials "tightened security at docks and processing centers," deploying "a beefed-up force of immigration officers, FBI agents and National Guardsmen."[491] The arrival of the Cuban émigrés, moreover, was coupled with nearly 15,000 Haitian refugees, who, Simon notes, "drew an even more negative reaction" from media and government officials.

The Haitian refugees, Simon explains, were "overwhelmingly black," mostly poor "beyond the American imagination," and inaccurately associated with disease. Consequently, Simon adds, they were "quickly coded as potential criminals and welfare recipients."[492] According to one newspaper, Dade County officials banned three Haitian triplets who displayed "early symptoms of the often-fatal Acquired Immune Deficiency Syndrome," or AIDS. Education officials, the article explains, "feared the triplets…could endanger the health of other children, despite doctors' assurances" that they were "healthy enough to attend school."[493] Haitian immigrants, reports another paper, "popular as cheap, hard-working help in South

[490] Jonathan Simon, "Refugees in a Carceral Age: The Rebirth of Immigration Prisons in the United States," *Public Culture* 10, no. 3 (1998): 579, 590.
[491] "Cuban Refugees Admit To Crimes," *The Times-News* (Hendersonville, NC), 24 April 1980, 18.
[492] Simon, "Refugees in a Carceral Age," 590-591.
[493] "School bans Haitian children with AIDS," *Boca Raton News*, 10 September 1984, 7-A.

Florida restaurants and hotels, suffer from roundworm and other diseases that pose serious health hazards." If the refugees do not maintain good hygiene, one doctor warned, "food, utensils and plates can become contaminated," and roundworm "can spread."[494]

As thousands of Haitian and Cuban refugees arrived and settled in South Florida, the state's politicians, media representatives, and residents expressed panic, disdain, and fear. "I believe we are in a state of undeclared emergency," declared the mayor of Miami Beach. "The Cuban Communist dictator has flushed his toilets," proclaimed the mayor of Miami, referencing the city's spike in crime that followed the Cubans' arrival."[495] The "true number of dangerous criminals," reports one paper of the *marielitos*, may be "10 times the publicly stated" number of "2,000 hard-core criminals."[496] A coalition of Miami radio hosts launched the "Save Our South Florida" campaign, which, one newspaper explains, was "prompted by projections that Mariel refugees, now eligible for citizenship, eventually could bring up to 300,000 relatives to this country."[497]

In a program aired by nine public television channels, Florida Governor Bob Graham demanded "President Reagan to do his job and save Florida from drowning in this flood of refugees," implored his Administration to begin resettling refugees elsewhere, asked the federal government to reimburse the state for social service expenses dispersed to refugees, and called for an immediate end to settling refugees in Florida unless with family members.[498] Thus, according to Florida's residents, politicians, and media figures, hundreds of thousands of newly-arrived refugees not only exposed the public to risks of dangerous crime and disease, but also threatened to drastically affect the state's demographic make-up and to drain its resources.

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[494] "Medical Experts Say That Haitians May Pose Serious Health Hazard," *Gainesville Sun*, 31 July 1981, 10-B.
[495] "Miami Crime Rate Blamed on Refugees," *The Palm Beach Post*, 19 September 1980, A-14.
[496] "INS Ignored Crime Reports On Refugees," *The Palm Beach Post*, 12 December 1981, A-1.
[497] "Radio Hosts Urge Curbed Cuban Influx," *The Palm Beach Post*, 7 December 1984, B-14.
[498] "Graham's Stance Tough on Influx Of Refugees," *Gainesville Sun*, 25 September 1981, 6-B.

As described in the first section of this chapter, the increased amount of attention dedicated to the issue of border security in the 1940s, 1950s, and 1960s helped create the conditions in which illegal Mexican immigrants could become consistently understood as criminals. However, as the discussion above illustrates, the spectre of the illegal, criminally inclined immigrant was also taken up by discourses concerning Haitian and Cuban émigrés. Thus, the discursive convergence of the criminal and the immigrant – particularly the Caribbean or Hispanic immigrant – had become a regular fixture of both national and state-wide immigration discourses.

Importantly, this convergence would soon be stabilized in law. Indeed, according to immigration lawyer Stephen Legomsky, over the past several decades, immigration law has increasingly adopted crucial elements of criminal law. Although civil in nature, Legomsky contends, immigration violations now result in a more punitive and more reliably-imposed set consequences than ever before.[499] Prison sentences for immigration-related crimes have lengthened, while the number of crimes for which non-citizens can be deported has increased. In what Legomsky calls a process of criminalization, "immigration law has been absorbing the theories, methods, perceptions, and priorities of the criminal enforcement model while rejecting the criminal adjudication model in favor of a civil regulatory regime."[500] Such processes, thus, not only reflect the legal convergence of immigration law with criminal law, but also indicate the formation of a legal system in which non-citizens are policed like criminals but are not entitled to the rights normally afforded to criminals during criminal prosecution and adjudication.

According to Legomsky, the modern iteration of this process began with a number of federal laws passed since the 1980s. In 1986, for example, Congress passed the Immigration

[499] Stephen H. Legomsky, "The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms," *Washington & Lee Law Review* 64, no. 2/3 (2007): 471.
[500] Ibid., 472.

Reform and Control Act, which prohibited employers from "knowingly" hiring unauthorized immigrants and criminalized the use of fake documents in order to falsify work authorization, while in 1993, lawmakers passed the Violent Crime Control and Law Enforcement Act, which criminalized the reentry of non-citizens deported for certain misdemeanors. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, which criminalized a number of additional practices, including intentionally failing to disclose one's participation in the preparing of a false immigration application, the filing of a "frivolous" immigration application, falsely claiming citizenship, and failing to obey a removal order.[501]

Over roughly the same period of time, Legomsky adds, Congress also lengthened prison sentences and strengthened sanctions for immigration-related violations such as unauthorized entry, unauthorized reentry, overstaying of a visa, working without authorization, and concealment of non-citizens unauthorized to work.[502] Thus, many of the behaviors typical of unauthorized non-citizens not only have become crimes, but also result in much more punitive consequences than ever before.

The number of crimes for which non-citizens can be deported, Legomsky continues, has also increased substantially. For example, with the passage of the Anti-Drug Abuse Act in 1988, Congress created a new kind of deportable crime – the "aggravated felony." Although initially only particularly serious crimes fell under this new category, it has since been amended to apply to over twenty crimes, including violent crimes like sexual assault as well as non-violent crimes like trafficking in false documents, fraud, forgery, perjury, tax evasion, counterfeiting, obstruction of justice, and unauthorized reentry. The category, moreover, applies retroactively. Thus, an individual convicted of a crime before it was considered an aggravated felony –

[501] Ibid., 476-477.
[502] Ibid., 478.

regardless of sentence completion – now faces the potential of incurring consequences retroactively, including possible deportation, prohibition from accessing certain forms of relief in immigration court, mandatory detention if arrested, increased possibility of lifetime barred reentry, and a decreased chance of achieving naturalized US citizenship.[503]

The massive expansion of the aggravated felony category, importantly, has had a very significant effect on immigration law enforcement. Between 1997 and 1998, for example, the number of prosecutions for immigration violations increased from about 18,000 to nearly 23,000. Similarly, from 2003-2004, prosecutions spiked 80% for immigration crimes. By 2006, immigration cases constituted close to one-third of all federal prosecutions, making it the largest category of all federal prosecutions.[504] However, despite the fact that deportation has become an increasingly inevitable result of criminal and immigration convictions, according to Legomsky, US courts nonetheless understand deportation to be a procedural consequence entirely independent of criminal punishment.[505]

Immigration officers, subsequently, can freely encourage non-citizens accused of deportable crimes to plead guilty or to accept voluntary removal orders. However, as Legomsky explains, because deportation is not considered punitive, immigration officers are not prohibited from initiating removal proceedings against non-citizens who have already pleaded guilty, been convicted of deportable offences, or completed prison sentences for crimes considered to deportable offences. Moreover, once a non-citizen accepts a voluntary removal order or pleads guilty to a deportable offense, he or she is locked into that decision.[506] Violators, consequently, not only frequently end up in removal hearings after completing their prison sentences, but they

[503] Ibid., 483-484. According to Legomsky, the original "aggravated felony" category included only murder, drug trafficking, and illicit weapons trafficking.
[504] Ibid., 479-480, 483-486, 488
[505] Ibid., 481.
[506] Ibid., 482. Agreeing to either of these prevents individuals from accessing the few protections made available to non-citizens who contest their removal orders from the very beginning.

also often find themselves unable to challenge such proceedings. Within immigration courts, therefore, deportation operates in an extremely unique way. For obvious reasons, deportation has the power to affect someone's life in a profoundly negative way, but it is at the same time formally independent of punishment. Deportation, thus, is positioned to function as a powerful adjudicative tool, the implications of which only affect non-citizens.

Legomsky also points out that immigration courts do not guarantee access to legal counsel, protect against self-incrimination, guarantee access to a speedy trial by jury, protect against bills of attainder,[507] prevent the use of laws *ex post facto*, prohibit cruel and unusual punishment, or protect against the use of evidence obtained without a warrant.[508] Such proceedings, moreover, permit the use of hearsay evidence and require only a preponderance of the evidence (not proof beyond a reasonable doubt) in order to establish guilt. Finally, because immigration courts operate administratively under the DOJ, few decisions can be challenged in federal appeals court.[509] Thus, according to Legomsky, not only do immigration courts fail to provide non-citizens with many of the rights and protections guaranteed in criminal proceedings, but the rulings that they produce are effectively "bereft of decisional independence."[510]

The practices described above make it clear that non-citizens living and working in the US are governed by laws and legal processes that either do not apply citizens or, at the very least, have markedly dissimilar implications for citizens. Such laws and legal processes serve only to undermine an egalitarian notion of justice. As Martin Luther King, Jr., notes in his letter from Birmingham jail, an "unjust law is a code that a majority inflicts on a minority that is not binding

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[507] A bill of attainder is a legislative act in which a person or group is declared guilty of a crime and rendered punishable without judicial trial. See: Ibid., 515-516.
[508] Ibid., 515-516. According to the INA, non-citizens facing deportation are guaranteed the "privilege" of counsel. See: *Immigration and Nationality Act, U.S. Code* 2 (1965), § 208.
[509] Legomsky, "The New Path of Immigration Law," 517.
[510] Ibid., 513.

on itself." The infliction of such a code, King explains, "is difference made legal."[511] Differences in the application and applicability of law, thus, can foment the formation of a system of boundaries exclusively affecting a minority group – a group which, as a result of disenfranchisement and limited judicial agency, is largely incapable of challenging such boundaries. Thus, not only is the realm of illegality broader in scope for non-citizens, but its adjudicative power stems from laws and permeates throughout processes that are ultimately unanswerable to the people it seeks to govern.

In Florida, the disciplinary practices through which marginalized groups became subjected to their labor were accompanied by similar processes of criminalization. These processes, however, were articulated alongside highly effective and aggressive law enforcement practices. Changes to Florida's criminal code, thus, were coupled with enforcement directives, entrenched community policing practices, and local networks of power. The effectiveness of disciplinary power, accordingly, depends on the ways in which it is practiced by individuals embedded in specific relations with one another.

If the effectiveness of disciplinary power relies in part on the types of practices deployed by law enforcement officials, in what ways might the criminalization processes described above also involve law enforcement practices? In what ways are these enforcement and policing practices authorized, and how is such authority organized and distributed? How do these policing and enforcement practices reinforce the processes through which non-citizens are disciplined?

Deputizing Enforcement, Distributing Authority

In 2004, the Bush Administration piloted the Secure Communities (SComm) program. According to Immigration and Customs Enforcement (ICE), the program "uses an already-

[511] Martin Luther King, Jr., "Letter from Birmingham Jail," *The Atlantic Monthly* 212, no. 2 (August 1963): 78-88.

existing federal information sharing partnership between ICE and the Federal Bureau of Investigation (FBI)" to check the fingerprints of non-citizens apprehended by local police against the FBI's immigration database.[512] If the results "reveal that an individual is unlawfully present…or otherwise removable due to a criminal conviction," according to ICE, then immigration agents take "enforcement action" by issuing a writ of detainer obligating the local police department to hold such an individual until federal agents can take custody of and relocate the offender to an authorized detention facility.[513]

The program, ICE's website explains, focuses on "the removal of criminal aliens, those who pose a threat to public safety, and repeat immigration violators."[514] According to an August 2012 ICE information booklet, since October 2007, SComm has resulted in the deportation of nearly 160,000 "[c]onvicted criminal aliens."[515] Moreover, according to the booklet, at least 97% of all state, municipal, and county jurisdictions are listed as active SComm participants.[516] Top officials at the Department of Homeland Security (DHS), which oversees ICE's operations, claim that by 2013, all remaining jurisdictions are required to implement Secure Communities agreements.[517]

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[512] In 1996, Congress authorized the government to form "collaborative agreements with state and local law enforcement agencies" for the purpose of enforcing immigration laws. Under Section 287(g) of the INA, designated, trained police officers in jurisdictions with agreements were authorized to work with Immigration and Customs Enforcement agents to conduct investigate, arrest, and detain suspected immigration offenders. Before being discontinued in 2012, at least sixty-five of such 'collaborative' agreements existed. (496-7). Additionally, Attorney General John Ashcroft – in a later retracted statement – asserted in 2002 that local police had "inherent authority" to enforce immigration laws. Finally, in 2005, Congress introduced a law authorizing local police officers to "investigate, identify, arrest, detain, or transfer" to federal custody all non-citizen violators encountered during "routine duties." See: U.S. Department of Homeland Security, "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," accessed 16 October 2012, http://www.ice.gov/news/library/factsheets/287g.htm.

[513] U.S. Department of Homeland Security, "Secure Communities," accessed 16 October 2012, http://www.ice.gov/secure_communities/.

[514] Ibid.

[515] U.S. Department of Homeland Security, "Activated Jurisdictions," accessed 16 October 2012, http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf.

[516] Ibid.

[517] Gretchen Gavett, "Controversial 'Secure Communities' Immigration Program Will Be Mandatory by 2013," *WGBH Educational Foundation: PBS Frontline*, 9 January 2012, accessed 16 October 2012,

By streamlining the ways in which local police apprehend and share information about non-citizens, SComm maximizes the number of encounters through which non-citizens can be subjected to federal government scrutiny. However, according to many local officials, SComm agreements have made non-immigration crimes much more difficult to police. "What's happening is," the mayor of Boston explains, "we're losing the trust of the immigrant community."[518] According to a former Sacramento police chief appointed to a federal task force organized to review the program, SComm was actively "undermining public safety." [519] Ultimately, the police chief resigned from the task force, but the task force's report suggested that the program has the potential to increase crime. "To the extent that Secure Communities may damage community policing, the result can be greater levels of crime," explains a draft of the report. If "residents do not trust their local police," the report explains, then "they are less willing to step forward as witnesses to or victims of crimes."[520]

As local police departments increasingly implement SComm agreements, similar reports of malevolent results have surfaced. According to one sheriff, for instance, the program's implementation has "caused serious public relations problems in Latino communities because of the fact that it's not been transparent." His officers, he added, are "hearing stories of people…being deported because of…status only."[521] As *The Los Angeles Times* reports, the program can even be a matter of life and death. After one unauthorized immigrant who was

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http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/controversial-secure-communities-immigration-program-will-be-mandatory-by-2013/.

[518] Julia Preston, "Resistance Widens to Obama Initiative on Criminal Immigrants," *New York Times*, 13 August 2011, accessed 16 October 2012, http://www.nytimes.com/2011/08/13/us/politics/13secure.html.

[519] "Secure Communities under fire again," *Los Angeles Times*, editorial, 16 September 2011, accessed 16 October 2012, http://opinion.latimes.com/opinionla/2011/09/secure-communities-immigration-enforcement-program-under-fire.html.

[520] Paloma Esquivel, "Report criticizes deportation program, urges changes," *Los Angeles Times*, 16 September 2011, accessed 16 October 2012, http://articles.latimes.com/2011/sep/16/local/la-me-secure-communities-20110916.

[521] Antonio Olivo, "'Secure Communities' program deportation spur frustration with Obama," *Chicago Tribune*, 17 August 2011, accessed 16 October 2012, http://articles.chicagotribune.com/2011-08-17/news/ct-met-dhs-lawsuit-20110817_1_deportations-national-immigrant-justice-center-immigration-detainers.

being attacked by her partner called the police for help, the woman was arrested when police discovered both individuals showed signs of injury. Although the woman had no criminal record, SComm required the local police department to transfer the woman to ICE agents, who then began considering her as a candidate for deportation. Thus, although its stated aim is to deport criminal, dangerous, and repeat immigration offenders, SComm has fundamentally changed the ways in which non-citizens and police officers relate to and understand one another.

In some states, as many as one-third of all non-citizens deported through SComm have no criminal convictions.[522] Moreover, according to one study, by 2011, SComm had resulted in the arrest of close to 3,600 citizens, while nearly 40% of all apprehended non-citizens had spouses or children who were citizens. The 2011 study also finds that despite the fact that Hispanics make up roughly 77% of all unauthorized immigrants in the US, the group constituted 93% of all apprehensions under SComm. Finally, in direct contradiction to SComm's stated goal of deporting non-citizens with criminal records, nearly half of all removal orders issued to detainees at ICE facilities listed "Present Without Admission" as the removal charge, which, the 2011 study's authors clarify, "does not indicate any criminal history."[523] Thus, many non-citizens arrested and deported because of stricter enforcement efforts pose little or no danger to the public.

Nonetheless, federal officials often make no attempt to differentiate such individuals from violent criminals. For example, as one journalist reports, in early 2012, ICE agents made over 3,100 arrests, more than 1,200 of which were either "immigration fugitives" who failed to obey a removal order or "illegal re-entrants" who returned after deportation. Although such

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[522] Ibid.

[523] Aarti Kohli, Peter L. Markowitz, and Lisa Chavez, "Secure Communities by the Numbers: An Analysis of Demographics and Due Process," University of California, Chief Justice Earl Warren Institute on Law and Social Policy, Berkeley (2011): 1, 8-9; Accessed 16 October 2012, http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

violations are far from dangerous, ICE director John Morton made no such distinctions. "Because of the tireless efforts and teamwork of ICE officers and agents in tracking down criminal aliens and fugitives," he explained in the wake of the arrest effort, "there are 3,168 fewer criminal aliens and egregious immigration violators in our neighborhoods." Such distinctions also escaped the article's author, who instead focused almost entirely on those with "multiple convictions, including murder, manslaughter, attempted murder, kidnapping, assault, armed robbery, terroristic threats, drug trafficking and crimes against children."[524]

Immigration enforcement and policing efforts, thus, function as opportunities in which non-citizens become understood and processed within a discursive context of danger and criminality. Accordingly, immigration violators embody an ensemble of egregious violators and immigration fugitives who must be removed from neighborhoods just as much as convicted murderers, pedophiles, and rapists. Apprehension and deportation, consequently, operate not just as part of an adjudicative process through which justice is administered, but as part of an interpretive process through which justice is given meaning. Through practice, therefore, deportation becomes the most logical and appropriate extension of apprehension. As one deportation official reasoned, as long as "you don't get arrested, you don't get your fingerprints submitted to the F.B.I., [and] you will never become a subject of Secure Communities."[525]

In order to expand immigration enforcement, the federal government has also enlisted the assistance of employers. Under the internet-based E-Verify program, for instance, employers, according to US Citizenship and Immigration Services (USCIS), "submit information taken from a new hire's Form I-9 (Employment Eligibility Verification Form)…to the Social Security

[524] Jerry Seper, "ICE arrests 3,100 convicted criminal aliens in sweep," *The Washington Times*, 2 April 2012, accessed 20 October 2012, http://www.washingtontimes.com/news/2012/apr/2/ice-arrests-3100-convicted-criminal-aliens-sweep/.
[525] Julia Preston and Sarah Wheaton, "Meant to Ease Fears of Deportation Program, Federal Hearings Draw Anger," *The New York Times*, 25 August 2011, accessed 20 October 2012, http://www.nytimes.com/2011/08/26/us/politics/26immig.html.

Administration" and USCIS agents, who then determine "whether the new hire is authorized to work."[526] Over a dozen states have passed legislation requiring some or all employers to participate in E-Verify.[527] By enlisting employers as active participants in the enforcement process, employment itself becomes an immigration checkpoint in which the presentation of documents is required.

State-specific immigration policing programs, however, have managed to disperse surveillance duties in more innovative ways. In 2009, for example, the Criminal Justice Division of the Governor of Texas provided nearly $2 million to BlueServo, "an innovative real-time surveillance program."[528] The surveillance program, according to BlueServo's website, was "designed to empower the public to proactively participate in fighting border crime." The "Virtual Community Watch" program, BlueServo's website explains, uses "a network of cameras and sensors along the Texas-Mexico border" to feed "live streaming video" of the border to registered viewers, referred to as "Virtual Texas Deputies." These deputies, BlueServo explains, then "monitor the streaming video…and report any suspicious activities directly to the Border Sheriffs via email." Such practices, BlueServo concludes, "allow the public to directly participate in reducing crime and improving their communities."[529]

Immigration enforcement, therefore, is now a collaborative effort, enlisting not just the cooperation of employers and local police, but also the watchful gaze of empowered and proactive citizen-deputies. However, although the role of the deputy can now be symbolically assumed by anyone with internet access, many state legislatures have effectively deputized their

[526] U.S. Department of Homeland Security, "About the [E-Verify] Program," accessed 20 October 2012, http://www.uscis.gov/portal/site/uscis/.
[527] See: Georgia, Alabama, Arizona, Utah, and Tennessee. For a complete list, see: "Map of States with Mandatory E-Verify Laws," NumbersUSA, accessed 20 October 2012, https://www.numbersusa.com/content/learn/illegal-immigration/map-states-mandatory-e-verify-laws.html.
[528] "Information," Press Release, BlueServo, Inc., 19 November 2008, accessed 20 October 2012, http://www.blueservo.net/info-launch.php.
[529] BlueServo, Inc., "About BlueServo," accessed 20 October 2012, http://www.blueservo.net/about.php.

residents, public officials, and police officers with an aggressive set of enforcement authorities, responsibilities, and obligations. Indeed, since 2010, lawmakers in several states – including Arizona, Georgia, and Alabama – have passed measures authorizing and requiring local police officers, public officials, and citizens to participate in state and federal immigration enforcement efforts.

As Arizona's immigration law demonstrates, the widespread dispersal of such authorities has the ability to render the lives and activities of non-citizens visible in particularly profound ways. Passed by the Arizona legislature in 2011, SB1070, according to the Arizona legislature, is designed to "discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.[530] The law's strategic goal is to achieve "attrition through enforcement."[531] Accordingly, SB1070 aims to change the ways in which non-citizens encounter government officials, police officers, public entities, and private institutions, thereby maximizing the number of the state's immigration checkpoints and effectively forcing unauthorized non-citizens to self-deport from Arizona. To that extent, SB1070 deems unauthorized non-citizens found "on any public or private land" in the state to be "guilty of trespassing" and requires state and local police officers to make a "reasonable attempt" to determine the status individuals suspected of unauthorized status.[532] Suspected violators, subsequently, are required to present officers with valid identification upon request.

A similar bill passed by Alabama in 2011 contains even more aggressive provisions. Championed as a job-creation measure, HB56 prohibits employers from "knowingly or

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[530] *Senate Bill 1070*, 49th Legislature of Arizona (2010), § 1, accessed 20 October 2012, http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf. The law authorizes all local police officers to transport "undocumented aliens" into the custody of federal officials, to transfer points beyond their local jurisdiction, and, upon judicial authorization, to jurisdiction beyond the Alabama state limit.

[531] Ibid. For an example of the rationale behind 'attrition through enforcement' legislation, see: Jessica M. Vaughan, "Attrition through Enforcement: A Cost-Effective Strategy to Shrink the Illegal Population," Center for Immigration Studies, *Backgrounder* (April 2006), accessed 20 October 2012, http://www.cis.org/articles/2006/back406.pdf.

[532] *Senate Bill 1070*, § 2.

intentionally" employing unauthorized aliens and requires all employers to participate in E-Verify.[533] After signing an affidavit affirming that they have terminated illegally employed non-citizens, employer-violators are subjected to a three year probationary period during which they must file quarterly reports with the local district attorneys.[534] Violating employers failing to sign such affidavits can have their business licenses suspended, while the licenses of employers with multiple offenses can be permanently revoked.[535]

The law's most troubling provisions, however, fundamentally transform the ways in which unauthorized non-citizens interact with private organizations, government officials, and public institutions. For instance, the law invalidates all contracts involving unauthorized non-citizens, prohibits individuals and organizations from knowingly harboring or transporting unauthorized non-citizens, forbids landlords from knowingly renting to unauthorized non-citizens, requires public benefits applicants to present residency documents and sign declarations affirming citizenship, and obligates public employees like teachers to make "reasonable" attempts to determine the status of those with whom they interact in an official capacity.[536] Officials refusing to cooperate can be convicted of misdemeanors, while Alabama residents are empowered to sue public entities suspected of non-compliance.[537]

HB56, thus, aims to interrupt and eliminate how unauthorized non-citizens form relationships and interact with public and private organizations, institutions, and individuals. Accordingly, the law not only deputizes and obligates public officials to monitor individuals and enforce immigration law, but also constructs an environment in which the state's residents,

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[533] *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, HB 56, 2011 Legislature of Alabama, *Secs 8(e)1 and 15(b),* accessed 20 October 2012, http://media.al.com/bn/other/Alabama%20Immigration%20Law%202011.pdf.
[534] Ibid., *Secs 9(e)1 and 15(c)1.*
[535] Ibid., *Secs 9(j) and 15(e).*
[536] Ibid., *Secs 7, 13, 15, and 27.*
[537] Ibid., *Sec. 11.*

institutions, and organizations are compelled by law to interrogate the status of friends, employees, customers, and tenants. Such surveillance and policing practices, consequently, recast the relationships between individuals as modalities for generating conflict, cultivating suspicion, and implementing fear, and as HB56's provisions open unauthorized non-citizens to the constant threat of investigation, apprehension, and deportation, individuals who are unfortunate enough to illicit the reasonable suspicions of those in positions of authority become beholden not just to their status, but also to their ability to convincingly prove the validity of their status, their legal employment, and their innocence.[538]

Thus, just as Florida's lawmakers and sheriffs maximized the enforcement of contract labor laws, criminal statutes, and vagrancy codes by deputizing citizens and employers, so too have federal immigration agents, Congressional lawmakers, and state legislators aimed to maximize immigration enforcement by deputizing state and local police, employers, citizens, and public officials with certain authorities, duties, and responsibilities. However, as Florida's history instructively demonstrates, the disciplinary practices through which marginalized groups are rendered docile involve not just the dispersal of policing and surveillance practices, but also the institutionalization of such discourses and practices in prisons.

In what ways, then, are the policing practices described above an extension of the current disposition of penal institutions? How do immigration detention facilities aim to discipline detained non-citizens through labor?

[538] Federal courts have blocked parts of HB56 from implementation, such as its provisions preventing unauthorized non-citizens from engaging in contracts. Additionally, the Supreme Court has ruled many of SB1070's provisions unconstitutional. However, much of these laws still stand, most significantly the provisions requiring police officers to make a 'reasonable attempt' investigate a suspected individual's immigration status.

The Detention-Industrial Complex

In the 1980s, over one million Central American and Caribbean refugees fled to the US, many hoping to escape countries with collapsing economies or oppressive regimes. The large-scale influx of these immigrants, David Manuel Hernández notes, threw the US into a "racial panic," with many Americans fearing that these new arrivals were "criminal, ideologically left, and diseased." According to Hernández, such fears, particularly in regards to the Hispanic and Haitian refugees who were often demonized in media and by politicians, pressured the federal government to begin a policy of holding asylum seekers in detention centers. Accordingly, the federal government soon constructed detention centers in Florida, Georgia, Louisiana, and along the US-Mexico border.[539]

In 1981, when Reagan's Attorney General ordered that all unauthorized refugees be held in detention until their claims for asylum were adjudicated, the US's policy of mandatory detention became standard. According to María Cristina Garciá, before long, immigration detention centers "along the United States-Mexico border filled to capacity with people the Border Patrol called the OTMs (other than Mexicans)."[540] Thus, as the population of detainees skyrocketed, the Immigration and Naturalization Service (INS) moved to expand its detention system. As García notes, the INS increased the capacity of its immigration prison in Port Isabel, reopened a compound previously used to confine Japanese Americans, and contracted the opening of additional detention facilities along the US-Mexico border.[541]

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[539] Hernández, "Pursuant to Deportation," 51.
[540] María Cristina García, *Seeking Refuge: Central American Migration to Mexico, the United States, and Canada* (Los Angeles, California: University of California Press, 2006): 91. Found in: Ibid., 51.
[541] Hernández, "Pursuant to Deportation," 51. Interestingly, Hernández notes that the 97-99% of the asylum petitions of refugees fleeing from countries like El Salvador and Guatemala, whose governments were supported by the US, were rejected, while as much as 84% of refugees from socialist governments like Nicaragua were either granted asylum or granted stay of removal orders.

In Florida, the INS opened Krome Avenue Processing Center in 1979. Built on a former Nike missile site twenty miles from the center of Miami, the INS intended the temporary processing facility to house Cuban and Haitian refugees. According to Simon, when the INS began implementing its policy of mandatory detention disproportionately against Haitians, the Haitian refugees detained at Krome became the subjects of the US's newest, most extreme detention practices. As Simon notes, Haitian refugees were one of the only groups that appear to have been singled out by the INS for mandatory detention solely on the basis of nationality. Additionally, more than any other group, Haitians served significantly longer periods of time in detention.[542]

For the INS, however, Krome functioned as much more than just a location in which to house and process potentially undesirable non-citizens. Indeed, Simon explains, because Krome "was the first 'service processing center' opened" by the INS, "it established the basic model for other such centers." The facility, Simon describes, contains "barracks surrounded by razor wire and guard towers," while inside, detainees "sleep in large dormitory-style rooms." The facility's grounds, Simon notes, "were designed to emphasize flexibility and to allow for cost-effective imprisonment to be sustained in the face of legal resistance by those processed for removal." [543]

However, as Simon points out, Krome was also built to "serve as a staging area from which federal personal can be deployed against an immigration emergency like Mariel."[544] Sitting on the edge of the Everglades, the location of the facility indeed supports such objectives. With Miami's urban center distantly to the East and hundreds of miles of Everglades wilderness immediately to the West, the facility's uniquely isolated location helps ensure that detainees

[542] Cheryl Little, "INS Detention in Florida," *The University of Miami Inter-American Law Review* 30, no. 3, Symposium: Immigration Reform (Winter – Spring, 1999): 554; Simon, "Refugees in a Carceral Age," 579 and 586.
[543] Simon, "Refugees in a Carceral Age," 587.
[544] Ibid., 587.

remain will separate from the American population, easy to manage, and unlikely to escape. Moreover, as Cheryl Little notes, the facility's isolation supports its ability to consistently operate well over capacity, far below federal prison standards, and without public and governmental oversight. Krome's distance from downtown Miami and the rest of the US, for example, deters attorneys, watchdog groups, and family members from communicating with detainees.[545] Such practices are now commonplace in ICE detention facilities across the country. Thus, an overview of contemporary detention practices is in order.

As immigration policing practices increasingly rely upon cooperation of state and local police departments, the number of detainees confined within immigration detention centers has skyrocketed. For instance, while in 2002 the average daily detention population remained around 20,000, that number increased nearly 60% to about 32,000 by 2011.[546] Additionally, between 2004 and 2009, the total number of non-citizens detained annually increased from 235,000 to over 360,000. Such practices have led to rising deportations, increasing from just over 200,000 in 2004 to more than 387,000 in 2010.[547] Interestingly, however, the federal government's network of detention centers has actually shrunk over the same period of time. For instance, according to *Frontline*, although 413 immigration facilities confined an average daily population of 20,039 in 2002, about half as many facilities – 204 – confined an average daily population of 32,095 in 2011.[548] As a practice, thus, detention has become both more commonplace and more centralized.

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[545] Little, "INS Detention in Florida," 555-557.
[546] U.S. Department of Homeland Security, *Immigration Enforcement Actions: 2004* (November 2005), accessed 22 October 2012, http://www.dhs.gov/xlibrary/assets/statistics/publications/AnnualReportEnforcement2004.pdf; U.S. Department of Homeland Security, *Immigration Enforcement Actions: 2010* (June 2011), accessed 22 October 2012, http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf. Also see: Cody Mason, *Dollars and Detainees: The Growth of For-Profit Detention* (Washington, DC: The Sentencing Project, 2012): 5.
[547] Ibid.
[548] Gretchen Gavett, "Map: The U.S. Immigration Detention Boom," *Frontline*, PBS and American University School of Communication, 18 October 2011, accessed 23 October 2012,

Arguably, such growth and centralization has only been made possible as a result of the augmented presence of privatized detention facilities. According to the Sentencing Project, for instance, only one-fourth of all INS detainees were housed in privately-run detention facilities in 2002. However, by 2012, nine years after the federal government rebranded the INS under the DHS as ICE, a total of 43% of all ICE detainees were held in privately-run detention facilities.[549] Between 2002 and 2012, the Sentencing Project notes, "the number of privately-held immigrants [in ICE-contracted private facilities] grew by 188 percent."[550] Thus, with almost half of all ICE detainees now held in private facilities, a brief history of the private prison industry and its involvement in detainee custody is in order.

For decades, local, state, and federal entities have contracted with private organizations in the provision of certain prison services, including maintenance, food, and medical services. However, as David Shichor explains, in the 1980s and 1990s Congressional and state lawmakers embraced a model of privatized prison construction and management.[551] Accordingly, Shichor summarizes, as private companies like RCA sought control of prison services and labor operations, firms like Corrections Corporation of American (CCA) and Wackenhut (now known as GEO Group) pioneered a different model, a model that enlisted the assistance of private capital at every step of the process – from design to construction and daily operation.[552] By 2000, private companies operated over 150 state and federal prison facilities, and, according to the DOJ, by 2009 private companies housed about eight percent of the nearly 1.6 million state and

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http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/map-the-u-s-immigration-detention-boom/.

[549] Mason, *Dollars and Detainees*, 5.

[550] Mason, *Dollars and Detainees*, 5.

[551] As Shichor notes, this growth stemmed in part from Reagan-era doctrines advocating 'tough on crime' measures and the use of privatization as a means to cope with budgetary problems. See: David Shichor, "The Corporate Context of Private Prisons," *Crime, Law and Social Change* 20, no. 2 (September 1993): 113-114.

[552] Mason, *Dollars and Detainees*, 4; Shichor, "The Corporate Context of Private Prisons," 113-115.

federal prisoners.[553] As ThinkProgress explains, the nation's private prison population increased 37% between 2002 and 2009.[554]

Subsequently, immigration detention has become an incredibly lucrative industry. According to articles published by *Propublica* and *The Huffington Post*, companies like CCA and GEO Group, with about 65 prison facilities each, have "more than doubled their revenues from the immigrant detention business since 2005." Such record profits, *The Huffington Post* contends, stem from aggressive lobbying efforts, as "the industry's lobbyists have influenced" Congressional lawmakers "to increase funding for detention bedspace." Notably, the federal government reimburses facilities that detain non-citizens.[555] Thus, increased funding for detention bedspace translates into increased reimbursements for private prison corporations.

At the same time, private detention facilities reward local governments. According to *The Huffington Post*, companies like CCA and GEO Group pay local governments depending on "the number of inmates" confined within their detention centers. Local governments, therefore, have an incentive to direct the flow of detainees to private facilities within their jurisdictions. Such kickbacks have become a significant source of revenue for local governments. As *The Huffington Post* notes, county and municipal governments have "embraced the arrival of immigrant prisoners for the attendant economic benefits, including tax revenues and jobs."[556]

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[553] U.S. Department of Justice, *Prisoners in 2008* (Washington, DC: Bureau of Justice Statistics, 2009): 5 and 38, accessed 23 October 2012, http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf.

[554] Zaid Jilani, "U.S. Private Prison Population Grew 37 Percent Between 2002-2009 As Industry Lobbying Dollars Grew 165 Percent," *ThinkProgress*, 26 September 2011, accessed 23 October 2012, http://thinkprogress.org/justice/2011/09/26/328486/us-private-prison-population-lobbying/.

[555] Suevon Lee, "By the Numbers: The U.S.'s Growing For-Profit Detention Industry," *Propublica*, 20 June 2012, accessed 22 October 2012, http://www.propublica.org/article/by-the-numbers-the-u.s.s-growing-for-profit-detention-industry/single; Chris Kirkham, "Private Prisons Profit from Immigration Crackdown, Federal and Local Law Enforcement Partnerships," *The Huffington Post*, 7 June 2012, accessed 22 October 2012, http://www.huffingtonpost.com/2012/06/07/private-prisons-immigration-federal-law-enforcement_n_1569219.html. Although *The Huffington Post* is by and large a biased source of information, occasionally, the organization commissions and produces well-investigated articles such as the one cited in this section.

[556] Kirkham, "Private Prisons," *The Huffington Post*.

In Arizona, such efforts, *The Huffington Post* contends, have transformed Pinal County into "the nerve center of immigrant detention in Arizona, with five separate facilities holding up to 3,000 detainees on a given day." And as detainees are transferred to the Pinal facility, CCA reimburses the county "two dollars per day for each inmate held" in the private facility.[557] According to *The Huffington Post*, Pinal County received $1.4 million from CCA in 2011, an arrangement that not only supported the county's treasury, but also helped fund the county's sheriff's office, "whose enforcement actions have influence over the size of the prisoner population."[558] Thus, these arrangements effectively subsidize the growth of the private detention industry, deeply embedding expanded enforcement and increased detention within the economic strategies of state and local governments.[559]

Florida's history again proves to be instructive for evaluating how incarceration practices regulate and discipline non-citizens. Armed with the assumption that criminality derived from a deviant, racially-determined work ethic, Florida's prison officials thus sought to inculcate prisoners in the habits of industriousness. As such, after being evaluated according to physical ability, inmates were then distributed across the state to various penal facilities that utilized inmate labor in different ways. Able-bodied men, for instance, were assigned to road prisons, while less able-bodied prisoners were remanded to Raiford. But if Florida's officials used labor as a tool for both organizing and reforming prisoners, in what ways might detention center

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[557] Ibid.
[558] Ibid.
[559] Although much attention has been focused on the growth of privately-run immigrant detention facilities contracted by ICE, much less attention has been focused on the increasing role of local prisons and jails. As Hernández notes, in addition to "federal detention centers managed by ICE" and "privately contracted prison facilities," detainees are also incarcerated in "state and municipal jails subcontracting bed space for immigrant detainees." Moreover, as the Sentencing Project notes, through "Intergovernmental agreement passthroughs," the U.S. Marshal Service "contracts with state or local governments that then subcontract with private companies." See: Hernández, "Pursuant to Deportation," 43; Mason, *Dollars and Detainees*, 7. The author has limited the scope of this paper to ICE's detention practices, but a more comprehensive approach might also investigate the detention practices of USMC.

officials seek to manage, monitor, regulate, and discipline detainees? What programs and arrangements might they implement?

Unlike Florida, ICE organizes and segregates detainees according to the level of threat they pose. For instance, detainees posing a high level of threat are deemed "High Custody", while those posing lesser threats are deemed "Medium Custody" or "Low Custody". "'Classification,'" explains ICE, "is a process of categorizing detainees as low, medium or high custody and housing them accordingly." Moreover, ICE argues, "[r]esearch has shown that discretionary decisions about custody classification are more objective and consistent when guided by a process that systematically uses verifiable and documented information, and scores those factors appropriately."[560]

"Low custody detainees," ICE explains, include "detainees with minor criminal histories and non-violent felonies." Examples of low severity offences are drunk driving, disorderly conduct, misdemeanor drug possession and trespassing. Medium custody detainees, on the other hand, include detainees "with a history or pattern of violent assaults" or detainees "convicted for assault on a correctional officer." Examples of medium severity offences are armed trespass, burglary, forgery, welfare fraud, and forgery. Finally, high custody detainees "require medium-to maximum-security housing," must be "always monitored and escorted," and may not be mixed with low custody detainees."[561] Examples of high severity offences are aiding an escape, aggravated battery with a deadly weapon, armed robbery, and kidnapping. Thus, while Florida's penology largely segregated prisoners according to racially-influenced notions of labor, physical ability, and criminality, the prevailing logic of immigration detention understands detainees in terms of crime, national security, and order.

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[560] U.S. Department of Homeland Security, *Performance-Based National Detention Standards 2011* (Washington, DC, 2011): 64 and 76

[561] Ibid., 66.

ICE deploys a relatively sophisticated disciplinary system to maintain order within facilities. Although ICE recommends that "whenever possible," facility staff should "settle minor transgressions through mutual consent," staff that have "reason to suspect that a detainee has engaged in a prohibited act…that cannot or should not be resolved informally" must prepare a "concise and complete incident report." Moreover, a "serious incident that may constitute a criminal act shall be referred to the proper investigative agency." Accordingly, a "Unit Disciplinary Committee (UDC)" might then "further investigate and adjudicate the incident and impose minor sanctions," while an "Institution Disciplinary Panel" might "conduct formal hearings on Incident Reports referred from UDCs and may impose higher level sanctions" for high level prohibited acts.[562]

The lowest offences warranting disciplinary action include, for example, "abusive or obscene language", unauthorized possession of "money or currency", and "being unsanitary or untidy." Sanctions for such offences might be losing one's privileges, changing one's housing assignment, losing one's job, or restriction to one's housing unit. Moderate offences, alternatively, include stealing, refusing "to clean assigned living area", refusing "to obey the order or a staff member", "insolence toward a staff member", and "signing, preparing, circulating, or soliciting support for prohibited group petitions." Sanctions for such offences can include criminal proceedings, "disciplinary transfer", and "disciplinary segregation." Although the highest categories of offences generally include violent acts like assault, it is worth noting that these categories also include non-violent behaviors like "engaging in or inciting a group demonstration" and "encouraging others to participate in a work stoppage."[563] Thus, in addition

[562] Ibid., 189-190.
[563] Ibid., 199-202. The work stoppage violation is particularly interesting, because even though detainees officially participate in work-related activities on a "voluntary" basis, it is still a violation for them to collectively participate in and organize a "work stoppage." Thus, work is "voluntary," but refusing to work can be a "violation."

to disciplining detainees for behaving in ways that clearly harm or threaten to harm other detainees and facility employees, ICE's disciplinary system is designed to eliminate and proscribe certain forms of protest and non-violent resistance.

Interestingly, although ICE does not use labor as a rehabilitative technology of power, labor nonetheless remains operative within an overall strategy to discipline non-citizens. Separated according to their custody level, "[d]etainees who are physically and mentally able to work," ICE explains, are provided with "the opportunity to participate in a voluntary work program."[564] Accordingly, as noted by the INS, an eligible detainee might work as a cook, janitor, landscaper, or bus driver, or might participate in "temporary work details" such as "digging trenches, removing topsoil, and other labor-intensive work." The program, according to the INS, allows detainees to be "gainfully employed," while at the same time helping to "improve" the facility's "[e]ssential operations and services."[565] "The negative impact of confinement," ICE explains, "shall be reduced through decreased idleness, improved morale and fewer disciplinary incidents."[566] Thus, rather than serve as an opportunity to rehabilitate non-citizens through forced labor, the voluntary work program instead functions to make detention more totalizing and productive.

Although ICE technically considers the work program to be voluntary, one article published by *Truthout* indicates that the ways in which this program is implemented are far from non-coercive. For example, according to Jacqueline Stevens, a Northwestern University political science professor, although detainees are compensated between one and three dollars per day, most participate in the work programs "so that they can buy food and hygiene products." As one

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[564] Ibid., 325.
[565] U.S. Department of Justice, "Voluntary Work Program," *INS Detention Standards* (Washington, D.C., 2002), accessed 23 October 2012, http://www.ice.gov/doclib/dro/detention-standards/pdf/work.pdf.
[566] U.S. Department of Homeland Security, *Performance-Based National Detention Standards 2011*, 324.

Georgia detainee describes, his wages went "directly" to the "canteen," where he "bought food, a calling card, a bar of soap, shampoo, [and a] toothbrush."[567] ICE's voluntary work program, thus, places the detainee's need to consume within the detention facility's internal economy. As such, the detainee is effectively prevented from refusing to participate in the voluntary work program, as the program serves as quite possibly one of the only ways in which indigent detainees can procure basic commodities. The detainee, therefore, remains subjected to labor, a relationship which functions as much to occupy his time as much as it does to discipline his behavior.

The voluntary work program, moreover, enables private and public detention centers to engage in a more productive allocation of resources. For instance, according to Stevens, by "paying people a small fraction of the legal wage" for work that would otherwise be performed by staff, detention facilities generate significant "savings" in overhead. At one private facility, Stevens estimates, the monthly payments for certain jobs would, "under federal minimum wage laws," range from "$168,635 to $337,000." However, Stevens explains, because the facility used detainees instead, "what actually was paid was $5,815."[568] Thus, ICE's voluntary work program functions in ways that fundamentally underwrite the financial solvency of ICE's network of private and public detention facilities. The labor program, therefore, is both disciplinary and productive.

Perhaps most interestingly, however, is that many non-citizens are being detained for violating laws prohibiting the employment of unauthorized non-citizens. Consequently, Stevens explains, the voluntary work program allows private companies, which would "in any other context" be punished "for hiring people who don't have legal documents" – to evade such

[567] Yana Kunichoff, "'Voluntary' Work Program Run in Private Detention Centers Pays Detained Immigrants $1 a Day," *Truthout.org*, 27 July 2012, accessed 23 October 2012, http://truth-out.org/news/item/10548-voluntary-work-program-run-in-private-detention-centers-pays-detained-immigrants-1-a-day.
[568] Ibid.

restrictions.[569] Such legal gymnastics rely on subtle but important semantic distinctions between work and employment. The voluntary work program, explains one DOL official, "does not constitute employment," but rather a voluntary activity performed in exchange for a small "stipend."[570] Moreover, contends one federal court ruling on the issue, federal labor law does not protect detainees working inside detention facilities because they are "not government 'employees.'" Detainees "whose work is described by no statute authorizing [the] use of taxpayers' money to pay government employees," the ruling concludes, are incapable of claiming "such [protected] status."[571] Thus, the voluntary work program functions as a process in which the unauthorized labor of a non-citizen can be effectively made legal.

Just as incarceration enabled Florida prison officials to design programs aimed at rehabilitating prisoners through labor, immigration detention centers similarly provide the conditions in which the labor of non-citizens can be made corrected. By providing space for the government to correct the practice of unauthorized employment, detention centers, thus, operate as mechanisms through which unauthorized elements of the population can be confined, processed for removal, and rendered docile.

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[569] Ibid.
[570] Ibid.
[571] *Guevara, et al. v. Immigration and Naturalization Service*, 902 F.2d 394 (US Court of Appeals, 5th Circuit, 1990). Found in: Ibid.

CONCLUDING REMARKS

In this paper, I have tried to place the contemporary practices and policies surrounding immigration within a historical context which privileges the discourses and practices characteristic of slavery, labor, and penology. Through the genealogical method, the technologies of power permeating today's immigration practices can be partially grounded in the slave, labor, and penal practices and discourses particular to both the South and Florida. Accordingly, one of the primary objectives of this paper has been to provide empirical support – through the consultation and interrogation of local histories – for explaining modern day labor and immigration practices. I hope to have illustrated that, by interrogating such local histories, we can come to approach contemporary phenomena like modern-day slavery in more complex and nuanced ways. Thus, in my concluding remarks, I highlight some of the ways in which recent immigration discourses echo and reiterate some of the problems exemplified throughout Florida's slave, prison, and labor discourses.

With the passage of aggressive immigration legislation by state legislatures in recent years, growers have expressed concern regarding labor shortages. For example, growers allege that, as a result of such immigration laws, non-citizen migrant workers have largely fled. "The tomatoes are rotting on the vine," argues Chad Smith, an Alabama tomato farmer. "There won't be no next growing season," another farmer similarly asserts.[572] Farmers, Smith reasons, depend on "illegal immigration workers" because "that's the only people that's willing to do" that kind

[572] "Farmers complain about rotting crops but Sen. Scott Beason says no to immigration law changes," *Alabama.com*, 3 October 2011, accessed 23 October 2012, http://blog.al.com/wire/2011/10/chandler_mountain_farmers_comp.html.

of work.[573] Projecting nearly $400 million in economic losses in 2012, Georgia's agricultural sector likewise blames Georgia's new immigration provisions.[574] "Maybe the immigration issue is not as easy as 'send them home,'" one Georgia editorialist writes – "maybe," the editorialist continues, "Georgia needs them [unauthorized laborers], relies on them, and cannot successfully support the state's No. 1 economic engine without them."[575]

Georgia officials have attempted to address the alleged labor shortages by developing a program to supply farmers with "able-bodied probationers."[576] The effort, according to Governor Nathan Deal, serves as a "great partial solution" to the state's problem. As Georgia's top probation official argues, the program is "a win-win for offenders who need suitable employment to fulfill the terms of their probation and farmers who need assistance."[577] Under an additional program, Georgia officials plan to use the state's transitional justice centers to provide farmers with non-violent inmates through work-release arrangements. The arrangements, state officials anticipate, will motivate inmates "to learn new skills, earn money and eventually land steady jobs."[578]

Residents, farmers, and labor contractors, however, have largely panned the arrangements. "None of the probationers," one journalist notes, can "keep pace" with the "Latino workers," who labor "furiously" for "extra pay." Instead, the journalist explains, they "lingered

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[573] "Tough new immigration law hits Alabama farmers," *NBC WXIA-TV Atlanta*, 4 October 2011, accessed 23 October 2012, http://www.11alive.com/news/article/208081/40/Tough-new-immigration-law-hits-Alabama-farmers.
[574] See: Georgia Department of Agriculture, *Report on Agriculture Labor, As Required by House Bill 87* (Atlanta, Georgia, 2012).
[575] "Solving the farm crisis," editorial, *The Valdosta Daily Times*, 16 June 2011, accessed 23 October 2012, http://valdostadailytimes.com/opinion/x947029544/Solving-the-farm-crisis.
[576] "Georgia Farms offer jobs to Probationers," Office of Public Affairs, Georgia Department of Corrections, 16 June 2011, accessed 23 October 2012, http://www.dcor.state.ga.us/NewsRoom/PressReleases/110616c.html.
[577] Jeremy Redmon, "Probationers to help fill South Georgia farm jobs again in fall," *The Atlanta Journal-Constitution*, 5 August 2011, accessed 23 October 2012, http://www.ajc.com/news/news/local-govt-politics/probationers-to-help-fill-south-georgia-farm-jobs-/nQKN9/.
[578] Jeremy Redmon, "Georgia may use prisoners to fill farm labor gap," *The Atlanta Journal-Constitution*, 6 October 2011, accessed 23 October 2012, http://www.ajc.com/news/news/local-govt-politics/georgia-may-use-prisoners-to-fill-farm-labor-gap/nQMRm/.

at the water cooler behind the truck, sat on overturned red buckets for smoke breaks and stopped working to take cellphone calls."[579] "If I'm going to depend" on probationers, one labor contractor concludes, "I'm never going to get the crops up."[580] Such problems, agricultural representatives add, stem from the stubborn work ethic of Americans. "This is work that most people in this country will not perform," argues the President of the Grower-Shipper Association, "even if they're unemployed or in prison."[581]

Significantly, immigration reform advocates have vociferously agreed with such logic. Because "American workers aren't willing to take the vacant farm jobs," one progressive blogger argues, businesses now "stand to lose millions of dollars."[582] Although "GOP politicians have crowed that driving immigrants out of the state will reduce unemployment," argues *ThinkProgress*, "they've quickly discovered that Americans are simply unwilling to do the back-breaking labor of harvesting crops."[583] Just as farmers suggested, *Immigration Impact* writes in critique of state immigration laws, domestic farmworkers "simply do not want to do the low-paying and grueling work usually done by immigrant workers." Such "findings," *Immigration Impact* adds, "fly in the face of arguments that undocumented skilled laborers are 'stealing American jobs,' as opposed to being essential members of the American economy who fill

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[579] Ray Henry, "Georgia introduces probation farm-work program," *USA Today*, 25 June 2011, accessed 23 October 2012, http://www.usatoday.com/money/industries/food/2011-06-25-probation-farm-work-program_n.htm.
[580] Ibid.
[581] "Parolees Working in Ag Fields," *FOX KION-California*, 28 June 2011, accessed 24 October 2012, http://www.kionrightnow.com/story/14993525/parolees-w.
[582] Van Le, "Georgia Governor Wants Criminals on Probation in Farm Jobs Left open Because of Anti-Immigration Law," *America's Voice*, 15 June 2011, accessed 24 October 2012, http://americasvoiceonline.org/blog/georgia_governor_wants_probationers_to_take_farm_jobs/.
[583] Marie Diamond, "Alabama Agriculture Department Advances Plan to Replace Immigrant Workers With Prisoners," *ThinkProgress*, 6 December 2011, accessed 24 October 2012, http://thinkprogress.org/justice/2011/12/06/382852/alabama-agriculture-department-promoting-plan-to-replace-immigrants-with-prisoners-to-farmers/.

economic voids that very much need filling."[584] "In this nation of immigrants," writes one journalist while criticizing increased immigration enforcement, "the federal government and local law enforcement officers now work hand-in-glove to round up and deport the undocumented."[585]

These positions rightly point out that the agricultural economy depends on the labor of non-citizen workers, many of whom lack employment authorization. Nonetheless, they also problematically rely on the assumption that Americans are invariably unwilling to perform such work, while immigrant farmworkers, alternatively, are assumed not just to be willing, but also eager to perform back-breaking farm work. The so-called furious Latino workers, consequently, represent the only group of individuals with the willingness to perform such work, and therefore also symbolize an appropriate and natural source of labor for farmers in need.

Such statements, accordingly, assume that certain kinds of people should, must, and indeed want to perform certain kinds of work. When reiterated by reform-oriented progressive and liberal journalists, bloggers, and activists, such statements, moreover, reinforce the notion that unauthorized immigrants should not be deported *en masse* because of the negative consequences such a policy promises for the nation's agricultural economy. In fact, unauthorized immigrants, so the argument goes, must remain in the US because of the ways in which they support industrial agriculture. Furthermore, an evaluation of such economically positive effects – particularly in regards to agriculture – serves as the standard to which the presence of unauthorized immigrants is judged in the public eye.

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[584] Matt Hershberger, "Agriculture Industry Harmed by Restrictive State Immigration Laws," *Immigration Impact*, 24 September 2012, accessed 24 October 2012, http://immigrationimpact.com/2012/09/24/agriculture-industry-harmed-by-restrictive-state-immigration-laws/.
[585] Ruben Navarette Jr., "Why Latinos are key in election," editorial, *CNN*, 1 October 2012, accessed 24 October 2012, http://www.cnn.com/2012/10/01/opinion/navarrette-latino-vote/index.html.

In light of the particularities of Florida's history, these kinds of statements must be understood as the discursive reiterations of statements arguing that slaves are naturally better-equipped to perform manual labor – that racial harmony means black men working on the plantation and black women working in the kitchen – that the black criminal can only be rehabilitated in and through the therapeutic and healthful performance of hard labor – that inculcating the deviant in the habits of industriousness better equips him with the ability to earn honest wages, to use his free time wisely, and to engage in the practices of good citizenship – in short, that individuals seeking admittance or re-admittance to the nation's community of rights-holders can do so only after establishing themselves as reliable workers, workers whose valuable contributions not only help improve the lives of American citizens, but also categorically reaffirm the mythologized bases of the American dream.

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