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# The Evolution

OF THE

## Penal System of South Carolina From 1866 to 1916



By ALBERT D. OLIPHANT

Assistant Secretary of the State Board of Charities  
and Corrections.

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Reprinted from The State of February 18, 1916.

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# The Evolution of the Penal System

OF SOUTH CAROLINA.

Knowledge of errors committed gives power to avoid repeating them. Consequently, we have won forward somewhat when we recognize the missteps taken in evolving during the last half century South Carolina's penal system as it exists today. Since the creation of this State as a political entity its penal system has touched too many thousands of its citizens to be rightly regarded as ever having been "a thing apart." Yet such is the deplorable attitude of the average citizen now toward penal and correctional institutions in South Carolina, especially those units in the system which lie nearest his door—his own county jail and chaingangs. The average man overlooks the fact that in the inscrutable course of events the method of managing the penal and correctional institutions in the State may become of supreme importance to him through the commission of some untoward act on his own part or on the part of some one dear to him. In fact, consequently, the operation of South Carolina's penal and correctional system is not a matter which any citizen can lightly dismiss as of no consequence and no moment to him.

If we find in reviewing the evolution of the penal system of South Carolina from 1865 to 1915 that the authorities responsible for it have too often heeded the prompting of expediency and frequently subordinated what are now recognized as moral principles for the sake of facilitating an immediate end, we must be ready to offer by way of palliation the fact that only of late has the sound doctrine of reformation rather than punishment for criminals gained its hold.

Until after the War Between the Sections persons sentenced to imprisonment by the courts of South Carolina were kept in the jail maintained by the county in which they were convicted. Some of the counties, notably Charleston, operated workhouses<sup>1</sup> in connection with their jails. The principal occupation of prisoners in these workhouses was cutting stone. Misdemeanants were flogged and dismissed if they did not pay their fines. Consequently, the jails were used before 1866 only as places of confinement for prisoners, which we now classify roughly as "long-termers," and for persons awaiting trial who could not get bond. The "short-term" prisoner

or convict, who now complicates so many of our penal problems of this day, did not exist in South Carolina before the War Between the Sections. It is hardly probable, though, that flogging the "short-term" who could not pay his fine proved any more a deterrent from petty crime than sending him to the chaingang for 30 days does now.

## State Control of Convicts.

In 1866, before Reconstruction had interfered with control by the white people, the general assembly passed an act to establish a State penitentiary.<sup>2</sup> The passage of this act was a matter of tremendous import in the evolution of the penal system of South Carolina; for it took the control of persons convicted of crime and sentenced to imprisonment away from the counties and vested it in the State. Justification for this action, if justification be asked, might be had from the fact that crimes are committed against the laws of the State and not against the laws of the counties. Consequently, the State and not the counties should assume the control and maintenance of persons imprisoned because of violation of the its laws.

It is probable that the general assembly of 1866 was moved to create the State penitentiary, not from the force of the somewhat academic argument that the State should take charge of persons convicted of violating its laws but from economic and, possibly, humanitarian reasons. The end of the war found every county in the State depleted in finances. The maintenance of the convicted persons in the jails was quite an item of expense to each county. The general assembly of 1866 may have decided to establish the State penitentiary to relieve the counties of the burden of maintaining convicts in their jails. It is possible, too, that the general assembly wished to better the condition of convicts. From what the writer has seen of a few jails in the State which were built before the War Between the Sections, now used almost entirely as places of detention for persons awaiting trial, he is convinced that from the standpoint of sanitation the county jails, even those in

<sup>1</sup>H. M. Henry, A. M., "Police Control of the Slave in South Carolina," p. 46.

<sup>2</sup>Statutes of South Carolina, Vol. XIII, p. 366.

counties which operated workhouses, must have been replicas of the Black Hole of Calcutta when they were used as places of confinement for all persons sentenced to imprisonment as well as those awaiting trial.

The act to establish a State penitentiary in South Carolina carried with it an appropriation of \$20,000 "for the purpose of commencing the establishment of a penitentiary in this State." The appropriation bill of 1866 also contained the following item: "For the construction of a penitentiary, \$45,000, to be paid on the draft of the governor, from time to time, as the same may be needed." The governor, however, was prohibited from drafting on this latter appropriation until the plans for the penitentiary had been drawn and the contract for its erection let.

The act provided for the appointment by the governor of three commissioners of the penitentiary who were authorized to select a site and direct the erection of the institution. The commissioners were charged first to build a temporary inclosure for 100 convicts whose labor was to be used in the erection of the permanent penitentiary after the governor named a keeper and assistant keepers for them.

It was undoubtedly the intention of the general assembly of 1866, the last before the black deluge of the 10 years of Radical rule in South Carolina, to provide the means at the penitentiary for employing the convicts confined in it. The commissioners were required by the act to select a site "where water power may be made available for manufacturing purposes." They chose the site which the institution still occupies, a 17-acre tract of land in Columbia on a high bluff on the eastern bank of the Congaree river just opposite the "fall line."

#### Radicals Loot Penitentiary.

The commissioners had time to make only the barest beginning before the Radicals took control of the State. It would be profitless to trace the growth of the penitentiary through the eight years following 1866. The Radicals used the penitentiary in its incompleting condition as one of their many excuses for looting the State treasury. From 1867 to 1876 the Radical legislatures appropriated a total of \$497,300 for "continuing the construction," for "maintenance and construction," and for "past dues for construction" of the penitentiary.

On May 2, 1875, Theodore W. Parmele succeeded John B. Dennis as superintendent of the penitentiary. In his first report to the governor under date of October 31, 1875, the new superintendent said that he had not been able to find any books or records

kept by his predecessor.<sup>3</sup> He reported that when he took charge of the penitentiary nearly all the structures were in ruins, a tornado having blown down the hospital, guards' quarters, commissary and watch tower, besides the brick boundary walls and most of the fencing. The convicts were sleeping on the stone floors of their cells.

Parmele went vigorously to work to rehabilitate the penitentiary. He recommended in his first report the establishment of a reformatory department at the penitentiary for juvenile convicts in which they might receive instruction and be given occupation apart from the adult convicts. Of the 350 convicts at the penitentiary in 1875, he said that 58 were minors. Although he found it difficult to utilize the labor of all the convicts at the penitentiary, Parmele reported that he had employed some of them at brick making and repairing the penitentiary buildings. He asked for appropriations of \$10,000 for construction and \$40,000 for maintenance, about half the amount which had served his predecessor annually. The general assembly of 1876 gave him \$40,000 for maintenance and construction.

#### Hampton and Convict Labor.

In 1877, when Wade Hampton became governor and the rule of the Radicals was brought to an end, steps were taken which determined the policy of the State toward its convicts for years to come.

In his first message to the general assembly at the special session which was convened on April 24, 1877, and adjourned on June 9, 1877, Hampton said:

"The penal, charitable and educational institutions of the State demand, and doubtless will receive, your careful consideration and your fostering care. . . . They should be made self-supporting as far as possible; and I trust that some system may be devised by the legislature by which, while placing the public institutions of the State on a secure basis, will relieve the people of a large portion of the heavy expense their maintenance now demands. With proper legislation the labor of the convicts in the penitentiary could be made profitable, and I ask your attention to this subject."

Hampton's request that the general assembly give its attention to the matter of providing labor for the convicts in the penitentiary was met with immediate compliance. On April 26, the same day his first message was read in the general assembly, J. Walter Gray, representative from Greenville, asked and obtained leave to in-

<sup>3</sup>Reports and Resolutions, 1875-76, pp. 150-179.

roduce in the house of representatives a bill "to utilize the convict labor of this State." The bill was passed, and the act approved June 8, 1877.<sup>4</sup>

The act to utilize the labor of the convicts in the penitentiary provided that the governor should appoint three directors for the institution. This board was to advertise for bids to complete the penitentiary according to plans it specified. The importance of this act in its effect on the policy of the State toward its convicts lay in the provision it made that the board of directors of the penitentiary might lease or hire convicts under terms advantageous to the State, considering the health of the convicts. The board, however, was prohibited from leasing convicts sentenced for murder, statutory assault, arson or manslaughter.

#### Misgivings About Leasing.

It appears from the terms of the act to utilize the labor of convicts that there was misgiving about the wisdom of establishing the leasing system and some foreshadowing of the woe it was to bring to hundreds of convicts. The general assembly provided in the act that men who contracted for the labor of convicts should give bond in the sum of \$50,000 and made them liable for indictment for cruelty. Other provisions in the act intended to safeguard the convicts from abuse by the contractors were that the board of directors report to the general assembly the number and names of the convicts hired, to whom hired and for what purpose and for what consideration; all convicts leased were to be kept in the State and humanely treated; the contracts were to specify the kind of food, clothing and lodging and the modes of punishment; and the convicts were not to be worked more than 10 hours a day.

The first contract for the leasing of convicts under the act approved June 8, 1877, was made shortly after its approval when the board of directors of the penitentiary let 100 convicts to the Greenwood & Augusta railroad, then in the course of construction, which was to make payment in cash on February 1, 1878, for their labor.<sup>5</sup> During the fiscal year 1877-1878, Superintendent Parmele reported that the daily average number of convicts confined in the penitentiary was 465 and that they had been maintained at an average cost for the year of \$79.39 per capita. The penitentiary was to receive \$3 a month from the Greenwood & Augusta railroad for the labor of each convict, the entire cost of whose maintenance was to be paid by the contractors.

In his report to the board of directors for the fiscal year 1877-1878, Parmele said in regard to the leasing

system: "My opinion is that the proper protection of society and the necessity for punishment of crime require other ways of utilizing the labor of State prisoners."<sup>6</sup>

Parmele called attention to the fact that the percentage of escapes among convicts working under lease had ranged from 12 to 28 per cent. during the first year the system was in force.

The joint legislative committee to examine into the State penal and charitable institutions in its report to the session of the general assembly in 1878, while expressing, after a fashion, its approval of the leasing of convicts, said that the system should be abolished as soon as the State could use their labor in its own industries.

#### Farming With Convicts Begun.

Another action taken in 1877, even more important than the provision for leasing convicts in its lasting effect on the penal system of South Carolina, was the beginning of the use of convicts in the penitentiary in farming. In January, 1877, five months before the act providing for leasing was approved, the board of directors of the penitentiary made arrangements with John C. Seegers of Columbia by which he was to work 150 convicts on his farm in Richland county.<sup>7</sup> Under the arrangement, Seegers was not to pay the penitentiary anything for the use of the convicts. He was simply to maintain them. In view of the fact that so many of the convicts were unemployed in the penitentiary in 1877 and that their maintenance was a dead expense to the State the arrangement with Seegers was not disadvantageous to the penitentiary from a monetary standpoint at the time it was made, although it soon became so. Accordingly, the arrangement was changed and provision made for the penitentiary with Seegers to work his farm on shares. Finally in 1881, the contract with Seegers for 150 convicts was terminated by mutual consent.<sup>8</sup> A new contract was made under which he was to be furnished 25 convicts at a cost of \$5 a month each and their maintenance to work his farm for five years following January 1, 1881. Other contractors were then offering as high as \$16.66 a month for the hire of convicts besides their maintenance. Consequently, by terminating the Seegers contract, the board of directors had 125 more convicts whom they could lease. A few months later, though, the State itself was definitely committed to the policy

<sup>4</sup>Statutes of South Carolina, Vol. XVI, p. 263.

<sup>5</sup>Reports and Resolutions, 1877-78, p. 87.

<sup>6</sup>Reports and Resolutions, 1877-78, p. 89.

<sup>7</sup>Reports and Resolutions, 1877-78, p. 89.

<sup>8</sup>Reports and Resolutions, 1881-82, p. 75.

of working its convicts on its own farm, an encouraging feature of the penal system which has survived to this day.

Besides passing the law authorizing the leasing of convicts, the general assembly at the special session of 1877 fixed 30 cents as the fee that sheriffs were to receive for dieting prisoners in county jails. Subsequent legislative enactment changed this fee in certain counties until in 1916 it was 25 cents in one county, 30 cents in 12 counties, 35 cents in seven counties, and 40 cents in 21 counties.<sup>9</sup>

#### Public Executions Abolished.

The general assembly of 1878 abolished the practice of inflicting the death penalty on criminals in public. The "hangin' grounds," where the people were wont to make holiday on occasions when they were put to their grisly use, were abandoned, but hanging as the means of execution was not changed until 1912, when electrocution was substituted for it. Under the act of 1878 the death penalty could only be inflicted on a criminal within the jail inclosure. The sheriff and his assistants, the clergy, State solicitor, attorney for the defense, the family of the criminal and "not more than 10 discreet persons" were all who were to be permitted to witness the execution.<sup>10</sup>

The demand by contractors for convicts from the penitentiary in 1878 was not great. In his report dated October 30, 1879, Superintendent Parmele said that on that date he had 625 convicts under his supervision, of whom only 138 were leased. He had undertaken to provide work for the remainder within the walls of the penitentiary, having started the manufacture there of shoes and brooms and cloth for the convicts' clothes.

Col. T. J. Lipscomb succeeded Theodore W. Parmele as superintendent of the penitentiary on January 3, 1879. The 12 years of the Lipscomb administration were marked by many notable departures. The chief of these were the development of the working of leased convicts by contractors within the walls of the penitentiary, the greatly increased use by the State of the labor of the convicts for its own purposes, the stoppage in a measure of abuses arising from the leasing system, and the operation of the penitentiary at a profit to the State—the last named a departure which should give every student of penal conditions in South Carolina cause for thought.

The first annual report of Col. Lipscomb, dated October 31, 1879, to the board of directors, although it did not result in any profound change in the leasing system, brought some amelioration of the pitiful condition

to which nearly all the convicts let to some contractors had been reduced in the brief period during which the system had been in effect.

"Under this system of less than two years standing, 153 have died and 82 escaped," Col. Lipscomb said in his annual report, "thereby proving that this hiring of convicts under the management of some of the contractors is very unsatisfactory. This extraordinary mortality is chargeable to mismanagement of some kind, and I feel that the casualties would have been less frequent if the convicts were properly, having a value to preserve."<sup>11</sup>

#### Scandal Under Leasing System.

Supt. Lipscomb also said that some of the contractors had shown a want of vigilance in preventing escapes, although they refused to pay the penitentiary the penalty required of them for each leased convict who ran away, claiming that they were not to blame for the escapes. He called attention to the fact that there was no legal provision for rewarding a person who returned an escaped convict.

Lipscomb mentioned incidentally in his annual report that the board had in its minutes his reports on the instances of mistreatment of leased convicts which had come to his attention. Subsequently, the senate passed a resolution requiring Lipscomb to produce all the papers in his possession bearing on the mismanagement of leased convicts. These papers were transmitted to the senate on December 15, 1879.<sup>12</sup> They related in detail conditions, some of them extremely horrible, which Lipscomb had found when he visited stockade No. 5 of the Greenwood & Augusta railroad in Edgefield county on August 21-22, 1879. They proved that the board of directors had taken vigorous action to correct the abuses to which Lipscomb called attention after his inspection. They showed, too, that after other inspections of stockade No. 5 by Lipscomb and the penitentiary surgeons the board had ordered the Greenwood & Augusta railroad to return to the penitentiary 26 of the convicts at its stockade No. 5. After some delay this request had been complied with and 24 sick and filthy convicts were brought to the penitentiary on September 27 from stockade No. 5, along with the body of a 25th convict who died en route.

Despite the fact that the railroad dismissed the superintendent in charge of stockade No. 5, the condition of the convicts who remained

<sup>9</sup>Report State Board of Charities and Corrections, 1915, p. 99.

<sup>10</sup>Statutes of South Carolina, Vol. XVI, p. 381.

<sup>11</sup>Reports and Resolutions, 1879-80, p. 296.

<sup>12</sup>Reports and Resolutions, 1879-80, pp. 885-947.

there continued unsatisfactory. The board sent Dr. B. W. Taylor of Columbia to inspect the convicts. He reported that all but eight of them were sick. Consequently, the board on October 9 ordered the Greenwood & Augusta railroad to return all the convicts to the penitentiary except these eight whom Dr. Taylor said were in good health. On November 13 the board instructed the superintendent to ask the attorney general to institute proceedings against the Greenwood & Augusta railroad for failure to comply with its order that the leased convicts be returned. Here the matter, as far as available reports show, seems to have rested. There is some indication that the convicts were returned to the penitentiary about December 1.

On December 15, 1879, the same day on which the papers transmitted by Lipscomb were presented to the senate, a resolution was introduced in that body to appoint a joint committee to investigate alleged cruelty to convicts. This resolution was adopted. The report of the committee was made to the general assembly in 1880. The most important suggestions contained in the report of the committee were that all contracts for the leasing of convicts be made revokable on proof that the convicts were being ill-used by contractors, and that the board of directors prescribe rules and regulations under which the leased convicts were to be worked. Both suggestions, somewhat modified, met with favor, and an act passed in 1880 made it the duty of the governor on receiving information that leased convicts were being mistreated to order the superintendent of the penitentiary to bring them back to the institution. To secure the intent of the act, it was made the duty of the superintendent of the penitentiary to cause the convicts leased "to be inspected by a physician of the penitentiary at least once a month."

#### Work Within Walls.

The working of convicts leased to contractors within the walls of the penitentiary was begun in a small way probably in 1880. Lipscomb reported to the board of directors under date of October 31, 1880, that he had made arrangements to hire a "number of convicts to Sample & Wetmore of North Carolina for the manufacture of shoes, and a number to Lorick & Lowrance (of Columbia) for the manufacture of brooms."

The leasing of convicts to contractors to be worked within the walls of the penitentiary had its advantages over the practice then in vogue of leasing them to contractors to be worked in any part of the State, but the whole leasing system was unjustifiable economically and liable to

great abuse as the airing of the Greenwood & Augusta railroad leasing scandal had proved. If the State has a right to make money out of the labor of a person whom it imprisons to reform and for the protection of society while this reformation is in progress, why should it divide its profit from his labor with middlemen? It is true that the middlemen have to make an outlay of capital for machinery and goods before they can make a profit from the labor of leased convicts. The State, though, is certainly as capable of making this initial outlay as the contractors whom it allows to work its convicts within the walls of the penitentiary, and the State could take all of the profits derived from the labor of the convicts if they were employed in State directed and controlled industries.

Sample & Wetmore did not comply with their agreement to hire convicts for the manufacturing of shoes at the penitentiary, according to Lipscomb's report of 1881. However, A. C. Dibert of Trenton, N. J., started a shoe factory sometime during 1881 at the penitentiary. Dibert employed 100 convicts, paying the State 50 cents a day for the hire of the male adults and 37 1-2 cents a day for the hire of the adult females and boys, the expense of maintaining them being borne by the penitentiary.

Although its only source of income was the hire it received from contractors for convicts leased to them for farming, phosphate mining, railroad building, and manufacturing within the walls, the penitentiary was able in 1881 to turn back into the State treasury the appropriation of \$23,000 made for its maintenance in 1880.<sup>13</sup> The effect that making the penitentiary a source of profit had on the institution will be seen later.

In 1881 the contractors were paying the penitentiary from \$10 to \$12.50 a month for the labor of convicts at railroad construction and in the phosphate mines.<sup>14</sup> The board of directors reported that year that contractors owed it \$25,000 which it was unable to collect for allowing convicts to escape.

Accordingly, by an act of 1882, the escape of a leased convict was made prima facie evidence of negligence on the part of the contractor who was to pay to the penitentiary a sum equal to \$50 a year for each year which the convict who escaped still had to serve in the penitentiary. In 1882 another act required the superintendent of the penitentiary to pay a reward of \$25 to any person who returned an escaped convict and provided a penalty for any person who harbored an escaped convict.

<sup>13</sup>Reports and Resolutions, 1881-82, p. 67.

The year 1882 was marked by two important departures in the history of the penitentiary. The institution bought its first farm<sup>14</sup> and was given the Columbia canal by the State. As far as effect on its policy was concerned, the purchase of the farm with an appropriation made for the fiscal year 1882-1883 was more important than the gift of the canal which carried with it the authority to use the labor of convicts in completing digging it.

The farm was purchased by the penitentiary for \$4,250 in the Dutch Fork section of Lexington (now a part of Richland county) five miles north of Columbia. The farm contained 404 acres and was well timbered when it was purchased. It is still owned by the penitentiary and is now a part of the site of the reformatory for negro boys under the control of the penitentiary directors.

#### State's Demands for Labor.

Under the terms of an act approved December 22, 1882, the board of directors of the penitentiary was required to keep a minimum of 200 convicts employed in completing the Columbia canal under the direction of a manager whom the board was to select. This marked the real beginning of the use by the State of the labor of convicts in the penitentiary for its own purposes. It may be well to summarize here the demands made subsequently by the State on the penitentiary for convict labor. They follow in chronological order: For completing the State house, labor and material in unspecified amounts, December 26, 1884; for keeping the State house grounds in order, an unspecified number of convicts, 1889; for erecting buildings for Clemson college and preparing building materials, 50 convicts, December 23, 1889; for erecting buildings for Clemson college and preparing building materials, 100 convicts, December 23, 1890; for erecting buildings for South Carolina Industrial and Winthrop Normal college, 100 convicts, December 23, 1891; for making brick for negro male building at State lunatic asylum, 50 convicts, January 4, 1894; for erecting buildings at Colored Normal, Industrial, Agricultural and Mechanical college, 40 convicts ("if on hand"), 1896; for making brick at State lunatic asylum, 30 convicts, 1896; for erecting buildings for South Carolina Industrial school, "so many convicts as they may require" to the board of trustees of the institution, 1906.

Mr. Lipscomb in his report for the fiscal year 1882-1883 tells of contracting with the Columbia Hosiery company for the employment of 200 convicts within the walls of the penitentiary in the manufacture of stockings

and knit goods and of a second contract with W. A. Evans of Chesterfield to use 200 more convicts at the penitentiary in the manufacture of saddles and leather goods. Under the third contract Dibert was using 100 convicts in the manufacture of shoes. The penitentiary itself was employing an average of about 200 convicts each day in digging the canal besides a small force in clearing the State farm of timber.

Complaints of the treatment of convicts by contractors who were working them outside of the penitentiary led in 1884 to the passage of an act requiring all leased convicts to remain under the supervision of sworn officers and guards appointed by the superintendent of the institution. Each contract for the leasing of convicts was to specify the number of hours during which they could be worked. The superintendent of the penitentiary was instructed under the act to prescribe rules and regulations for the management of leased convicts. The penitentiary surgeon, too, must certify that the locality in which contractors proposed to work the convicts was healthful before contracts could be made.

#### Chaingang System Started.

The board of directors of the penitentiary reported on October 31, 1885, that they had been able to make only one new contract under the act of 1884 and that the institution was in financial straits as it had 874 inmates to support. This report led to the repeal of the act of 1884 and the passage of another act which provided that the superintendent and board of directors of the penitentiary might make contracts for specific work by leased convicts under the direction of officers of the penitentiary and also hire them under provisions of the law in force before the act of 1884 was passed.<sup>15</sup>

The act of 1885, which in the main permitted a reversion to the old system of leasing, also authorized the superintendent and board of directors of the penitentiary to purchase or lease one or more farms.

Probably the report of the board of directors of the penitentiary in 1885 to the effect that it found difficulty in leasing convicts under the act of 1884 and that the penitentiary with a population of 874 convicts on October 31, 1885, was no longer self-supporting influenced the general assembly to pass an act approved December 22, 1885, permitting counties and municipalities to use convicts sentenced for not more than 90 days to work on their roads and streets.<sup>16</sup>

<sup>14</sup>Reports and Resolutions, 1883, Vol. I, p. 643.

<sup>15</sup>Statutes of South Carolina, Vol. XIX, p. 74.

<sup>16</sup>Statutes of South Carolina, Vol. XIX, p. 125.



The passage of this permissory act was the first step toward the re-assumption of the control of convicts by counties and municipalities under conditions similar to those which obtained before the establishment of the penitentiary in 1866. This act led, too, to the creation of the chaingang system of working the roads with convict labor in South Carolina. It contributed, indirectly, also, to the final abandonment of the leasing of convicts to contractors for work outside of the penitentiary walls.

The act approved December 22, 1885, provided that all courts which had power to sentence convicts to imprisonment might, "within their discretion, impose the condition of hard labor for a period not exceeding 90 days."<sup>17</sup> All convicts sentenced with this condition were to perform hard labor upon the highways and other public works of the county or city in which they had committed their offenses. The county and city convicts were placed under control of the county commissioners and municipal authorities, respectively, who were charged to provide guards for them.

#### Reformatory Recommended.

In his report dated October 31, 1885, Superintendent Lipscomb recommended the establishment of a reformatory department at the penitentiary "in which youthful criminals of both sexes and races could be confined." It will be remembered that Parmele, when he became superintendent of the penitentiary in 1877, recommended the same action.

Under authority given them by the act of 1885 permitting a reversion to the old leasing system and providing for the leasing or purchase of farms, the superintendent and board of directors leased in January, 1886, for a period of five years farms belonging to John C. Seegers, T. B. Aughtry and James Sims in lower Richland county. The leasing of these farms proved a source of financial loss to the penitentiary because for three successive years parts of them were overflowed during high stages of the river and the crops ruined. The board of directors in its report of October 31, 1886, said that there had been a deficiency of \$8,714.41 in the maintenance of the penitentiary for the fiscal year 1885-1886 due to the loss incurred by the overflowing of the three leased farms.<sup>18</sup> The general assembly in 1887 granted the penitentiary a loan of \$25,000 as high water had again ruined large portions of the crops on the leased farms during that year.

The act to raise supplies and make appropriations for the fiscal year 1888-1889 contained a provision that convicts should be worked only in healthy localities and on farms not

subject to overflow. The lease of the farms in lower Richland, however, still had three years to run. The provision, though, was repeated in the appropriation and supply bills for the four years following 1888.

Under an act approved December 20, 1888, clerks of court were required to ascertain whether convicts awaiting transportation from the county jails to the penitentiary "are suffering from measles or any other infectious or contagious disease." If such was the case convicts could not be sent to the penitentiary until the county physician said it could be done with safety.

#### Stoppage of Work Within Walls.

In 1889 economic conditions, common to the country as a whole, but felt particularly acutely in the South, led to the abandonment by A. C. Dibert and Markley and Company, successors to the Columbia Hosiery Company, of their contracts for leasing convicts to work within the walls. The general assembly by an act approved December 24, 1889, prohibited the working of convicts by contractors in phosphate mines and authorized the board of directors to purchase out of the surplus earnings of the penitentiary a farm which should cost not over \$40,000.<sup>19</sup>

The stoppage of work within the walls of the penitentiary early in 1889 made many convicts idle. The general assembly, consequently, took the action noted above, which definitely committed the penitentiary to the use of a large portion of its population in farming land owned by the institution, a policy which had already been indicated by the purchase of the farm in Lexington in 1877, and which, on account of the healthful nature of the occupation provided the convicts, must be approved. The general assembly took the precaution to provide that the farm they authorized the purchase of should have sufficient elevation to prevent its overflow. The precaution was very reasonable as the board of directors in one of its reports estimated that the overflowing of the leased farms cost the institution \$100,000.

The rooms used as a hospital for sick convicts at the penitentiary, having been condemned by the State board of health, the erection of a hospital building within the walls of the institution was begun in May, 1889.

The board of directors of the penitentiary bought the deSaussure farm on Wateree river on the line between Kershaw and Sumter counties in 1890 for \$25,000, the purchase price to be paid in installments.

<sup>17</sup>Statutes of South Carolina, Vol. XIX, p. 125.

<sup>18</sup>Reports and Resolutions, 1886, Vol. II, p. 287.

<sup>19</sup>Statutes of South Carolina, Vol. XX, p. 320.

W. J. Talbert succeeded Col. T. J. Lipscomb in 1891 and a new board of directors of the penitentiary took control of the institution in 1890. The new board in its first report announced its intention of not working convicts on shares on farms, but of leasing the convicts and using them to farm for the institution.<sup>20</sup> The board said in this report that the hosiery mill, formerly operated by Markley and Company at the penitentiary had been reopened early in 1891 with J. M. Graham as superintendent.

On January 1, 1892, the board of directors leased the deSaussure farm to T. O. Sanders for an annual rental of \$1,750 for three years. The board also repaid to the State the loan made to the penitentiary in 1887 to cover part of the losses due to the overflow of the farms in lower Richland leased from Sims, Aughtry and Seegers.

#### Segregation of Juvenile Convicts.

W. A. Neal succeeded W. J. Talbert as superintendent of the penitentiary in January, 1893. One of the new superintendent's innovations was the partial segregation of juvenile convicts from adult convicts. He did not mention this salutary action in his annual reports until 1899, when he said that it had then been the practice for five years at the penitentiary to allow all convicts under 18 years of age to sleep in one ward of the hospital where they were given liberty until 9 p. m. The juveniles, according to Neal's report in 1899, had over them one adult prisoner "to keep them straight" and they had "no contact with the old and hardened criminals."<sup>21</sup>

In an act to provide a system of county government for the several counties of the State, approved January 4, 1894, provision for the divorcement of still other convicts from State to county control was made. The act superseded the act of 1885, which gave the criminal courts permission to sentence convicts for not more than 90 days to work on the public highways. The act of 1894 created the offices of supervisor and board of road commissioners in each county. One of its sections required all courts previously able to sentence convicts to imprisonment to sentence all able-bodied male convicts whose sentences did not exceed two years to hard labor on the public works of the county in which they were convicted. The apparent mandatory language of the section was modified by another provision that able-bodied male convicts might be so sentenced in the alternative to imprisonment in the penitentiary or the county jail. Consequently, the act simply left to the discretion of presiding judges which convicts sentenced for not exceeding two years should be sent to hard labor on the

roads and which imprisoned in the penitentiary or county jail.<sup>22</sup>

The county government act of 1894 went further than merely providing for the use of convicts in working the roads. It created the chaingangs virtually in the form in which we have them now. The act vested the control of county convicts sentenced to hard labor on the public works in the supervisor and made the municipal authorities responsible for convicts sentenced to work on the streets. It said, too, that supervisors and municipal authorities were to provide guards, medical attention, food and tools for the convicts engaged in road work. It gave permission to transfer unconvicted convicts to the penitentiary and to confine convicts in the county jails when they were not working the roads.

#### Constitution and Penal System.

The constitutional convention of 1895 did not make a single direct change in the penal system of South Carolina as it was then organized. The convention reenacted a number of provisions from the United States constitution, some of them as old as Magna Charta, relating to the rights of persons accused of crime. Among those rights which the convention reaffirmed in the constitution of 1895 were: Speedy and public trials, the necessity of a presentment or indictment by a grand jury to hold a person for trial for a crime, the punishment of which exceeded a fine of \$100 or imprisonment for 30 days, trial by jury, the specification of the charge against the accused, right of the accused to compulsory processes to summons witnesses in his own behalf, the privilege of the writ of habeas corpus, and the right of bail except in capital cases "where proof is evident or presumption great."

The convention specifically prohibited in the constitution the inflicting of corporal punishment, imprisonment for debt except in cases of fraud, excessive bail, fines, or "cruel and unusual punishment," and the "unreasonable" detention of witnesses.

The constitution of 1895 gave circuit courts and all courts inferior thereto and municipal courts the right in their discretion to sentence persons to labor on the roads, streets and public works as well as to imprisonment.<sup>23</sup>

The section of the constitution which had the greatest effect on the evolution of the penal system of the State was that which gave the general assembly permission to establish a reformatory for juvenile offenders "sep-

<sup>20</sup>Reports and Resolutions, 1891, Vol. I, p. 91.

<sup>21</sup>Reports and Resolutions, 1899, Vol. I, p. 284.

<sup>22</sup>Statutes of South Carolina, Vol. XXI, p. 486.

<sup>23</sup>Constitution of 1895, Art. XII, Sec. 6.

arate and apart from hardened criminals."<sup>24</sup>

Although the leasing of convicts by the penitentiary was not prohibited by the constitution, one of its sections reenacted the principal provision of the act of 1884, i. e., that the leased convicts should remain under the control of officers detailed by the penitentiary. It had been found impractical to work leased convicts under the act of 1884, and it was equally impractical to work them under this provision of the constitution.

Under an act approved March 9, 1896, the penitentiary authorities were forbidden to hire convicts for any consideration other than legal money, except for agricultural purposes, when presumably the labor of the convicts might be paid for in whole or in part by agricultural products.

A joint resolution passed in 1896 authorized the board of directors of the penitentiary to purchase the Reid farm in Sumter county which adjoined the deSaussure farm.<sup>25</sup> The resolution permitted the board to borrow \$10,000 from the sinking fund commission to pay for the Reid farm. The purchase of this farm, the third to be bought by the penitentiary, brought the total acreage owned by the institution, exclusive of its site, up to 5,116, and made its investments in real estate for farming purposes amount to \$39,250.

In January, 1899, Col. D. J. Griffith succeeded W. A. Neal as superintendent of the penitentiary. This year the receipts from contractors for convict labor amounted to \$16,599.66. The hosiery mill at the penitentiary had been burned on April 24, 1894. It was rebuilt and was in operation in 1899. The erection of a new cell-house for male prisoners at the penitentiary was begun in 1899 and completed the year following, at a total cost of \$16,760.81.

#### Leasing of Convicts Ended.

In its report for that year the board of directors of the penitentiary said: "We can not give our approval to the present system of hiring convicts to private parties."<sup>26</sup> In its report for 1901 the board again expressed its disapproval of the leasing system and mentioned the finding of unspecified abuses in some of the camps. All the contracts for leasing convicts for farm work, which had gradually become the only form of work for which they were leased outside of the penitentiary, terminated, except one, on December 31, 1901.

Before 1901 the penitentiary does not seem to have been very much affected by the increased use of convicts sentenced for not exceeding two years for road work by the counties. In 1901, however, the penitentiary was required to hire for road work or

drainage to the counties for \$4 a month each such convicts as it could spare from its farms and the hosiery mill. The hiring of convicts for farm work was prohibited by the same act which made provision for leasing them to the counties.<sup>27</sup>

The leasing of convicts outside the penitentiary for any labor except phosphate mining and farming has never been prohibited by law in South Carolina. Two factors, however, were operating as early as 1901 to make it impractical to lease convicts for labor except in the penitentiary. One of them was the constitutional provision<sup>28</sup> that convicts leased must be worked under the supervision of officers selected by the penitentiary and the other the growing use of convicts by the counties for working their roads. In 1903 the general assembly enacted a law permitting courts to sentence persons whose sentence did not exceed 10 years to hard labor on the roads or public works of the counties in which they were convicted. Criminals sentenced for statutory assault were excepted from those who could be used by the counties.

In 1900 the general assembly took a very progressive step when it passed a law that the farm in Lexington (now Richland) county should be used as the site of a reformatory for male juvenile criminals under 16 years of age. The law required the superintendent of the penitentiary to erect the necessary buildings and transfer juvenile criminals to the reformatory as soon as practicable. The separation of the races at the reformatory was made compulsory. In 1901 there were 28 boys under 16 years of age of both races at the institution.

The establishment of the South Carolina Industrial school, a reformatory for white boys, was not accomplished until 1906, and then only after years of agitation in favor of the institution.<sup>29</sup> The State Federation of Women's Clubs took a prominent part in the educational campaign which preceded the passage of the law creating the South Carolina Industrial school. The late Mrs. Martha Orr Patterson, one time president of the State federation, was a leader in the campaign for the school. Her son, Representative Lawrence Orr Patterson, of Greenville introduced the bill to establish the South Carolina Industrial school in the house on January 30, 1905. The house refused by the decisive vote of 77 to 20 to strike out the enacting words. The house agreed

<sup>24</sup>Constitution of 1895, Art. XII, Sec. 7.

<sup>25</sup>Statutes of South Carolina, Vol. XXII, p. 379.

<sup>26</sup>Reports and Resolutions, 1901, Vol. II, pt. 2; page 1142.

<sup>27</sup>Statutes of South Carolina, Vol. XXIII, p. 660.

<sup>28</sup>Constitution of 1895, Art. XII, Sec. 9.

<sup>29</sup>Statutes of South Carolina Vol. XXV, p. 133.

to an amendment to the bill permitting three of the members of the board of trustees of the school to be women. This amendment was, however, unconstitutional. On February 9, the house refused a motion to recommit the bill and sent it to the senate after it was read the third time. In the senate the bill encountered rough weather. On February 17 it was continued until the next session by a vote of 16 to 15.

When the bill came up for second reading in the senate on February 7, 1906, it met with strong opposition, but was finally passed and approved by the governor on February 24, 1906.

#### Two Reformatories Contrasted.

The South Carolina Industrial school act carried an appropriation of \$4,500 for establishing the school. Florence county subscribed \$4,000 additional out of the public funds for the school on condition that the institution be located at Florence. The site of the school was donated by the Atlantic Coast Line railroad. Much of the labor for erecting the first building was furnished by convicts from the penitentiary.

The same act which created the South Carolina Industrial school provided that the penitentiary's farm in Lexington county should be used as a State reformatory for negro boys and be managed by the board of directors of the penitentiary. The present three-story brick dormitory building at the reformatory was erected in 1907.

The management of the South Carolina Industrial school and the State reformatory is in striking contrast. At the industrial school a system of parole is the keystone which supports the work of the institution. By applying himself and keeping the rules of the school a boy can acquire enough merits in 16 months to make himself eligible for parole by the board of trustees. The school as yet has no parole officer to do "follow up" work with boys who are dismissed from the institution.<sup>30</sup> There is no system of parole at the State reformatory for negro boys, nor is there anything in the method of managing the institution tending to effect the reformation of the negro boys, except regular work, segregation from adult criminals and the holding of religious services by the chaplain of the penitentiary.<sup>31</sup>

In 1906 the general assembly created the board of pardons, giving it power to advise the governor in the matter of extending executive clemency to convicts, but did not bind him to accept its recommendations pro or con. The creation of the board to act in an advisory capacity to the governor and to hear petitions for

pardon was practically directed by the constitution of 1895.<sup>32</sup>

#### Defects in Parole Law.

Under an act approved March 2, 1909, the governor was given the right to "suspend sentence or parole any prisoner upon such terms or conditions as he may deem just in the exercise of executive clemency."<sup>33</sup> This law was well-intentioned, but poorly bottomed, in that it did not provide the means of finding out whether paroled prisoners violated the terms or conditions on which clemency was granted to them. Consequently, it falls short of the mark. In effect, parole in South Carolina has been almost equivalent to a pardon, except that it does not carry with it restoration of elective rights.

The counties did not take advantage to any great extent of the act of 1901 requiring the penitentiary to lease convicts to them for road work. In 1907 the board of directors of the penitentiary reported that only 39 convicts had been leased to the counties. The superintendent of the penitentiary was ordered by an act of 1909 upon application of the supervisors of Lancaster, Lexington, Saluda and Bamberg counties, to lease such convicts convicted in these counties as "such supervisors may deem practical to accept." This act was followed by another in 1911, which required all convicts to be sentenced to hard labor on the public works of the county in which they are convicted "without regard to length of sentence" in the alternative to imprisonment in jail or the penitentiary.<sup>34</sup> This act left it to the judges to decide whether convicts should go to the chaingang or to jail or to the penitentiary. Its importance in its effect on the chaingang system of working the roads lay in the fact that it removed the prohibition against the use of convicts sentenced for more than 10 years.

#### Chaingang System Fully Grown.

In 1914 an act was passed which gave the supervisors the right to take from the penitentiary any convicts sentenced from their respective counties and to employ them on the chaingangs "without charge."<sup>35</sup> Under this act supervisors had taken by September 30, 1915, 234 convicts away from the penitentiary. Of these 131 were sentenced for life and 62 more for terms between 11 and 40

<sup>30</sup>Report State Board of Charities and Corrections, 1915, pp. 78-84.

<sup>31</sup>Report State Board of Charities and Corrections, 1915, pp. 67-73.

<sup>32</sup>Constitution of 1895, Art. IV, Sec. 11.

<sup>33</sup>Statutes of South Carolina, Vol. XXVI, p. 121.

<sup>34</sup>Statutes of South Carolina, Vol. XXVII, p. 160.

<sup>35</sup>Statutes of South Carolina, Vol. XXVIII, p. 626.

years.<sup>36</sup> Supervisors now have the right to take from the penitentiary any convicts they choose, convicted in their counties, and to return them if they see fit.

The operation of the hosiery mill within the walls of the penitentiary by leased convict labor, begun in 1883, was brought to an end in 1913 when an act was passed forbidding the employment of convicts in the mill on the ground that it was injurious to their health.<sup>37</sup> This action was recommended by the governor. As early as 1907 the committee from the State board of health appointed to investigate penal and charitable institutions reported that "the hosiery mill is not in a sanitary condition," being overcrowded and poorly ventilated.<sup>38</sup> The same committee, after a visit to the penitentiary hosiery mill on October 12, 1909, recommended "that as early as possible the practice of working convicts in the hosiery mill be discontinued." Under a concurrent resolution passed in 1911 by the general assembly the board of health was directed to inspect the penitentiary.

#### Board Condemns Hosiery Mill.

On March 15, 1911, the board passed the following resolution:

"Resolved, That after a thorough consideration of all the phases of hygiene and sanitation in connection with the work in the hosiery mill, it is the sense of the entire board that this form of employment should be discontinued, and that work of an outdoor nature should be provided."<sup>39</sup>

Counties were given permission by an act of 1911 to establish houses of correction for female convicts, except those convicted of capital offenses, in which they might be given occupation. No county has availed itself yet of this permission.

Convicts serving sentence of more than six months were given an incentive for good conduct by the passage of a law in 1914 providing that one-tenth of their sentence should be deducted for good behavior.<sup>40</sup> Officers who refuse to deduct the tenth were declared guilty of a misdemeanor.

#### Multiplicity of Standards.

The principal steps in the evolution of the penal system of South Carolina from 1866 through 1914 have now been outlined in rough chronological order. We have seen the planless way in which the State drifted from one expedient to another in handling its criminal population during this period. Under these circumstances, it is hardly to be wondered that in the course of its evolution the penal system has described a circle and that the control of about five-sixths of the convicts has gradually drifted back to the counties

as it was before 1866 while only one-sixth remain under State control.<sup>41</sup>

County control of convicts can not be justified in theory, and it is open to grave indictment in fact on the ground that it necessitates a multiplicity of standards in handling the convicts. Under State control one standard can be maintained, but under county control in South Carolina 44 standards are in existence. Manifestly, it would be easier to raise one standard than it is to raise 44 standards.

It has been said that the making of money for the State out of the labor of convicts is a matter which should give students of South Carolina's penal system cause for serious thought. At present the effort to derive a profit for the State from the labor of men sentenced by the courts to the penitentiary is the outstanding feature of the management of this institution and its two subordinate branches, the State farm and the State reformatory for negro boys.<sup>42</sup> It is commendable from every standpoint to provide employment for prisoners, and if this employment be profitable so much the better. But should the profit from the labor of the prisoners be taken by the State? Would it not be more equitable to divide the profit (that is, the surplus over and above maintenance expense) among the convicts who make it; among their dependent families, when they have such; and, in certain cases, among the parties injured by the crime for which the convict has been taken in hand by the State for its own protection and for his reformation?

The marked tendency to divorce convicts from State control to county control and the effort to make money for the State from the labor of convicts under its control were the doubtful foundation which carried most of the superstructure of the State's penal system when the State board of charities and corrections was created in 1915. This board has been termed "the State's agency by which regular, careful and expert investigation of the public prisons, hospitals, almshouses, chaingangs and similar institutions may be had and by which their relations to one another may be studied."

The State board of charities and corrections began its work in June, 1915. It found that the South Carolina Industrial school was being well

<sup>36</sup>Report State Board of Charities and Corrections, 1915, p. 221.

<sup>37</sup>Statutes of South Carolina, Vol. XXVIII, p. 210.

<sup>38</sup>Reports and Resolutions, 1908, Vol. II, p. 851.

<sup>39</sup>Reports and Resolutions, 1912, Vol. II, p. 1327.

<sup>40</sup>Acts of 1914, p. 617.

<sup>41</sup>Report State Board of Charities and Corrections, 1915, p. 219.

<sup>42</sup>Report State Board of Charities and Corrections, 1915, p. 59.

administered, although seriously handicapped by lack of facilities, including both buildings and land. At the penitentiary practically all the convicts were in idleness, the war in Europe having put a stop to the supply of raw materials with which some of the convicts under lease were making chairs for a contractor within the walls. At the State reformatory and State farm the negro boys at the former and the adult prisoners at the latter were engaged in farming for the penitentiary and incidentally for the State. Almost all the convicts under county control were employed in road work, although a few were engaged in farming for the counties. The county jails were used almost exclusively as places of detention for persons awaiting trial and not, fortunately, as prisons for convicts.

#### Recommendations.

The State board of charities and corrections realizes that the complicated problems involved in the management of prisoners and convicts by the State and the counties demand careful and cautious handling. In its first report to the governor the board made the following recommendations applying to the penal system of South Carolina.

(a) That a State reformatory for white girls be established.

(b) That the aim of both the penitentiary and State reformatory for negro boys be made reformatory and a parole system started at the latter institution.

(c) That certain specified steps be taken to ameliorate the conditions un-

der which both State and county controlled prisoners and convicts live.

(d) That a parole officer be employed by the South Carolina Industrial school.

(e) That opportunities for training in trades be provided at the South Carolina Industrial school with a view to manufacturing for State use.

(f) That in many counties the county jail and the city jail in the county seat should be combined.

(g) That white convicts be sent to the penitentiary instead of to the chaingangs.

(h) That the medical service given county and municipal controlled convicts and prisoners be vastly increased.

(i) That the records of county controlled convicts and prisoners be kept from a social as well as a criminal standpoint.

The import of these recommendations of the State board of charities and corrections is too plain to need comment. The effective enforcement of the recommendations depends upon the citizens of the State, all of whom the State board of charities and corrections is privileged to inform as well as to advise about matters relating to the penal system. An informed public can be trusted not to go very far wrong. It will be possible to use a more triumphant tone in writing of the evolution of the penal system of South Carolina between 1916 and 1966 than could be used in treating the same subject during the last half century.



