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“FAILURE TO COMMUNICATE”[†] THE REEL PRISON EXPERIENCE

Melvin Gutterman*

I. INTRODUCTION

THE academic legal community has failed to appropriately recognize the images of law depicted by Hollywood as a legitimate and important subject for scholarly review.¹ Movies have the capacity to “open up” the discussion of contemporary legal issues that conventional legal sources ignore.² Although different from the normative legal theory of study, movies provide a rich portrait of popular jurisprudence of legal values.³ A fundamental paradox of many notable films is their inability to simultaneously achieve both scholastic acceptance and artistic achievement, at least equal to other media.⁴ Movies are very powerful and can, through the use of provocative images, explore controversial themes and evoke passions that can affect even the most tightly closed minds.⁵

The exclusion of films’ celebrated images from academic study has its cost. There is, for example, a prevalent belief that life in prison is too

† In the most celebrated colloquy in the movie *Cool Hand Luke*, the Captain as he stands over the defiant convict Luke asserts, “[w]hat we’ve got here is failure to communicate.” What the Captain actually demands is that Luke totally capitulate to the contemptible prison system he embodies. The Captain’s exclamation dramatizes his determination to destroy Luke’s spirit. *COOL HAND LUKE* (Warner Brothers 1967).

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1. “Clearly, quantitative bias militated against the sort of inherently critical and interpretive research required to evaluate the relation between lawyers, the legal system, mass media, and popular culture.” Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 *WIS. L. REV.* 527, 540 (1986).

2. JOHN DENVIR, *LEGAL REELISM*, Introduction at xvi (1996) (“Movies often uncover aspects of law that traditional legal sources deny; but film not only ‘reveals’ law, it often creates the social reality to which legal institutions adapt. Therefore, film must be more than a tool of critique; sometimes it must also be its object.”). See also, MICHAEL ASIMOW & PAUL BERGMAN, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996) (synopsis and brief analysis of selected movies that feature courtroom practice).

3. See generally, Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 *YALE L.J.* 1579 (1989) (an informative essay of how people’s legal attitudes and opinions intersect with the norms reflected in popular culture).

4. See generally, Chase, *supra* note 1. Americans are said to be finally learning about the realities of World War II through the movie *Saving Private Ryan*. George Will, *A Summons to Gratitude*, *NEWSWEEK*, Aug. 17, 1998, at 70.

5. “[M]ovies reflect powerful myths that influence our reactions to issues we meet in real life, including legal issues; perhaps the ‘rule of law’ is best viewed as one more myth competing for audience acceptance.” DENVIR, *supra* note 2, at xi.

easy.⁶ Our political leaders paint a portrait of prisons that may be somewhat overcrowded, but are generally replete with the amenities of the good life: fine food, first rate physical training equipment, and cable television.⁷ They have created the perception that for many of the disadvantaged, prison may actually improve their quality of life. For them prisons have become a home, a place where they may reunite with friends safely cradled in the arms of their keepers.⁸ Fueled by the notion that favorable prison conditions do not sufficiently emphasize the punitive theory of incarceration, several states have recently joined a harsh movement to reinstate the use of "chain gangs" as a manifestation of the retributive theory of punishment.⁹ Politicians understand that by providing a grueling prison experience the public penchant for harsh prison measures is satisfied.¹⁰ There is absolutely no political risk to their getting tough on prisoners.¹¹

6. "A recent NBC television poll found that 82 percent of Americans say life in prison is too easy. More than 60 percent say prison programs to rehabilitate criminals have failed." Mark Curriden, *Hard Times*, 81 A.B.A. J. 72, 73 (1995).

In his recent bestseller, John Grisham characterizes Trumble, a fictional federal prison camp, as "nicer than most public schools. Air-conditioned dorms, clean cafeteria serving three squares a day, a weight room, billiards, cards, racquetball, basketball, volleyball, jogging track, library, chapel, ministers on duty, counselors, caseworkers, unlimited visiting hours." JOHN GRISHAM, *THE BROTHERS* 43 (2000). *But see* Norval Morris, *The Contemporary Prison: 1965-Present*, in *THE OXFORD HISTORY OF THE PRISON: THE PRACTICE OF PUNISHMENT IN WESTERN SOCIETY* 227-28 (Norval Morris & David J. Rothman eds., 1995). Nowadays, most prisons are places of "grinding dull routine interrupted by occasional flashes of violence and brutality." Furthermore, "prisons" have many different variations, ranging from "open prisons" that are "indistinguishable from farms" to "maximum-security prisons." *Id.*

7. "Criminals today think prison is a joke. . . . Prison is not a place people go to be punished anymore. Because prison conditions have improved and societal conditions in the inner city have deteriorated so much, criminals actually see their standard of living and quality of life improve when they go to prison. It's a place where their friends are.'" Curriden, *supra* note 6, at 73 (quoting Gary Gerbitz, district attorney for Hamilton County (Chattanooga), Tennessee).

8. *See* Martha Grace Duncan, "Cradled on the Sea": *Positive Images of Prison and Theories of Punishment*, 76 CAL. L. REV. 1202, 1243-46 (1988) (collecting various "positive images" used to describe the prison).

9. *See* Wendy Imatani Peloso, *Les Miserables: Chain Gangs and the Cruel and Unusual Punishments Clause*, 70 SOUTHERN CAL. L. REV. 1459 (1997).

10. Jonathan Turley, the director of the Prison Law Project, contends: "It's difficult to imagine a measure draconian enough to satisfy the public desire for retribution." Larry Reibstein & Ginny Carroll, *Back to the Chain Gang?*, NEWSWEEK, Oct. 17, 1994, at 87. Bobbie Huskey, president of the American Correctional Association, remarks: "In the last two to three years, we have seen a re-emergence of what we categorize as harsh, austere and mean-spirited treatment of offenders." David W. Chen, *The Great Outdoors: A Prison Rehabilitation Program*, N.Y. TIMES, Aug. 20, 1995, § 13NJ, at 6. Several states are even entertaining thoughts of caning their prisoners. *See* Fox Butterfield, *Idle Hands Within the Devil's Own Playground*, N.Y. TIMES, July 16, 1995, at E1.

11. *See generally*, Susan N. Herman, *Slashing and Burning Prisoners' Rights: Congress and the Supreme Court in Dialogue*, 77 OREGON L. REV. 1229 (1998). Corrections experts agree that there is underway a "no frills" movement that is widespread and gaining momentum. *See* Peter Finn, *No-Frills Prisons and Jails: A Movement in Flux*, 60 FEDERAL PROBATION, Sept. 1996 at 35. *See also*, The Prison Litigation Reform Act of 1995, 18 U.S.C. § 3626 (1996). "These proposals have nothing to do with crime or stopping crime," adds Al Brownstein, director of the ACLU's National Prison Project. 'It's nothing but more meanness, more mean-spiritedness.'" Curriden, *supra* note 6, at 73.

Public respect for the criminal justice system depends upon its moral credibility and its ability to embody the values of its citizens. The political myths and the public perception of prison are far from the truth.¹² Most moviegoers have probably never toured a penitentiary, so their primary perceptions about incarceration are acquired by what they read¹³ and view on the silver screen.¹⁴ This poses the central question: do prison movies (even the most graphic ones) capture the truth; have they accurately portrayed prison life? This article will examine the historical development of American prison systems as I appraise Hollywood's image of convict life in three very different prison settings: the Big House, the Prison Farm, and the Chain Gang.

II. THE BIG HOUSE

A. THE DEVELOPMENT OF THE PENITENTIARY

In order to understand, and more importantly, to evaluate the American prison system, we must know its history and its aspirations. Imprisonment as a form of punishment for criminal acts is a relatively recent phenomenon. Early American colonial experience was based upon the European model: once convicted of a crime, corporal punishment, execution, or banishment were the accepted forms of punishment.¹⁵ Incarceration, up until the latter part of the eighteenth century, was very rare. Then in the late 1770s a group of Quaker reformists began to rethink punishment and initiated a movement that ultimately changed Pennsylvania's barbarous criminal code. The Quakers totally eliminated corporal punishment and abolished the death penalty for most crimes. In its place, they substituted imprisonment as the normal penalty for the commission of serious crimes. This bold break with the past colonial savagery of punishment necessitated the establishment of a prison system to house those found guilty of criminal acts, and so a new institution took shape—the Penitentiary.¹⁶

Opened in 1790, Philadelphia's renovated Walnut Street Jail was the nation's first true penitentiary. The Quakers organized their concept of

12. See generally Melvin Gutterman, *The Contours of Eighth Amendment Prison Jurisprudence: Conditions of Confinement*, 48 SMU L. REV. 373 (1995).

13. See TED CONOVER, *NEWJACK: GUARDING SING SING* (2000), for an engrossing and compassionate look at a most troubled maximum security prison, the infamous Sing Sing.

14. See Louise Everett Graham & Geraldine Maschio, *A False Public Sentiment: Narrative and Visual Images of Women Lawyers in Film*, 84 KENTUCKY L.J. 127, 131 (1995-96). "The images, and therefore the expectations that they create, become part of the cultural experience affecting both the conscious and subconscious perceptions of many viewers." *Id.*

15. Punishment consisted of public whipping, branding, carting, or displaying in the pillories or stocks. For the more serious offenses, the offender might have been burned at the stake, hanged, or banished. See DOUGLAS GREENBERG, *CRIME AND LAW ENFORCEMENT IN THE COLONY OF NEW YORK: 1691-1776*, at 223 (1974).

16. For an excellent general discussion on the early development of American penitentiaries, see DAVID J. ROTHMAN, *THE DISCOVERY OF THE ASYLUM* 79-108 (1971); see also HARRY E. BARNES, *THE REPRESSION OF CRIME* (1926).

the penitentiary around the principles of solitude for the mind, and labor for a strong body, so that the lawbreaker could repent. The reformers expected this would provide the moral transformation needed by the convict.¹⁷ The silent inmate, alone in his cell, hard at work at his craft formed the model of the ideal nineteenth century prisoner.¹⁸ As the Walnut jail quickly filled, Pennsylvania built the Western State Penitentiary near Pittsburgh in 1826 and the Eastern State Penitentiary¹⁹ (also known as the Cherry Hill Prison in recognition of its nearby cherry orchards) outside of Philadelphia in 1829. The prison reformists convinced the legislature to enact their fundamental vision of penal administration—solitary confinement and hard labor. The program, known as the “Pennsylvania system,” called for the inmate to be kept in continuous isolation. Except for his religious advisor and official visits, all communication was forbidden.

New York was the first state that evinced an eagerness to follow Pennsylvania’s reform movement. Following a period of experimentation with total solitary confinement, New York built a state penitentiary in Auburn and endorsed a congregate method of confinement. This was a minor change that permitted convicts to work together by day, with separation at night, while the keeper²⁰ still retained the rule of silence.²¹ The Auburn program introduced the lockstep to maintain silence in the movement of large numbers of convicts from their cells to the workshops. The convicts were out of step with society, and their movement around the prison was designed to be performed as graceless as possible. They were to move at a slow pace, the “right arm outstretched with the hand on the right shoulder of the man in front of him.”²² They were “not permitted to hold their heads up, as would befit free men.”²³ The prisoners were compelled to turn their heads to the right, and cast their eyes downward as they shuffled forward, a constant reminder of their low estate.²⁴

17. NEGLEY K. TEETERS & JOHN D. SHEARER, *THE PRISON AT PHILADELPHIA: CHERRY HILL: THE SEPARATE SYSTEM OF PENAL DISCIPLINE, 1829-1913*, at 29 (1957).

18. The Pennsylvania experiment in public penal labor initially appealed even to southern leaders. Thomas Jefferson’s revised code for Virginia designated all property offenses, as well as manslaughter, as “[crimes punishable by Labor.]” THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* 139 (Harper Torchbooks 1964) (1861).

19. The Eastern State Penitentiary was the first institution to bear the designation “penitentiary”: its form of prison architecture was designed for the inmate to spend his entire day alone with his Bible and to labor on daytime crafts in his cell. See CONOVER, *supra* note 13, at 173.

20. “Keepers” was the terminology of the time for the staff members in direct charge of the prisoner. CONOVER, *supra* note 13, at 312.

21. Under the Auburn program, inmates “[m]arched in lockstep to the shops, . . . labored in silence, [and took] their meals and nightly rest in separate cells.” See GLEN A. GILDEMEISTER, *PRISON LABOR AND CONVICT COMPETITION WITH FREE WORKERS IN INDUSTRIALIZING AMERICA, 1840-1890*, at 11 (1987).

22. NEW YORK STATE SPECIAL COMMISSION ON ATTICA, *ATTICA: THE OFFICIAL REPORT OF THE NEW YORK STATE SPECIAL COMMISSION ON ATTICA* 7, 10 (1972).

23. *Id.* at 11.

24. *Id.*

Nevertheless, this minimal change proved to be so significant that a fierce controversy arose between the advocates of the New York and the Pennsylvania program, which raged with intensity over several decades.²⁵ The two systems, debated as if diametrically opposite, vied for predominance in America. The modest difference of the two programs did, however, greatly influence the type of prison work. With the growing industrialization of the nation, convict labor, to rehabilitate and be profitable, would need to assemble around the factory system. The New York plan, self-supported by convict labor and economically cheaper to construct and preserve, triumphed, and with the exception of Pennsylvania, it became the preeminent model for American prisons.²⁶ The Auburn program of silent group work by day and isolation in separate cells at night became the prominent feature of the American penitentiary system.²⁷

From the beginning, the penitentiary housed the most violent criminals with the longest sentences. The wardens ("agent" in the terminology of the time)²⁸ found it difficult to morally reform the hardened inmate who would spend most of his life behind prison walls. As they confronted the problem of controlling unruly prisoners, most agents reverted to harsh discipline. Breaking the rule of silence by whispering a word, or even looking askew, became a ground for a whipping. The cat-o'-nine-tail ("cat-ocracy") was the symbol of authority that reigned over the penitentiary. The "cat" was made of long strips of hard leather (frequently with tips of wire) attached to a stout wooden handle. The whip descended swiftly and with deliberation, and left its imprint on the broken skin. The punishment was administered in a common area on the ground floor as the victim was fastened by two iron rings to the Flogging Post. The number of blows (twenty, fifty, seventy, a hundred) varied according to the will and temper of the keeper of discipline.²⁹ The harsh punishment was completed when the guard brushed the raw wound with a salt water sponge.³⁰ The cat-o'-nine-tails was so barbaric that it left its mark on those who used it, as well as on its victim. It "destroy[ed] in the breast of the officer all sympathetic feeling, until each ennobling quality of his nature is lost"; while in the enraged, degraded convict was "implanted a spirit of revenge there secretly to corrode until every higher feeling is

25. ROTHMAN, *supra* note 16, at 79-88. See also BARNES, *supra* note 16, at 112-117. The New York school of reformers asserted that it was unnatural to leave inmates in solitary confinement for years at a time, and that total isolation was "at variance with the human constitution." ROTHMAN, *supra* note 16, at 87.

26. ROTHMAN, *supra* note 16, at 29. See also BARNES, *supra* note 16, at 163-65.

27. The rule of silence emerged as the most dreadful aspect of the penitentiary. See GUSTAVE A. DE BEAUMONT & ALEXIS DE TOCQUEVILLE, *ON THE PENITENTIARY SYSTEM IN THE UNITED STATES AND ITS APPLICATION IN FRANCE* (Herman R. Lantz ed., Francis Lieber trans., S. Ill. U. Press 1964) (1833). Upon completion of their tour through the Auburn prison, the French visitors Beaumont and Tocqueville recorded: "[W]e felt as if we traversed catacombs; there were a thousand living beings, and yet it was a desert solitude." *Id.* at 65.

28. CONOVER, *supra* note 13, at 172.

29. *Id.* at 177.

30. LEWIS E. LAWES, *TWENTY THOUSAND YEARS IN SING SING* 74-75(1932).

obliterated.”³¹ The whipping post was never dry,³² and so it emerged that the very punishment the penitentiary was designed to eliminate was now widely used. An impenetrable wall of silence between the convict and agent commenced. Faced with years of confinement, the prisoner became uncooperative, and forced the agent to devote even more of his energy to preserve tranquility and security within his institution.

There was need for reform, but legislative commissions and official visitors could not stop prison abuses. A chairman of the Board of Inspections wrote that “[i]t was so easy for the officers to conceal even from me, with all my attention and vigilance, their abuses of authority and wanton cruelty.”³³ As the prison population increased and became more violent, the agents lost patience with all attempts at reform. As they began to loosen their insistence on silence and separation, security became even more of a problem.³⁴ More energy was now spent on administration than on rehabilitation. During this period widespread prison mismanagement and cruelty surfaced and several prison officials were forced to resign.³⁵ Throughout the cycles of reform attempts and corruption, the basic premise that incarceration was the best societal response to criminal behavior was never questioned.³⁶ On this main theory there was clearly general public agreement. As one prison became overcrowded, another fortress-like institution was built. New York needed more prison space and asked the agent of Auburn, Elam Lynds, to build a modern penitentiary near the village of Sing Sing. In 1825, the hardened disciplined prisoners from Auburn under the watchful eye of its disciplinarian Agent Lynds set about the formidable task of building Sing Sing on the Hudson River.³⁷ All work was done in silence. The convicts were not permitted to exchange looks, wink, laugh, or even motion to each other. As stone upon stone was laid, silence (as the backbone of prison administration) was rigidly enforced. Continually the “cat” hovered over the men ready

31. Letter from Blanchard Fosgate, M.D., to members of a legislative committee, included in “Report of the Select Committee of the [New York State] Assembly” 74 (cited in CONOVER, *supra* note 13, at 181).

32. CONOVER, *supra* note 13, at 178.

33. See PHILIP KLEIN, PRISON METHODS IN NEW YORK STATE 361 (1969).

34. ROTHMAN, *supra* note 16, at 249.

35. See W. DAVIS LEWIS, FROM NEWGATE TO DANNEMORA: THE RISE OF THE PENITENTIARY IN NEW YORK, 1796-1848, at 208-09 (1965). See Leonard G. Levenson, *Constitutional Limits on the Power to Restrict Access to Prisons: An Historical Re-Examination*, 18 HARV. C.R.-CL. L. REV. 409, 426 (1983).

36. The only criticism was about the construction of the cell block. The iron grated doors (only three or four feet apart) of the cells had been placed flush with the outer surface of the walls and there was grave danger that prisoners talking in a low tone could maintain a conversation with each other. The prospect of a breach of discipline by whispered conversations was a sore spot for Sing Sing. See LAWES, *supra* note 30, at 73-74. Soon after Sing Sing was completed in 1844, New York authorized the construction of the Clinton Prison.

37. Sing Sing derived its name from the name of a local Indian tribe, “Sint Sinks,” which translates as “stone upon stone.” *Id.* at 69. Sing Sing was picked as the site for the new prison because the materials to build it, the marble and other stones, were already there, in the quarry. The materials would be used not only to build the prison, but could easily be placed on river boats and sold for a profit. *Id.*

to pounce at the least provocation.³⁸ Nothing was to disturb the harmony as one thousand cells quietly rose from the Rocky bed at Mount Pleasant. When it was done the prison commissioners could proudly look at it and broadcast to the world that no better penitentiary prison was ever built.³⁹ It was a noble structure, a perfect cathedral to house the criminal hoodlums in need of redemption.⁴⁰

B. HOLLYWOOD'S PORTRAYAL OF LIFE IN THE BIG HOUSE:⁴¹
*THE SHAWSHANK REDEMPTION*⁴²

Prison movies spring from and reflect the historical experience of the penitentiary in the United States. Naturally these films are concerned with the treatment of the inmates and the value of incarceration. A crusading passion marks their genre, as similar themes recur in film after film: the injustice and cruelty imposed on the men as they try to retain a semblance of human dignity under difficult circumstances; the concept of redemption through physical and spiritual suffering; and the futile attempts to reform lawbreakers placed in schools for crime.

The signature of "Big House" movies in particular is legend. The camera captures the microcosm of prison life as the massive stone edifices and towering guard posts are contrasted sharply with the small cells that house the inmates. The structured boredom of daily prison life emerges as the groups of convicts are shown circulating in the prison yard. Of course, there is the first appearance of the newly arrived convicts before

38. The cruelty and degradation inflicted by the cat-o-nine-tails finally required the legislature to abandon its use in 1848. CONOVER, *supra* note 13, at 181-82. Corporal punishment, however, was not abandoned. Other versions of bodily torture increased, as the guards conceived of new methods to control unruly inmates, such as the "yoke" (forty pound flat iron bar attached around the neck creating unbearable pressure on the cervical vertebrae), the "iron cage" (round metal construction placed around the prisoner's head, making movement painful and rest impossible), and the most feared new punishment "cold water torture" (icy cold water released all at once upon the naked prisoner and controlled to produce a drowning sensation). *Id.* See also LAWES, *supra* note 30, at 73-74.

39. LAWES, *supra* note 30, at 73.

40. Many European countries became interested in the American experiment and dispatched their emissaries to evaluate the spectacular new experimental prisons. England sent Sir William Crawford; Prussia sent Dr. Nicholas H. Julius. BARNES, *supra* note 16, at 163. France dispatched its young aristocrat Alexis de Tocqueville and his friend Gustave Auguste de Beaumont. Sing Sing was their first stop, and the Frenchmen, accustomed to the fortress-like prisons of France, wrote of the vivid impression their first sight of manacled inmates building the largest prison in the land left upon them. See GEORGE WILSON PIERSON, *TOCQUEVILLE IN AMERICA* 101-02 (1996). The French emissaries wrote invaluable essays on their experiences. See, e.g., BEAUMONT & TOCQUEVILLE, *supra* note 27.

41. The first talking motion picture to win an Oscar for best screenplay was MGM's, *THE BIG HOUSE* (Metro-Goldwyn-Mayer 1930). See ROBERT OSBORNE, *70 YEARS OF THE OSCAR THE OFFICIAL HISTORY OF THE ACADEMY AWARDS* 322 (1999). It is a morality tale of a timid playboy (Robert Montgomery) who is sentenced to ten years for manslaughter after his conviction for causing a death during a drunk driving accident. In the congested penitentiary, Montgomery shares a small cell with two hardened convicts and gradually learns about survival in prison. He is ultimately killed during a mass escape. The picture was a tremendous success and the title of the movie entered the American vocabulary as the gangsters of the 1930s were sent up the river to the "Big House."

42. *THE SHAWSHANK REDEMPTION* (Castle Rock 1994).

the “righteous warden,” and the ever present brutal, sadistic Captain of the guards, the towering master of arms. These are all the standard trademarks, and *The Shawshank Redemption*, the prototype of the “Big House” cinema, is Hollywood’s finest example of the prison film genre.⁴³ Shawshank’s convicts endure prison hardship magnificently. Their triumphs, designed to fire the human spirit, succeed brilliantly.

The movie script is based on the novella, “Rita Hayworth and Shawshank Redemption,” from the 1982 Stephen King collection *Different Seasons*.⁴⁴ Tim Robbins plays Andy Dufresne, a mild-mannered Boston banker who, in 1947, is charged with the double murder of his unfaithful wife and her paramour. Although Andy is clearly shown to be innocent, he is convicted on circumstantial evidence and is sentenced to two consecutive life sentences at Maine’s Shawshank State Prison. Andy eventually befriends another lifer, Ellis Boy Redding (Morgan Freeman),⁴⁵ the prison’s entrepreneur, the con who can get anything from the outside for a price. Red’s eyes are alive in search of Shawshank’s secrets. Red had already served ten years at Shawshank on his murder sentence when he first encounters the enigmatic Andy. The veteran convict immediately recognized that there is something special in Andy. “The new kid is aloof. He lacks that edge, that gallows humor and swagger.”⁴⁶ Andy’s prison life is shaped by the friendship that emerges with Red behind Shawshank’s walls. Together they share the anguish of detention at Shawshank, and become bound together in hope and guile. Their twenty-year relationship, marked by the change of pinup posters (the 1940s *Gilda* poster of Rita Hayworth⁴⁷ is replaced by the 1950s poster of Marilyn Monroe in the *Seven Year Itch*,⁴⁸ that gives way to the 1960s poster of Raquel Welch as a cave woman from the film *One Million Years, B.C.*)⁴⁹

43. The American public’s clamor for prison movies has remained unabated. Every actor seems to want to play the part of a prisoner: the romantic convict cast as the consummate outsider challenging the prison system. The tradition was started in the 1930s by Robert Montgomery in *THE BIG HOUSE* and carried on by Paul Muni in *I AM A FUGITIVE FROM A CHAIN GANG* (Warner Bros. 1932) and Spencer Tracy in *20,000 YEARS IN SING SING* (Warner Bros. 1932). It was continued in the 60’s by Burt Lancaster in *BIRDMAN OF ALCATRAZ* (United Artist 1962) and Paul Newman in *COOL HAND LUKE* (Warner Bros. 1967); in the 70s by Clint Eastwood in *ESCAPE FROM ALCATRAZ* (Paramount 1979); in the 90s by Tim Robbins and Morgan Freeman in *THE SHAWSHANK REDEMPTION*, *supra* note 42, Kevin Bacon in *MURDER IN THE FIRST* (Warner Bros. 1995), as well as Denzel Washington in *THE HURRICANE* (Universal Pictures 1999). It has endured in the new century with Robert Redford in *THE LAST CASTLE* (Dream Works 2001).

44. STEPHEN KING, *Rita Hayworth and the Shawshank Redemption*, in *DIFFERENT SEASONS* 1 (Viking Press 1982).

45. It is interesting to note that Morgan Freeman won early screen acclaim as Walter, a prisoner driven mad by his prolonged stay in solitary confinement in the prison drama *Brubaker*. *BRUBAKER* (20th Century Fox 1980) (discussed at *infra* notes 137-78 and accompanying text).

46. *THE SHAWSHANK REDEMPTION*, *supra* note 42.

47. *GILDA* (Columbia Tristar 1946).

48. *SEVEN YEAR ITCH* (20th Century Fox 1955).

49. *ONE MILLION YEARS, B.C.* (20th Century Fox 1966).

is the heart of *The Shawshank Redemption*.⁵⁰

The central message of the movie is clear; in Shawshank penitentiary nothing is quite like the outside world would believe. The main characters are seen one way when you first encounter them, but they turn out to be very different. Andy, for example, is a convicted murderer but is actually innocent of the crime. The judge sends him to prison for life because he found him “icy and remorseless.”⁵¹ In Shawshank, he is anything but a cold fish as he cultivates a durable bond with Red and brings a purpose to the other inmate’s lives. On the outside, Andy was an honest man, “straight as an arrow.”⁵² Only in prison does he become a crook.

Bob Gunton portrays one of the most evil wardens in film history. As a self-righteous, Bible carrying warden, Samuel Norton is a bundle of contradictions as he bellows to the new arrivals that the first rule in his prison is no blasphemy. “I’ll not have the Lord’s name taken in vain in my prison . . . I believe in two things, discipline and the Bible. Here, you’ll receive both. Put your trust in the Lord. Your ass belongs to me.”⁵³ Right in front of the warden, during his pompous introduction, the sadistic Captain of the guards shouts profanities at a disrespectful prisoner, as he forcefully jams his baton into the convict’s stomach. And so we are welcomed into the incongruity of Shawshank Prison.

Apart from the Sisters, a band of degenerates that sexually prey on the other inmates, the convicts in Shawshank appear to have better character than many people we may encounter in the free world. We begin to think of them less like hardened criminals and more like Andy, harmless people caught in a hopeless place.⁵⁴ Although Andy is routinely raped and beaten by the Sisters (as Red explains, they are not homosexuals because they are not human) he remains unbowed by the sadism that swirls through the prison. Andy eventually mentors Tommy (Gil Bellows), an exuberant young hood who brings fresh insight into Andy’s reformation. Tommy, who has recently married and will soon be a father, solicits Andy’s help to earn a high school equivalence diploma. Only after Tommy promises “one-hundred percent - nothing half-assed,” does Andy

50. Bronwen Hruska, ENTERTAINMENT WEEKLY 32 (Sept. 30, 1994). “‘It’s a love affair,’ says Freeman, ‘[t]hey’re not in love with each other—they’re friends who are interdependent. It’s what Butch Cassidy and the Sundance Kid and Thelma & Louise were about.’” *Id.*

51. THE SHAWSHANK REDEMPTION, *supra* note 42.

52. *Id.*

53. *Id.*

54. Compare with the account of comedian Richard Pryor’s routine:

I went to do a film in a penitentiary, and I was up there six weeks—Arizona State Penitentiary—it was, like, 80 percent black people . . . I was up there and I spoke to all the brothers, and it made my heart ache, you know? All these beautiful black men in the joint, goddamn warriors, they should be out there helping the masses. And—I was real naive, right?—six weeks I was up there, I talked to the brothers, and I talked to them, and- [in a low, grave voice] *thank God we got penitentiaries!* I mean, murderers, do you hear me, real live murderers!

Richard Pryor, *Live on the Sunset Strip* (1982) (quoted in CONOVER, *supra* note 13, at 210).

accept him as his “new project.”⁵⁵ Andy’s investment in their relationship pays abundant emotional dividends. He finds it “a thrill to help a youngster crawl off the shit heap,” as he helps Tommy to restore his hopes and dreams through education.⁵⁶

Throughout the movie the warden masquerades as a man of the Bible but in truth he is a corrupt hypocrite who accepts bribes and kickbacks for not using his men as laborers to underbid building contractors. Andy can match the warden in Bible quotes, and in time gains his confidence so fully that the warden profits from Andy’s financial skills to help launder payoff money. By having the skill to juggle the warden’s various secret skimming operations, Andy is assured a better life at Shawshank, but he is also now much too familiar with the wardens’s corrupt operation to ever be released. When it is learned that Tommy has information that would exonerate Andy, Warden Norton has Andy placed in solitary for a month for his arrogance, and then has Tommy shot by a tower guard. Only after several months of Andy’s apparent subservience and seeming faith in the Bible, does the warden once again puts his trust in him.

In one of the great redemptive moments (the roof-tarring scene) Red and Andy are selected as volunteers to begin a week’s outdoor work to resurface the roof of the license plate factory. As the convicts pour and spread hot tar on the roof—Captain Hadley is heard complaining about the government taxes that he will owe after receiving an inheritance from his rich brother’s estate. “Uncle Sam, he puts his hand in your shirt and squeezes your tit till it’s purple.”⁵⁷ Overhearing the Captain grumbling, Andy boldly drifts over to him and inquires: “Mr. Hadley, do you trust your wife?”⁵⁸ Enraged with his arrogance, Hadley grabs Andy and drags him toward the rim of the roof to toss him off. As he dangles over the edge, Andy uses his wit and financial brilliance to explain to the Captain that he can keep all of the inheritance by handing over the money to his wife as a gift. For his part, to prepare the papers, Andy only asks that the Captain provide “three beers apiece for each of my co-workers . . . I think a man workin’ outdoors feels more like a man if he can have a bottle of suds. That’s only my opinion.”⁵⁹

And that’s how it came to pass, that on the second-to-last day of the job, the convict crew that tarred the plate factory roof in the spring of ‘49 wound up sitting in a row at ten o’clock in the morning, drinking icy cold Bohemia style beer, courtesy of the hardest screw that ever walked a turn at Shawshank State Prison. . . . We sat and drank with the sun on our shoulders and felt like free men. Hell, we could have been tarring the roof of one of our own houses. We were the Lords of all Creation. As for Andy, he spent that break hunkered in the shade, a strange little smile on his face, watching us drink his

55. THE SHAWSHANK REDEMPTION, *supra* note 42.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

beer. . . . You could argue he'd done it to curry favor with the guards, or maybe make a few friends among us cons. Me, I think he did it just to feel normal again, if only for a short while.⁶⁰

The Shawshank Redemption brings a sense of dignity, strength and compassion to the convicts. There are memorable moments of laughter, as well as pain. Overall, the movie, by taking a candid look at the warehouse approach to incarceration, has serious intentions. The reformists had their dream of an enlightened era in prison treatment, but it failed to bloom. The architects of the penitentiary program hoped to create a world from which those that had temporarily faltered would eventually emerge as worthy citizens. But as *Shawshank* reveals, by the 1900s, the concept of reformation had practically disappeared, and for the most part, penitentiaries like *Shawshank* served a purely custodial function—as a warehouse for the convicted.⁶¹

The reform minded moviegoer remains somewhat disappointed, as the director and script writer, Frank Darabont⁶² fails to provide any suggestions of how we are expected to narrow the gap between our universe and the nightmarish world of Andy Dufresne. At the movie's conclusion we surely feel vindicated by the Warden's suicide, exhilarated at the Captain's arrest, gladdened when Sister Bogs Diamond is severely beaten, and elated at Andy's escape and the eventual reunion with his friend Red. There is redemption to this story—a triumph of Andy's human spirit, which we can admire. The movie stirs our emotions, and it touches our heart: but the basic message eludes us, lost perhaps in our overwhelming sensations. The popularity of the movie cannot be attributed to its disenchantment with the penitentiary system. There still appears to be widespread public endorsement for the massive, fortress-like castles that remain ready to house the next generation of criminals. The basic symbol of *Shawshank*, as a warehouse for criminal outcasts, is still an acceptable program for most Americans. The real hell of *The Shawshank Redemption* may, in actuality, be its reality.⁶³

60. *Id.*

61. See ROTHMAN, *supra* note 16, at 255.

62. Mr. Darabont followed his release of *The Shawshank Redemption* with the direction of another prison film, again based upon a Stephen King novel. In *THE GREEN MILE* (Castle Rock, Warner Bros. 1999), the center of the movie is the relationship between a white correction officer and a black man on death row awaiting his walk on the "green mile" (green floor) to the electric chair.

63. The national disgrace of daily life in American prisons has been the subject of many television shows and magazine articles. See, e.g., *Oz*, (HBO's engrossing television series on daily prison life); see also Aric Press, *Inside America's Toughest Prison*, NEWSWEEK, Oct. 6, 1986, at 46 (gripping story of the overcrowded conditions and brutal treatment of inmates in the Texas prison system). From time to time, an Attica rebellion happens and the catastrophe makes the public acutely aware of the desperate plight of the prisoners. See TOM WICKER, *A TIME TO DIE* (1975) (riveting story of the Attica revolt). The universal wisdom is that our prison system has fallen woefully short in its struggle to effectuate its main goals: community protection, crime reduction, and offender rehabilitation. See President Johnson's message to Congress, 1 Pub. Papers 263, 264 (Mar. 8, 1965). (There is an "endless, self-defeating cycle of imprisonment, release, and reimprisonment which fails to alter undesirable attitudes and behavior.")

III. THE PRISON FARM

A. THE HERITAGE OF CONVICT LEASING AND THE DEVELOPMENT OF THE STATE PRISON FARM SYSTEM

The history of American prisons cannot be divorced from the legacy of convict labor.⁶⁴ They are inextricably intertwined.⁶⁵ The Pennsylvania program with its emphasis on complete isolation limited convict labor to handicrafts of an artisan nature, an anachronism in the growing age of industrialization. At Auburn penitentiary in New York its first Agent, William Brittin, structured a state account system. The state purchased the supplies and raw materials, and used convict labor to produce the finished article sold to private parties.⁶⁶ When Elam Lynds was appointed Agent upon Brittin's death in 1821,⁶⁷ he replaced the "separate system" with the "congregate method" of work.⁶⁸ Lynds transferred his congregate concept to the newly built penitentiary at Sing Sing,⁶⁹ and early in the 1830s introduced various trades to the recently completed workshops. In Sing Sing, Lynds contracted with private parties for the labor of the convict to be performed inside the penitentiary. The private contractor supplied the raw materials, machines and shop instructors to the prison and paid a fixed price per day for each convict's labor.⁷⁰ Marched in lockstep to their assigned shop space, they worked silently, and produced the products specified under the contract agreement.⁷¹ By the middle of the nineteenth century, the congregate program had prevailed in all but the Pennsylvania penitentiaries, and depending on the economic needs of the region, private sector involvement in prison work took on many of the contract forms.⁷²

In the South, at the end of the Civil War slavery was abolished as an American institution. The Union triumph resulted in the emancipation of four million blacks.⁷³ The conclusion of the conflict had not, however,

64. See generally, Stephen P. Garvey, *Freeing Prisoners' Labor*, 50 *STANFORD L. REV.* 339 (1998).

65. "Labor gives to the solitary cell an interest; it fatigues the body and relieves the soul." BEAUMONT & TOCQUEVILLE, *supra* note 27, at 57.

66. GILDEMEISTER, *supra* note 21, at 9. The account system was the antithesis of the lease program. See *infra* notes 78-102, and accompanying text. The products were made inside the prison by the inmates and the Agent retained complete control over the discipline and caring of the convict. GILDEMEISTER, *supra* note 21, at 32-33.

67. GILDEMEISTER, *supra* note 21, at 32-33.

68. See *supra* notes 16-40, and accompanying text for the historical development of the penitentiary, and the debate between the advocates of the "separate" and the "congregate" prison program.

69. See *supra* notes 37-40, and accompanying text.

70. One deviation from the contract program was the "piece-price system" where the contractor paid a fixed price for each finished article rather than a daily wage to the prisoner. Garvey, *supra* note 64, at 340.

71. GILDEMEISTER, *supra* note 21, at 16. The trades included "stonecutting, shoemaking, hatching, weaving, smithing, coopering, and the building of wagons and carriages." *Id.*

72. *Id.* at 29.

73. MILFRED C. FIERCE, *SLAVERY REVISITED: BLACKS AND THE SOUTHERN CONVICT LEASE SYSTEM, 1865-1933*, 75 (1994).

wiped out the need for cheap labor to work the plantations.⁷⁴ The war had left many estates in ruins. Emancipation gave a new meaning to crime in the South, as a minor transgression that was tolerated by former slave owners became a serious crime.⁷⁵ The southern states treasuries were empty⁷⁶ and they could no longer afford to maintain their prison systems.⁷⁷ The devastation in the South and the agitation of early Reconstruction forced southern officials to search for methods to reduce expenses associated with a burgeoning prison system.⁷⁸ A southern businessman, Edmund Richardson, offered a solution that would fill both gaps. Richardson needed cheap laborers to work his land in the Yazoo Delta, so he contracted with the state of Mississippi to feed, clothe, guard and treat well the criminals assigned to him provided he could keep all the profits. The state, for its part, agreed to pay him for the prisoners' maintenance.⁷⁹ Richardson's proposal started the era of convict leasing in Mississippi, and other southern states enthusiastically embraced the contract arrangement.⁸⁰ Richardson's convict lease strategy condemned a generation of black prisoners to hardships far worse than they had ever experienced. Their prison time would be served in the coal mines and railroad camps and sometimes on the very same cotton fields that they

74. Southern whites considered slavery a "civilizing influence on an inferior race"; they claimed it was good for blacks because it kept their primitive instincts in check. DAVID M. OSHINSKY, "WORSE THAN SLAVERY" PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 18-19 (1996). The fact that many blacks abandoned their plantations only "reinforced the image of the lazy, indolent field hand" who roamed the countryside stealing crops and getting into trouble. *Id.* at 17-18. Many southern states passed a series of acts known as the "Black Codes" "to control the labor supply, to protect the freed black man from his own 'vices,' and to insure the superior position of the whites in southern life." *Id.* at 20. Mississippi was the first to pass the Black Codes, followed by South Carolina, Georgia, Florida, Alabama, Louisiana, and Texas. *Id.* at 21. At the core of the new Codes were the Enticement Acts, which made it illegal to lure a worker away from his employer, and the Vagrancy Acts that required all free Negroes to have proof of a job. These new laws, specifically designed to force the former slave back to his home plantation, were vigorously enforced. *Id.* Emancipation also brought violence and vigilante action against blacks by vengeful whites. The lynching of black men by the Ku Klux Klan, or casting them into the local jail, was considered nobody's loss. *Id.* at 24-29. During slavery blacks were valuable property, and as such they were seldom lynched and spent little time in jail. "[T]hey had to work; when they done wrong they was whipped and let go." *Id.* at 34.

75. FIERCE, *supra* note 73, at 7.

76. See EDWARD L. AYERS, VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH-CENTURY AMERICAN SOUTH 185-91 (1984).

77. *Id.*

78. FIERCE, *supra* note 73, at 9, 74.

79. OSHINSKY, *supra* note 74, at 35. Richardson was the owner of numerous plantations in the Yazoo-Mississippi Delta and was known as the "Cotton King." See MANCINI, *infra* note 92, at 132.

80. Where and when the system of convict leasing began in the United States is hard to establish. Although not confined to the South, there is little dispute that it was in the South that the program became despicable. FIERCE, *supra* note 73, at 63-78. The earliest record of convict leasing is from Kentucky (in the 1820s), a state not a part of the Old Confederacy. The first leases seem to be three individuals "'who . . . in addition to what they could make from the labor of the convicts, were to receive a bonus from the state . . . of \$300 . . .'" FIERCE, *supra* note 73, at 8 (quoting *Lucien v. Rule, The City of Dead Souls* 45 (Louisville, Ky. 1920)).

had just worked before as slaves.⁸¹

The evolution of the convict lease system has generally been ascribed to the heritage of slavery, the devastation of the South during the Civil War, and the widespread lack of compassion for mostly black convicts.⁸² The lease system had the additional element of the larger tradition that insured southern racial hierarchy: it satisfied the South's indispensable need for racial oppression.⁸³ The additional bonus was that it prevented the migration of emancipated blacks from the South, and tethered black labor to the needs of the South's new industries. The arrangement guaranteed an abundant and reliable work force of those most capable of maximum productivity.⁸⁴ The convict lease system was formally based on criminality, not on race, but this distinction was lost in the era of Jim Crow.⁸⁵ After emancipation, the jailhouse became a black preserve. Over ninety percent of the convicts were black.⁸⁶ To empty the jails, southern states passed lease laws that empowered private contractors to work and house convicts outside the penitentiary. The laws additionally permitted counties to work their prisoners outside the local jail for minor offenses. Clearly the laws were designed for black, not white convicts, as they provided a steady stream of black labor to county chain gangs and local plantations.⁸⁷ The laws insured that cheap black labor would continue essentially uninterrupted on southern farms.⁸⁸

81. OSHINSKY, *supra* note 74, at 36.

82. ALEX LICHTENSTEIN, *TWICE THE WORK OF FREE LABOR: THE POLITICAL ECONOMY OF CONVICT LABOR IN THE NEW SOUTH* 3 (1996).

83. See Matthew J. Mancini, *Race, Economics, and the Abandonment of Convict Leasing*, 63 J. NEGRO HIST. 339 (1978). "Indeed, leasing is one significant mode by which the South sought to perpetuate racial subordination." *Id.* at 345.

84. Margaret Mitchell, in her classic novel *Gone with the Wind*, tells how Scarlet O'Hara thought of leasing convicts when her "free negroes" insisted on being paid every day and then frequently became drunk and did not show up the next morning to work at her mill. Many of the churchgoing townspeople deplored the system of leasing convicts and "thought this was far worse than slavery had ever been." See MARGARET MITCHELL, *GONE WITH THE WIND* 741-43 (1936). In the end, however, Scarlett leased the convicts. *Id.* at 759-61.

85. Assistant Attorney General Charles W. Russell, the Justice Department's special investigator, reasoned that convict leasing was "largely a system of involuntary servitude—that is to say, persons are held to labor as convicts under those laws who have committed no crime." Benno C. Schmidt, Jr., *Principle and Prejudice: The Supreme Court and Race in the Progressive Era, Part 2: The Peonage Cases*, 82 COLUM. L. REV. 646, 651 (1982) (quoting C. RUSSELL, REPORT ON PEONAGE 17 (1908)).

86. Mancini, *supra* note 83, at 339, 343.

87. OSHINSKY, *supra* note 74, at 40-42.

88. Mary Church Terrell, a black leader of the period, considered the lease system as a "modern form of slavery" where blacks were jailed on "trumped up" charges:

Colored men are convicted in magistrates' courts of trivial offenses, such as alleged violation of contract or something of the kind, and are given purposely heavy sentences with alternate fines. Plantation owners and others in search of labour, who have already given their orders to the officers of the law, are promptly notified that some available labourers are theirs to command and immediately appear to pay the fine and release the convict from [jail] only to make him a slave.

MARY CHURCH TERRELL, PEONAGE IN THE UNITED STATES: THE CONVICT LEASE SYSTEM AND THE CHAIN GANGS, *The Nineteenth Century* 62, 308 (1907) (quoted by FIERCE, *supra* note 73, at 231).

The exclusive right to lease convicts soon became a prized political boon, desired by plantation owners and other businessmen.⁸⁹ Once again, America's aspirations for a more equal society were bent for the benefit of a white hierarchy. By mid-1870s the lease program existed exclusively in the South⁹⁰ and almost every southern state had introduced some version of convict leasing.⁹¹ Many former slaves fell under the grip of the convict lease so soon after their emancipation that these unfortunate souls never really experienced freedom.

The state leased its prisoners to the highest bidder for a fixed sum and relinquished physical control over him: it was the private contractor that now assumed total responsibility for the convict. There was no financial or moral incentive to treat the convict well, or even keep him alive beyond his sentence.⁹² Blacks as slaves were often brutalized by their slave masters. But unlike the African slave, bought for life, the African American convict lacked any value to the boss at the end of his contract.⁹³ He had no resale value. Once he was leased, the prisoner was subjected to greater danger and physical abuse than he had suffered during slavery.⁹⁴ There was no interest in his well-being, so the bosses worked him like an animal.⁹⁵ A Texas legislative committee remarked, "the life of a [Texas] convict is not as valuable in the eyes of the sergeants and guards and contractors as that of a dog."⁹⁶

The barbarous details of convict leasing varied amongst the states, but the basic theme of racial caste was the same. Black convicts became younger, and their prison sentences longer.⁹⁷ The plantation records detail a history of savagery and indifference.

The prisoners ate and slept on bare ground, without blankets or mattresses, and often without clothes. They were punished for "slow hoeing" (ten lashes), "sorry planting" (five lashes) and "being light with cotton" (five lashes). Some who tried to escape were whipped

89. OSHINSKY, *supra* note 74, at 43.

90. GILDEMEISTER, *supra* note 21, at 30.

91. FIERCE, *supra* note 73, at 9.

92. See generally, MATTHEW J. MANCINI, ONE DIES, GET ANOTHER: CONVICT LEASING IN THE AMERICAN SOUTH, 1866-1928 (1996).

93. Not surprisingly, the average life of a convict in Texas was estimated at about seven years. OSHINSKY, *supra* note 74, at 61. An Alabama doctor "estimated that most convicts died within three years." Christopher R. Adamson, *Punishment After Slavery: Southern State Penal Systems, 1865-1890*, 30 SOC. PROB. 555, 566 (1983). "Morality rates ranged widely but at its worst the convict lease was lethal." AYERS, *supra* note 76, at 200.

94. OSHINSKY, *supra* note 74, at 61. The convicts' lives were always in jeopardy. "A year or two on the Western North Carolina Railroad was akin to a death sentence; convicts regularly were blown to bits in tunnel explosions, buried in mountain landslides, and swept away in springtime floods." *Id.* at 61. See generally, ROBERT DAVID WARD & WILLIAM WARREN ROGERS, CONVICTS, COAL, AND THE BANNER MINE TRAGEDY 35 (1987). (The tragic story of the Banner Mine disaster in Alabama on April 8, 1911 that claimed 128 lives, mostly black leased convicts).

95. OSHINSKY, *supra* note 74, at 61.

96. *Id.*

97. Mancini, *supra* note 83, at 343. Georgia had a tenfold increase in its prison population during the four decades of its convict lease system. North Carolina, Florida, Mississippi and Alabama experienced similar dramatic expansions. *Id.* at 344-46.

“till the blood ran down their legs”; others had a metal spur riveted to their feet. Convicts dropped from exhaustion, pneumonia, malaria, frostbite, consumption, sunstroke, dysentery, gunshot wounds, and “shackle poisoning” (the constant rubbing of chains and leg irons against bare flesh).⁹⁸

As these outrages were reported in the press there was demand for progressive penal reform, coupled no doubt with growing awareness of the diminished economic benefit in convict leasing. When it became obvious that the abuses were difficult, if not impossible, to eradicate, congressional voices began to attack the practice insisting that it was a “disgrace to the State, a reproach to the civilization and Christian sentiment of the age, and ought to be speedily abandoned.”⁹⁹ The labor unions also railed against convict labor in the South.¹⁰⁰ As the states gradually turned away from the convict leasing system¹⁰¹ two different programs emerged: the county camp system that emphasized county road work in the southeast, and the state farm system in the south central and western states.¹⁰²

In Texas, Mississippi, Louisiana, and Arkansas, state prison farms became the preferred alternative to convict leasing. The farm names (Parchman, Angola, Cummins) entered the lexicon for prison brutality.¹⁰³ Mississippi was typical of the southwestern states; by 1904 the state had bought more than twenty-thousand acres for the construction of several prison farms. The biggest tract, called Parchman after the family that formerly owned it, was in the fertile Yahoo Mississippi Delta. It spread roughly two hundred miles from Vicksburg to Memphis.¹⁰⁴ James Kimble Vardaman, known to his followers as “The White Chief,”¹⁰⁵ was a demagogue who played on the white fears that the faithful slave of yesterday had been replaced by a younger “black beast.”¹⁰⁶ “The White Chief” successfully campaigned for Governor on a banner that read: “A

98. OSHINSKY, *supra* note 74, at 45.

99. WARD & ROGERS, *supra* note 94, at 35 (quoting Alabama Warden John Hollis Bankhead).

100. In 1885, workers in Birmingham, Alabama complained that the city had become the “Botany Bay of the Commonwealth,” and founded the Anti-Convict League to oppose prison labor. AYERS, *supra* note 76, at 214.

101. By 1915, the convict lease program had been abolished in all states except Florida and Alabama. OSHINSKY, *supra* note 74, at 70. Mississippi abolished its leasing system in 1890; Tennessee in 1897; Louisiana in 1901; Georgia in 1908; Texas in 1910; Arkansas in 1913. Alabama closed the door on convict leasing in 1928. FIERCE, *supra* note 73, at 193.

102. Jane Zimmerman, *The Penal Reform Movement In the South During the Progressive Era, 1890-1917*, 17 J.S. HIST. 462, 463 (1951) (noting that after the collapse of the lease, southern states “turned to two types of outdoor labor—farm work and road building”). Several border states adopted the industrial factory contract model that had recently been abandoned by the northern penitentiaries. See SOUTHERN REGIONAL COUNCIL, *THE DELTA PRISONS: PUNISHMENT FOR PROFIT 1* (1968).

103. Many of the southern states had purchased land for prison farms in the 1880s and 1890s. AYERS, *supra* note 76, at 221.

104. WILLIAM BANKS TAYLOR, *DOWN ON PARCHMAN FARM, THE GREAT PRISON IN THE MISSISSIPPI DELTA* 21-22 (1999).

105. WILLIAM K. HOLMES, *THE WHITE CHIEF* (1970).

106. OSHINSKY, *supra* note 74, at 90.

VOTE FOR VARDAMAN IS A VOTE FOR WHITE SUPREMACY, THE SAFETY OF THE HOME, AND THE PROTECTION OF OUR WOMEN AND CHILDREN.”¹⁰⁷ The “White Chief” was a paradox in that he was a “hard-shelled racist” while at the same time against the convict lease system.¹⁰⁸ As a representative of the poor whites, he regarded the convict lease program as a system that served the interest of the wealthy planters (enriched the big planter and aided them to dominate agriculture) at the expense of the common farmer.¹⁰⁹ The newly elected Governor deemed that a good prison, run like an methodical slave plantation, could civilize young blacks who had lost their way.¹¹⁰ He encouraged prison reform, and claimed at least partial credit for the elimination of the lease program in Mississippi¹¹¹ As convict leasing died out, the Governor considered the plantation life as a humane and pragmatic response to black crime, and moved all state prisoners to Parchman.¹¹²

Southern whites were deluded to presume that blacks did not mind going to the prison farm. There was no shame in it, and no fear of prison life. “They do the same work, eat the same food, sing the same songs, play the same games of dice and cards, fraternize with their fellows, attend religious services on Sunday mornings and receive visitors on Sunday afternoons.”¹¹³ The blacks, of course, had a far different view of the evil system that deprived them of freedom and subjected them to all forms of barbarous treatment.¹¹⁴

Parchman farm “resembled a slave plantation.”¹¹⁵ Most of the convicts were black. The superintendent at Parchman was akin to the master of the plantation. He lived in a Victorian mansion with a core of convict servants to attend to his family needs. An experienced farmer (not a professional penologist) able to make a good crop and turn a profit was what the state wanted.¹¹⁶ In charge of the field camp was the sergeant (an overseer) responsible for fixing the work schedules and disciplining the convicts. Assisting the sergeant were two drivers, one who worked the

107. *Id.* He crusaded on a platform that “Negro education was foolish—because blacks belonged to an inferior race that was incapable of acquiring meaningful education—and dangerous because even a rudimentary education might rekindle the Negroes’ ambition to vote and hold office.” HOLMES, *supra* note 105, at 102-03.

108. FIERCE, *supra* note 73, at 26-27.

109. *Id.* at 26.

110. OSHINSKY, *supra* note 74, at 110.

111. FIERCE, *supra* note 73, at 26. His biographer asserts, “the abolition of convict leasing, and the reorganization of the penitentiary system . . . constituted the major achievements of his administration.” HOLMES, *supra* note 105, at 195.

112. OSHINSKY, *supra* note 74, at 110.

113. *Id.* at 136 (quoting DAVID COHEN, WHERE I WAS BORN AND RAISED 103 (South Bend, Ind. 1967)).

114. See, TAYLOR, *supra* note 104, at 218 n.52 (“evidence confirms that the lifestyle of black convicts incarcerated at Parchman Farm during the early decades of the century was remarkably similar to that of the majority of employed African Americans in free-world Mississippi”). Notwithstanding, white Mississippians regarded Parchman as punitive. *Id.*

115. *Id.* at 199.

116. OSHINSKY, *supra* note 74, at 139.

convicts in the fields, and one who ran the barracks.¹¹⁷ Over a hundred inmates in each camp were controlled by the sergeant and driver, made workable only through the use of the trusty system, where selected inmates (trusty-shooters) guarded the regular convicts (gunmen, because they worked under the trusty's guns).¹¹⁸ Although the trusty shooters were not paid, they had better food and sleeping quarters, they could move freely about the camp, they could hunt, fish, and spend time with their women.¹¹⁹ Isolated from the other convicts, the trusty's allegiance was solely to the sergeant. The position of the trusty shooter was like the black plantation slave driver—in order to keep his assignment, he had to do the white man's bidding.¹²⁰

A trusty was picked for his ability to intimidate and willingness to use force. Most were serving long sentences for violent crimes, usually convicted murderers, and were chosen only after years of not causing any trouble.¹²¹ Trust in the shooters was essential, as they provided complete protection for the staff.¹²² The shooters stood at the edge of the field and were armed with high power rifles and shotguns. They provided an adequate barrier between the convicts and the free world. And the state provided the ultimate inducement, a pardon for the shooter who killed a convict trying to escape.¹²³

For southerners, the prison farm represented a powerful link to the past. The convict's day began at 4:30 a.m. when after breakfast he was marched to the cotton fields. He worked throughout the day, often in such unbearable heat until he could no longer see. Work quotas were enforced by drivers who rode through the fields on the back of a mule. The emblem of authority was "Black Annie," a leather strap three feet long, four inches wide, and a quarter inch thick that hung from the belts of the sergeants, and was used by them for the most common offenses such as fighting, stealing, disrespecting an officer, and failing to meet work quotas.¹²⁴ Punishment was meted out by the sergeant in front of

117. *Id.*

118. *Id.* See also TAYLOR, *supra* note 104, at 50-53.

119. OSHINSKY, *supra* note 74; *id.* at 140.

120. *Id.* at 140-41.

121. TAYLOR, *supra* note 104, at 52.

122. OSHINSKY, *supra* note 74, at 141.

123. *Id.* at 148. The shooters were mostly expert marksmen whose "conspicuous meritorious service" (shooting an escapee) could earn them a pardon. TAYLOR, *supra* note 104, at 53. Vardaman did not favor the trusty system, which he thought tempted a man "to do wrong to his fellow prisoner." *Id.* at 67. He was highly averse to grant executive clemency for the "lethal meritorious service." *Id.* Vardaman's appeals for civilian guards were ignored by the legislature. *Id.* at 67.

124. OSHINSKY, *supra* note 74, at 149. The convicts and employees referred to the use of Black Annie as a "whuppin" or a "spanking" on the buttocks. TAYLOR, *supra* note 104, at 61. The work demands at Parchman explain why a blunt leather strap rather than the "cat-o-nine-tails" was employed. "You spank a fellow right," a superintendent commented, "and he'll be able to work on." *Id.* at 62. It was effective punishment as it did not keep the men from working in the fields. OSHINSKY, *supra* note 74, at 151.

the men,¹²⁵ with the convict stripped to the waist and spread-eagled on the ground.¹²⁶ For the white populace, "Black Annie" seemed like the perfect punishment for a prison inhabited by children of former slaves.¹²⁷ Once again at the Parchman Prison Farm, like on the slave plantation, blacks were forced to work the cotton fields for the enrichment of others. In less than one year as a prison farm, Parchman turned a handsome profit.¹²⁸ After several years, millions of dollars poured into the state treasury from the sale of cotton. In the South, Parchman was being hailed "as the best prison in America, as fertile and productive as the 'Valley of the Nile.'"¹²⁹ A northern penologist touring Parchman recorded "[t]heir cotton is very profitable," however it "is secured by reducing the men to a condition of abject slavery."¹³⁰

Vardaman's principles were pursued with remarkable success between 1904 and 1934. After 1914, with the demise of his coalition in the political arena, every facet of prison farm operations at Parchman began to deteriorate. By 1933, the convicts were living in squalor, deficits had escalated, and the "White Chief's" aspirations for prison reform at Parchman had run its course.¹³¹ But criticism fell mostly on deaf ears as the southwestern states managed their prison farms without interference for half a century. During the 1950s and 1960s, as the struggle for civil rights raged in the South, Mississippi officials used the Parchman Farm as a threat to breakdown those who challenged its segregationist laws.¹³² Freedom

125. The white sergeant delegated the chore to his black "trusty man." As one former Parchman employee explained, "we mostly let the trusties be the heavies. . . . The [black] cagebosses didn't like it when their [white] sergeants came down and did their work for them." TAYLOR, *supra* note 104 at 61. Cf. OSHINSKY, *supra* note 74, at 149 (whipping done by the white sergeant).

126. OSHINSKY, *supra* note 74, at 149.

127. *Id.* at 151; see also TAYLOR, *supra* note 104, at 60-62.

128. OSHINSKY, *supra* note 74, at 109.

129. *Id.* at 155.

130. *Id.* at 147. Musicians fed the legend of the unspeakable brutality of life on Parchman farm. The recorded version of "Parchman Farm Blues" (1940) by Buka White best encapsulates the hardship. "Oh listen men: I didn't mean no harm. If you want to do good . . . stay off the Parchman Farm." TAYLOR, *supra* note 104, at 114.

131. OSHINSKY, *supra* note 74, at 62-69.

132. *Id.* at 233. On the eve of the Freedom Rides, the *Jackson Daily News* boasted of "Parchman's Southern charm":

ATTENTION: RESTLESS RACE-MIXERS

Whose Hobby is Creating Trouble Get away from the blackboard jungle.
Rid yourself of fear of rapists, muggers, dopeheads, and switchblade artists
during the hot, long summer.

FULFILL THE DREAM OF A LIFETIME
HAVE A "VACATION" ON A REAL PLANTATION

Here's All You Do

Buy yourself a Southbound ticket via rail, bus or air.

Check in and sign the guest register at the Jackson City jail. Pay a nominal fine of \$200. Then spend the next 4 months at our 21,000-acre Parchman Plantation in the heart of the Mississippi Delta. Meals furnished. Enjoy the wonders of chopping cotton, warm sunshine, lowing mules and tractors, feeding the chickens, slopping the pigs, scrubbing floors, cooking and washing dishes, laundering clothes. Sun lotion, bunion plasters, as well as medical

Riders were bused into Parchman's hell by the hundreds.¹³³ As national attention focused on the civil rights organizers, the Governor left instructions to "[b]reak their spirit . . . but not their bones."¹³⁴ After their release, the Freedom Riders became national heroes, survivors of one of the nation's toughest prisons. Their experience demanded that attention now be paid to all the prisons in the South as part of the larger black civil rights struggle. No one in power on the state level seemed to care about the prison farm's cruelty, so help was sought from outside: the federal courts would be called upon to lead.¹³⁵

As the 1970s unfolded, federal judges became enlightened about the barbaric conditions in southern state prison farms. Federal district judges' William C. Keady, Frank Johnson, J. Smith Henly and William Wayne Justice were shown the horrors committed in the prison farms in Mississippi, Louisiana, Arkansas and Texas. A minor revolution began, and to their lasting credit these federal judges stepped up to the plate, documented the deplorable conditions, and maximized federal constitutional protections in their efforts to secure decent living conditions in state prisons.¹³⁶

B. LIFE ON THE SOUTHWESTERN PRISON FARM: BRUBAKER¹³⁷ AND THE ARKANSAS EXPERIENCE

Arkansas was emblematic of other southern states. Throughout its history it had experienced numerous prison scandals exposing mismanage-

service free. Experience the "abundant" life under total socialism. Parchman prison fully air-cooled by Mother Nature.

(We cash U.S. Government Welfare Checks.)

Id. at 233-34.

133. TAYLOR, *supra* note 104, at 171. James Farmer, a founder of the Congress of Racial Equality denounced the prison policy as "the dehumanization of the riders to make us as animals." *Id.* at 171-72.

134. OSHINSKY, *supra* note 74, at 235.

135. *Id.* at 245.

136. See MALCOLM M. FEELEY AND EDWARD L. RUBIN, JUDICIAL POLICY MAKING AND THE MODERN STATE: HOW THE COURTS REFORMED AMERICA'S PRISONS (1998), for a detailed account of how the federal judges formulated and sought to implement their policies. See also OSHINSKY, *supra* note 74, at 245.

Judge Keady visited Parchman several times where he encountered a prison in shambles and full of violence.

The camps were laced with open ditches, holding raw sewage and medical waste. Rats scurried along the floors. Electrical wiring was frayed and exposed; broken windowpanes were stuffed with rags to keep out the cold. At one camp, Keady found "three wash basins for 80 men which consist of oil drums cut in half." At all camps, he saw filthy bathrooms, rotting mattresses, polluted water supplies, and kitchens overrun with insects, rodents, and the stench of decay. . . . Parchman was a dangerous, deadly place. Shootings and beatings were common; murders went unreported; the maximum security unit was a torture chamber. Trustees brutalized inmates, who, in turn, brutalized each other. "One part of me had always suspected such things," the judge recalled. "The rest of me was angry and ashamed."

Id. See also Melvin Gutterman, *Prison Objectives and Human Dignity: Reaching a Mutual Accommodation*, 1992 B.Y.U. L. REV. 857 (1992) (examining the federal role in the development of prisoners' rights).

137. BRUBAKER *supra* note 45.

ment, corruption and cruelty.¹³⁸ By 1890 all political parties called for the end of the convict lease program.¹³⁹ As had happened in Mississippi and other southern states, prison investigative commissions, labor unions, and pressure from all political parties finally led Arkansas to abolish convict leasing in 1913.¹⁴⁰ And like Mississippi, which purchased the old Parchman estate, Arkansas bought old plantations (the Cummings Farm in 1902, and the Tucker Farm in 1912), and turned them into prison farms.¹⁴¹ On these lands, the lawbreakers were expected to build their own housing and cultivate the soil to produce their own food.¹⁴² Like their counterparts at Parchman they were even empowered to guard each other.¹⁴³ In Arkansas, as elsewhere in the South, the prison farm became the ideal successor to convict leasing. The benefit of being a white convict, even in prison farm work, remained. The Arkansas legislative committee that recommended the lease system be abandoned advocated that black convicts be worked at the more arduous prison farms, and that the white offenders be employed at the less demanding assignments inside the penitentiary.¹⁴⁴ The value of outdoor agricultural work was considered by a leading penologist at the time to be ideally suited for Negro prisoners.¹⁴⁵ Despite intermittent scandals, prison farms were mostly invisible to the public, managed by independent superintendents who knew not to request more money from the state budget.¹⁴⁶ One hundred years of Democratic party rule in Arkansas ended when in 1967 Republican Governor Winthrop Rockefeller took office, pledging to correct prison abuses in his state.¹⁴⁷

Brubaker is based on the true story of Governor Rockefeller's appointment of the reform-minded warden (Tom Murton) who became entangled in the Arkansas prison farm scandals of the late 1960s.¹⁴⁸ Nominated for Best Screenplay,¹⁴⁹ this sordid docudrama dramatizes the corruption at the Tucker Prison Farm, renamed in the film as the Wakefield Prison Farm. The Hollywood version of survival at Wakefield can readily be compared with the reality of life at Tucker, as the real Arkansas prisoners initiated an unprecedented legal attack on the state's archaic penal system that is documented by Judge J. Smith Henley in his

138. FEELEY & RUBIN, *supra* note 136, at 51.

139. See FIERCE, *supra* note 73, at 201.

140. *Id.* at 201-02.

141. FEELEY & RUBIN, *supra* note 136, at 52.

142. *Id.*

143. See *supra* notes 118-123, and accompanying text for discussion of the convict trusty system at Parchman.

144. See FIERCE, *supra* note 73, at 200.

145. *Id.* at 202.

146. FEELEY & RUBIN, *supra* note 136, at 52.

147. Tom Murton, *The Effects of Prison Reform: The Arkansas Study*, in PRISONERS' RIGHTS SOURCEBOOK 467 (1980).

148. See THOMAS O. MURTON & JOE HYMAS, *ACCOMPLICES TO THE CRIME* (1970), for a discussion of the Arkansas prison scandal.

149. See OSBORNE, *supra* note 41, at 260.

numerous federal decisions.¹⁵⁰

Robert Redford, as Henry Brubaker, portrays the idealistic reform warden commissioned by the Governor to clean up the violence and corruption at Wakefield Prison Farm. It is Brubaker's season at Wakefield that lies at the epicenter of the movie. His personal experiences give expression to the human conflicts that emerge in the film. Brubaker is brought into Wakefield anonymously as a prisoner, and in this disguise he witnesses firsthand the prison's cruelties.¹⁵¹ Wakefield is a hell-hole of sadism, where no free world guards are needed, as trusty convict prisoners are armed to keep order, receiving time off their sentences for shooting convicts that try to escape. From the pages of *Holt v. Sarver*,¹⁵² the voice of Judge Henley resonates throughout the movie, as the film's images vividly capture his impressions of the Arkansas prison.¹⁵³ The prison farm, the federal judge discovered, was the absolute in slave labor, enforced by trusties floggings with leather straps, and the extreme in torture devices: the "Tucker telephone," an instrument that sends electric currents throughout the prisoner's body.¹⁵⁴ Beatings and sexual assaults were a common occurrence in the "dark and evil world" of the prison farm, a place that was, as the judge learned, "completely alien to the free world."¹⁵⁵ Trusty "inmate guards," with the power over life and death, supervised the daily routine of the prison.

They can make prison life tolerable or they can make it unbearably hard. They can and do sell favors, easy jobs, and coveted positions; they can and do extort money from inmates on any and all pretexts. They operate rackets within the prison, involving among other things the forcing of inmates to buy from them things like coffee at exorbitant prices. They lend money to rankers [inmates] and then use force or threats of force to collect the debts.¹⁵⁶

The film underscores the rather broad privileges of the prison's trusty system, as we see Huey Rauch, the head trusty, leave and return to Wakefield almost at will.¹⁵⁷ He brings back weapons, liquor, and drugs that he shares with his men. The kitchen and the prison stores are under trusty control, and they sell goods to less privileged prisoners (rankers) at very high prices. Brubaker discovers how Huey easily steals huge quantities of

150. See Gutterman, *supra* note 136, at 870-972.

151. BRUBAKER, *supra* note 45. What appears implausible is that Redford, as a new prisoner, would be unmolested – he is for the most part left alone by the trusties, while the other convicts are beaten and their property taken.

152. *Holt v. Sarver*, 309 F. Supp. 362, 381 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971).

153. *Id.*

154. *Id.* at 368.

155. *Id.* at 381.

156. *Id.* at 375. "It is within the power of a trusty guard to murder another inmate with practical impunity, and the danger that such will be done is always clear and present." *Id.* at 374.

157. BRUBAKER, *supra* note 45. Free-world folks were disturbed by the freedom afforded trusties. In 1938, a Mississippi senate penitentiary committee was astonished that Parchman's trusties were "free to roam as they please" even in "in public places with women and whiskey" and censured the entire system. TAYLOR, *supra* note 104, at 85.

food and other commodities from the farm and then sells and trades them for a profit. The trusties eat well at Wakefield (fried eggs in the morning and fried chicken at night) but a ranker is forced to eat a disgusting mix of gruel spiced with floating maggots unless he can pay for a sandwich or other left-over food.¹⁵⁸

An enterprising trusty who makes the most of his opportunities can do quite well for himself. Some do so well that they do not want to leave the institution. While it can hardly be said that the trusty system in Arkansas is a “free” enterprise system, it is certainly a capitalistic system with some of the worst features commonly attributed to “Mafia” techniques in organized crime.¹⁵⁹

Brubaker sketches the real inhumanity of convicts caught in the nightmare of this damnable place. When a new inmate arrives at Wakefield, the first person to interview him is a trusty who usually takes away all his money and property. The convicts at Wakefield, like those in the real Tucker farm, are faced with the threat of death, forced to work ten hours a day, six days a week, sometimes in inclement weather and without adequate clothing. They are beaten with leather straps and tortured by electrical shocks. The barracks, accurately depicted, are nothing more than a large dormitory surrounded by bars. The convicts are shown to have free access to each other at all times. The inmates would “cling to the bars” all night in their attempt to escape sexual assault in the barracks.¹⁶⁰

At times deadly feuds arise between particular inmates, and if one of them can catch his enemy asleep it is easy to crawl over and stab him. Inmates who commit such assaults are known as “crawlers” and “creepers,” and other inmates live in fear of them . . . [t]he “floor-walkers” are ineffective in preventing such assaults; they are either afraid to call the guards or, in instances, may be in league with the assailants. An inmate who is physically attractive to other men may be, and frequently is, raped in the barracks by other inmates. No one comes to his assistance; the floor walkers do not interfere; the trusties look on with indifference or satisfaction; the two free world people on duty appear to be helpless.¹⁶¹

The movie convincingly captures the factual personalities and the actual events that occurred on Arkansas’ abhorrent prison farms. Robert Redford plays the idealistic reform warden *Brubaker*, who takes charge of the prison and tries to implement his platform of progressive reforms. One scene demonstrates the corruption of the convict lease program when the trusty guards deliver prison labor to nearby farms and businesses. C.P. Woodward, the owner of a lumber company, had previously

158. See MURTON & HYMAS, *supra* note 148, at 34-36. The ranker literally pays for the food with his blood, as blood donations are one of the few ways he can earn money. See *id.* at 109-10, for a description of the corrupt “blood sucking program” practiced at the prisons.

159. *Holt*, 309 F. Supp. at 375.

160. *Id.* at 376.

161. *Id.* at 377.

contracted with the old warden to have convicts assigned to work laboriously at his lumber yard. Brubaker calls Woodward to repair the barracks roof he had built two years ago, and that just collapsed during a rainstorm, injuring many inmates. Woodward in a gesture of "community spirit and friendship," brings him a chocolate prune cake made by "his misses" as a token gesture "to get along."¹⁶² But Brubaker will not "go along" with business as usual, and when Woodward is pressed to repair the roof at his own expense, he warns Brubaker: "Don't f**k with tradition."¹⁶³ As he storms from the office, he predicts the new warden will have a "short season."¹⁶⁴

Murray Hamilton, as Mr. Deech, is the contemptible chairman of the state prison board, who tolerates the corrupt arrangement. At their first meeting, Deech tells Brubaker that the trustees, who he knows are free of charge to the state, are good men. "I hope you don't favor those free-world guards."¹⁶⁵ Jane Alexander (Lilian Gray), the pragmatic aide to the state governor, attempts to run political interference for Brubaker. But even she cannot prevent Brubaker from being fired as he pursues the scandal of convicts presumably murdered in their attempt to escape from the prison farm. In their final scene together, Brubaker refuses to go along with Lilliam, and the "good old boy's" request to stop his digging for the buried bodies.¹⁶⁶ Brubaker is implacable as he accuses her of blurring the line between principle and strategy.

Finally, there is Coombes (Yaphet Kotto Dickie), a hard-boiled trusty who cannot make up his mind about the new reform warden, as one of the more interesting personalities. As Brubaker communicates his aspirations for Wakefield, Coombes cynically tells him that "every new warden is a reform warden."¹⁶⁷ Bewildered at Brubaker's naiveté, he wonders why he does not know that "the rags the rankers wear today were once the brand-new clothes issued by the past reform warden."¹⁶⁸ Coombes understands the danger that real reform poses to the political power structure. As Brubaker's platform for prison governance starts to take shape, Coombes's skepticism is confirmed when Abraham (an institutionalized convict) is brutally beaten to death by the trustees. Coombes, who knows that Abraham's death was directly connected to the reform movement and Brubaker's unwillingness to bend to the political winds, rages. "You're dangerous," he accuses him, "you get people killed."¹⁶⁹

162. BRUBAKER, *supra* note 45.

163. *Id.*

164. *Id.*

165. *Id.*

166. See MURTON & HYMAS, *supra* note 148, at 182-95, for Superintendent Tom Murton's account of digging up the bodies at Cummins prison farm. Similarly, there were also rumors that convicts were flagrantly murdered by their heartless keepers and buried in unmarked graves near Parchman's orchards. See TAYLOR, *supra* note 104, at 115.

167. BRUBAKER, *supra* note 45.

168. *Id.*

169. *Id.*

Faced with prison life conditions as debased as those depicted at Wakefield, Judge Henley, in *Holt*, found that a sentence to the Arkansas state prison farms amounted to “banishment from civilized society” to a damnable place.¹⁷⁰ The federal district judge relied on the “cruel and unusual punishment” clause of the Eighth Amendment to decree that the climate of fear and hatred produced through the brutal and capricious exercise of power by the trustees was unconstitutional.¹⁷¹ The judge reasoned that it was one thing for the state to send a man to prison as punishment for crime; but quite something else to delegate the treatment of him to other convicts, and to do nothing meaningful for his safety, well being, or possible rehabilitation.¹⁷² The judge resolved that if the state was going to operate a prison system, it was going to have to be one that qualifies under the United States Constitution.¹⁷³

In the early years of the Republic, southern courts viewed the criminal offender as a “slave of the State,”¹⁷⁴ subject to harsh living conditions and needlessly cruel punishment.¹⁷⁵ By the middle of the twentieth century, the conditions on the notorious prison farms—Parchman in Mississippi, Angola in Louisiana, and Tucker in Arkansas—became the new rallying symbol for prison reform.¹⁷⁶ As dramatized in *Brubaker*, the convicts’ experience on these prison farms exploded the myth that prisoners were being treated humanely and they could, if they only wanted to,

170. *Holt*, 309 F. Supp. at 381.

171. *Id.* at 385.

172. *Id.*

173. *Id.*

174. *Ruffin v. Commonwealth*, 62 Va. (21 Gratt.) 790, 796 (1871).

175. For a historical review of the “hands off” theory, see Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506 (1963).

176. See generally, FEELEY & RUBIN, *supra* note 136. The Arkansas system, regrettably, was not an aberration. Over time judicial opinions emerged which described the gruesome daily conditions and experiences in other state prisons. Chief Judge Frank Johnson detailed the “horrendously overcrowded” conditions prevailing in the Alabama penal system, to the extent that inmates were required to sleep on mattresses placed on the floors in hallways and next to urinals. *Pugh v. Locke*, 406 F. Supp. 318, 323 (M.D. Ala. 1976), *aff’d as modified*, 559 F.2d 283 (5th Cir. 1977), *rev’d in part on other grounds*, 438 U.S. 781 (1978) (per curiam). Rampant violence prevailed; robbery, rape, and assault were “everyday occurrences among the general inmate population.” *Id.* at 324. Food was often infested with insects and served without adequate utensils. *Id.* at 323. As described by a United States health officer, the Alabama prisons were “wholly unfit for human habitation according to virtually every criterion used for evaluation by public health inspectors.” *Id.* at 323-24.

The Mississippi state prisoners at Parchman experienced similar destructive conditions of confinement. *Gates v. Collier*, 349 F. Supp. 881 (N.D. Miss. 1972), *aff’d*, 489 F.2d 298 (5th Cir. 1973). Carefully describing the deleterious effects of inhumane living conditions and the danger of prisoner mistreatment by armed trusty guards and other inmates, U.S. District Judge William C. Keedy found the housing at Parchman “unfit for human habitation under any modern concept of decency.” *Id.* at 887. The judge criticized the public and official apathy regarding these conditions. See *supra* text accompanying notes 103-135, for the captivating story of the Parchman era.

just peaceably do their time.¹⁷⁷ The prisons were nothing less than "farms with slaves."¹⁷⁸

IV. THE CHAIN GANG

A. ONCE AGAIN IN BONDAGE: FROM CONVICT LEASING TO THE "GOOD ROADS MOVEMENT"

After the Civil War, the convict lease program, together with the other components of Jim Crow laws, hindered the migration of emancipated blacks out of the South. Although the lease system was literally based on criminality, not on race factors, the distinction had been clouded during this period.¹⁷⁹ A stalled economy eventually brought it to an end. As far as organized labor was concerned, its inhumanity was not the problem, it was convict competition with free labor. The main goal of the labor movement was not fought in the name of compassion, but rather to remove convict labor from the work force.¹⁸⁰ As pressure from organized labor escalated, so did the reports of the savagery of convict leasing. Left with the prospect of being "stuck with crews of laborers whom they had to feed, clothe, and attend to but whom they could not work,"¹⁸¹ the convict lease system crumbled.¹⁸² The southern states' prison program was converted into two models of outdoor convict labor, the prison farm and the road chain gang.¹⁸³

177. BRUBAKER, *supra* note 45. As recently as the mid 1980's remnants of the brutal power exercised by trustees and condoned by prison officials survived in the Texas penitentiary system. See Press, *supra* note 63.

178. OSHINSKY, *supra* note 74, at 248. This was the description that inmate Nazareth Gates used to describe Parchman to his attorney.

179. Jennifer Rebuke, *Southern Labor Law in the Jim Crow Era: Exploitative or Competitive?*, 51 U. CHI. L. REV. 1161, 1162 (1984).

180. LICHTENSTEIN, *supra* note 82, at 158. Once the lease system was abolished, employment for free laborers would open up in the coal mines, brick yards, saw mills and turpentine camps. *Id.*

181. MANCINI, *supra* note 92, at 225.

182. *Id.* "The economic value of the convict lease system to private businessmen plummeted at precisely the time that other forces converged to deprive it of its social usefulness. Its demise occurred when both its economic and social utility were undermined." *Id.* at 349. "When the decline and abolition of convict-leasing came in the South it was most often the result of a combination of ongoing opposition from the labor movement, falling profits, public criticism, and general condemnation of the system." FIERCE, *supra* note 73, at 12. Mississippi was the first state to cease leasing in 1894. Garvey, *supra* note 64, at 364. Alabama, Arkansas, Florida, Tennessee, Louisiana, South Carolina and Georgia stopped the practice in the first two decades after the turn of the century. *Id.* North Carolina finally fully eliminated its lease in 1933. *Id.* The transition from prison labor to free market labor proved difficult for the South. The end of convict leasing forced southern states to look to another source of cheap labor. Letters to the Atlanta Constitution called for the replacement of "loafing Negro labor" with campaigns to induce "immigrants of a better class" to come and work in the South. LICHTENSTEIN, *supra* note 82, at 152. Notwithstanding constant claims that convict labor enjoyed living conditions equal to that of free labor, southern manufacturers soon learned that free laborers would refuse to live in former prison barracks. *Id.* at 155. In order to subsidize a stable free labor force, industrialists were compelled to build suitable living quarters, upgrade their plants, and improve working conditions. *Id.* at 157-58.

183. Zimmerman, *supra* note 102, at 463.

The chain gang was born in Georgia in 1908, and developed into the "good roads movement."¹⁸⁴ The road chain gang was envisioned as a model of regional reform, the direct result of the abolition of convict lease system and the demand for improved transportation.¹⁸⁵ The State grasped the economic and social benefits of the chain gang at the same time it struggled to cast off the lease program. Farmers needed easier and cheaper access to local markets. The railroads regarded good roads as a trunk line that would increase their freight. City dwellers in growing cities of the South coveted cheaper goods supplied from the outside, and therefore they also favored road development. The demand for good roads bound together the rural farmer, the urban city worker, and the mercantile establishment. Labor leaders joined the growing refrain for lawbreakers to be used to build public roads, especially since they would not be in direct competition with free labor.¹⁸⁶ The United States Department of Agriculture's Office of Public Roads aligned itself with the movement that sought road improvements as the way to modernize the South's economy.¹⁸⁷ The Department spearheaded the good roads movement that tied together the many factions favoring road construction. Hired labor and even conscription¹⁸⁸ had proved unreliable in the past, as free men were not disposed to work the roads if they could help it.¹⁸⁹ Partisans of the good roads movement "believe[d] the best interest of the state and public at large will best be served if convicts are made to do public duty on the roads [working] without producing unfair competition with anyone."¹⁹⁰ Moreover, it would "take the prisoner out of the cell, the prison factory and the mine and work him in the fresh air and sunshine."¹⁹¹

The chain gangs flourished throughout the South and by the 1920s and 1930s they began to build the roads the country needed for its growing industrialization and flourishing fascination with the automobile.¹⁹² Chained prisoners, mostly black, became a common sight along southern roadways. "Bad boys," a Georgia folk saying went, "make good roads."¹⁹³ Georgia's improved roads were largely the result of convict

184. LICHTENSTEIN, *supra* note 82, at 159-85.

185. Alex Lichtenstein, *Good Roads and Chain Gangs in the Progressive South: "The Negro Convict Is a Slave,"* 59 J.S. HIST. 85 (1993).

186. LICHTENSTEIN, *supra* note 82, at 160-61.

187. *Id.* at 160.

188. Preceding the exploitation of convict labor, southern state counties had a waning feudal labor tax system that "warned out" able-bodied free men to work on the roads "four or five days" out of the year. LICHTENSTEIN, *supra* note 82, at 161. *See also* Butler v. Perry, 240 U.S. 328, 333 (1916) (upholding the practice of conscripted labor against a Thirteenth Amendment challenge).

189. LICHTENSTEIN, *supra* note 82, at 162. "Everybody in our county wants a good road. But there is no one that wants to work the road." *Id.*

190. *Id.* at 158.

191. Lichtenstein, *supra* note 185, at 88 (quoting E. Stagg Whitin, *Convicts and Road Building*, SOUTHERN GOOD ROADS, V, June 1912, at 16).

192. Garvey, *supra* note 64, at 365.

193. LICHTENSTEIN, *supra* note 82, at 152; *see also* Lichtenstein, *supra* note 185, at 85, 104.

labor.¹⁹⁴ Magazine editorials applauded Georgia for “throw[ing] off the shackles [of the lease] and . . . building more good roads than any other state in the South,” and encouraged other states to follow its lead.¹⁹⁵ The tragic plight of the black lawbreaker had not been diminished by the shift from the lease system to county chain gangs. The black man was quick to comprehend that “the Negro in Georgia is still in a manner a chattel.”¹⁹⁶ The black prisoner, caught in the southern justice system, saw little difference between his position as a slave on the plantation, as a leased convict forced to toil in the coal mine, or as a chained prison worker on the roads. The chained southern black man on the southern county road had been transformed into the slave of the state.¹⁹⁷

The race factor, for the most part, enhanced the enthusiasm for the chain gang, and the overwhelming white support for the good roads movement. The State had preserved for black Georgians a reminder of their heritage.¹⁹⁸ The lawbreakers in the South were predominately black, suited, it was advanced, to the heavy unskilled labor required. Their moral standard, it was asserted, was not lowered by working in chains in public.¹⁹⁹ Even the federal government, through the Office of Public Roads, endorsed the chain gangs, implying that blacks are accustomed to outdoor occupations, and “[do] not possess the same aversion to working in public . . . as is characteristic of the white race.”²⁰⁰ The road gang was lauded by all as a healthy alternative to convict leasing that had fed black prisoners to the coal mines and railroads. Thus, with both state and federal endorsement, the South’s prison system was transformed; still left unchanged, however, was the basic practice of racial maltreatment.

The Georgia reformers had tried desperately to harmonize racial equality, forced labor, and the development of an industrial infrastructure with an indefensible prison policy, but their approach merely shifted the atrocities from the private to the public sector. The chain gang had too much of the attraction of the legacy of slavery. The state now became the actual master responsible for the well-being of the growing pool of forced black labor. Black prisoners chained together in a line worked, ate and even slept with chains fastened around their ankles. Food was bug-infested and rotten. With a white-armed overseer, the black convict slaved

194. Lichtenstein, *supra* note 185, at 103.

195. LICHTENSTEIN, *supra* note 82, at 177 (quoting the magazine 5 SOUTHERN GOOD ROADS, Feb. 1912, at 20-21).

196. *Id.* at 159.

197. Lichtenstein, *supra* note 185, at 91. One northern reformer deemed that the convict on the road is the slave of the state, and that slaves had always labored faithfully for kind masters. *Id.* (citing E. Stagg Whitin, *The Spirit of Convict Road-Building*, 6 SOUTHERN GOOD ROADS, Dec 1912, at 12-13). An agent of the Office of the Public Roads made a similar observation. “[O]n the roads, as in the railroad camps, coal mines, terpentine forests, and brickyards before, [t]he negro convict is a slave.” LICHTENSTEIN, *supra* note 82, at 185.

198. See Mancini, *supra* note 83, at 349.

199. LICHTENSTEIN, *supra* note 82, at 180.

200. *Id.*

from sunup to sundown.²⁰¹ Brutalities, corporal punishments (whipping with a leather strap, blows from rifle butts and clubs) and outright torture, were commonplace. Major atrocities, like the staking treatment (stretching an inmate across a stake with a chain and pouring molasses over his body while flies, bees and other insects were allowed to crawl all over him); the sweat box treatment (locking a prisoner into a wooden box that was neither high enough to stand nor deep enough to sit for days, while temperatures within the box exceeded one hundred degrees); the dipping barrel (sticking the prisoner into a barrel with a hose running into it and forcing the prisoner to either bail out the running water or drown); and the Georgia rack (stretching the inmate between two hooks with a cable and a turn crank) were all meted out for the most minor transgressions.²⁰²

Chain gangs had a short existence. Economic forces once more played a dominant role in their demise. As the Great Depression settled over the country, the federal government prohibited the use of convict labor to build roads financed with federal money.²⁰³ As jobs became scarce there were renewed complaints that the gangs took work rightfully belonging to free labor. Once again, there was a public outcry as books and movies dramatized the horrors of a Georgia chain gang.²⁰⁴ Race also played a central part, as the number of white convicts on the roads began to increase, the enthusiasm for the chain gang waned.²⁰⁵ The road gangs largely began to fade between the Depression and World War II. By the 1940s, they had almost vanished.²⁰⁶ The last few chained prisoners were pulled off the roads when Georgia finally eliminated the practice in the early 1960s.²⁰⁷

By century's end the South had come a long way. It strode confidently into the nation's mainstream as it left behind the trappings of Jim Crow. It elected progressive Governors and United States Senators, and even sent three of them to the White House.²⁰⁸ The new South was justly proud of its fine museums, acclaimed symphony orchestras, and its many

201. See *id.* at 183 (citing FRANK TANNENBAUM, *DARKER PHASES OF THE SOUTH* 73-113 (1924)).

202. See *Commonwealth v. Baldi*, 106 A.2d 777, 781-82 (Pa. 1954) (Musmanno, J., dissenting), *cert. denied*, 348 U.S. 977 (1955).

203. See LICHTENSTEIN, *supra* note 82, at 190-91.

204. See *infra* notes 214-17 and accompanying text.

205. See LICHTENSTEIN, *supra* note 82, at 190. "[I]ncreased visibility of white prisoners began to erode the public faith in the benefits and justice of criminal labor." *Id.*

206. Garvey, *supra* note 64, at 366.

207. The practice of chaining Georgia inmates working together on the highways was stopped in the mid-60s as part of nationwide trend toward rehabilitation and after a controversial report calling for reform. See Rhonda Cook, *Around the South Back to Hard Labor*, ATLANTA J. & CONST. at D-4, Aug. 20, 1995.

208. DAVID RUBEL, *MR. PRESIDENT THE HUMAN SIDE OF AMERICA'S CHIEF EXECUTIVES* 231 (1998). Vice President Lyndon Baines Johnson (previous United States senator from Texas) acceded to the presidency upon the assassination of John F. Kennedy in 1963 and was elected President in 1965. In 1977, Governor Jimmy Carter of Georgia became the 39th President. Governor William Jefferson Clinton of Arkansas served as the 42nd President.

fine universities that could be counted among the nation's best. But as far as prison life was concerned, little appeared to have changed. The past has a way of creeping back, and in Alabama, as the sun peaked over the bountiful fields that roll away from the Limestone Correctional Facility, four hundred convicts (dressed in white uniforms) formed the day's chain gang. Led from their mass barracks to the recreational yard, guards awaited them with shotguns balanced on their hips, to chain them ankle to ankle, leashed together in groups of five, for the days work. Premised on the theory that the high recidivism rate was at least partially attributed to comfortable prison conditions, a half century after their disappearance, chain gangs had once again appeared on southern roads. The reemergence of the chain gang began on an Alabama campaign trail when Ron Jones, a prison warden, recommended it to gubernatorial candidate Forrest "Fob" James as a "get tough on crime" measure. After his successful election, Governor James with overwhelming white support established chain gangs in Alabama as "an effective crime deterrent which makes Alabama a safer place for the law abiding."²⁰⁹ The Governor professed that he reintroduced chain gangs for two reasons. First, because some convicts found prison life much too easy, preferring it to parole, and second, because "medium-risk prisoners should be out working rather than lifting weights or watching cable TV."²¹⁰ Alabama, in 1995, had fired the first missile, but was shortly joined by several other states.²¹¹ Together they sent the nation a clear, forceful message: tough on crime, tough on criminals.

B. THE SOUTHERN CONVICT ROAD GANGS: *COOL HAND LUKE*²¹²

The brutalities endured by black Americans working on southern roads in the 1920s and 1930s came to symbolize the brutality of race relations in the South, as well as the economic and moral backwardness of the region.²¹³ Robert Elliot Burns's haunting book, *I Am a Fugitive from a Georgia Chain Gang!*,²¹⁴ detailed these monstrosities²¹⁵ and helped turn chain gangs into a national disgrace. Its counterpart, the classic 1932 Paul

209. Tony Snow, *Linked to History: Chain Gangs Brought Back to Prisons*, THE VOICE, Oct. 1, 1996, at 13.

210. Fob James, Jr., Editorial, *Prison is for Punishment*, USA TODAY, Aug. 28, 1995, at 14A.

211. Arizona, Florida, Iowa, and Wisconsin enacted statutes that called for inmates to spend some of their sentences working on chain gangs. *Alabama Agrees to Abolish Chain Gang Shackles*, MONTGOMERY ADVERTISER, June 21, 1996, at 1A. Massachusetts also utilized chain gangs. *News: Chain Gangs Arrive In Massachusetts*. FLORIDA TODAY, Thursday, June 17, 1999. The practice of chaining inmates together for work details ended in Alabama. See *infra* note 265.

212. COOL HAND LUKE, *supra* note 43.

213. See LICHTENSTEIN, *supra* note 82, at 160.

214. ROBERT E. BURNS, *I AM A FUGITIVE FROM A GEORGIA CHAIN GANG!* (1932).

215. "[T]hat is what a chain gang is for, torture! Torture every day. Any idea of reformation, any idea of trying to inoculate ideas of decency, manners or good and right thinking in the convict, is prohibited. All the convicts get is abuse, curses, punishment, and filth. In a few weeks all are reduced to the same level, just animals, and treated worse than animals." *Id.* at 56.

Muni film, *I Am a Fugitive from a Chain Gang*,²¹⁶ depicted the American chain gang so poignantly that the public outcry eventually caused Georgia to abandon the practice. *Cool Hand Luke*, as the direct descendent of this classic movie, is a memorable depiction of the harsh penal punishments on a prison road chain gang.²¹⁷ The film stars Paul Newman (doubtless the most acclaimed actor of the period) as Luke, a handsome, lovable misfit sent to a despotic prison work camp for two years for his destruction of public parking meters.

The beginning scene spotlights the cheerfully drunken Luke, in an unidentified southern town, staggering along the lonely sidewalk, cutting the heads off parking meters. The parking meters are slowly decapitated, and as each one clanks to the ground the audience begins to sense Luke's individualism and rebelliousness.²¹⁸ Quickly he is stamped as a person who has had a history of difficulty with those in command. Although he served with distinction in the military (decorated with the Silver Star, Bronze Star, and a couple of Purple Hearts) he left the service with the same rank he entered, as a Buck Private. Upon his arrival at the prison camp, the authoritarian Captain (Stretcher Martin) counsels the new inmate that he will fit in real good, unless, of course "you get rabbit in your blood and you decide to take off for home, you get a bonus of some time and a set of leg chains to keep you slowed down just a little bit. For your own good, you'll learn the rules. It's all up to you. Now I can be a good guy, or I can be a real mean son-of-a-bitch. It's all up to you."²¹⁹

Faced with the overly harsh sentence for a relatively minor transgression, and as he begins to serve his time, Luke struggles to gain a semblance of autonomy. Our intuition forewarns us that the strict rules and regimentation of the prison camp are on a collision course with Luke's independent spirit. The cigar-chomping, floor-walker guard, Carr (Clifton James) acquaints the new men with the camp rules. Each infraction, no matter how minor (forgetting a laundry number, losing a spoon, smoking in a prone position in bed, turning into the laundry the top rather than the bottom sheet, loud talking) will be rewarded with "a night in the box."²²⁰ Instinctively, he senses Luke's defiance. "I hope you ain't gonna be a hard case."²²¹

216. *I AM A FUGITIVE FROM A CHAIN GANG*, *supra* note 43.

217. The New York Times printed a series of articles with noted directors, actors, screen writers and cinematographers describing movies having personal meaning to them. The acclaimed actor and Oscar winning producer and director Kevin Costner was inspired by *Cool Hand Luke*. "I guess it is because a movie says there is a way men should behave . . . It's about being your own person, about how men will desert you when, somehow, you don't live up to their expectations . . . Sometimes the outcome isn't great, but at least you leave a mark." Rick Lyman, *Watching Movies with Kevin Costner Inspired By a Cool Hand*, N.Y. TIMES, Jan. 19, 2001, at B1, B7.

218. *COOL HAND LUKE*, *supra* note 43.

219. *Id.*

220. *Id.*

221. *Id.*

At the prison camp we witness Luke complete the roughest jobs working on the county roads without ever complaining. The convict boss of the chain gang, Dragline (George Kennedy), perceives and is envious of Luke's strong attributes of leadership, and instigates what turns out to be an impressive fist fight. Dragline soundly thrashes Luke who refuses to admit defeat. Time and time again, after being knocked to the ground, he pulls himself up, until Dragline, with reverence, finally just walks away. From that moment on, Dragline and the other convicts have an abiding respect for Luke.

Luke acquires his "Cool Hand" pseudonym at a poker game when he ceaselessly raised the ante until everyone folded; and even though he had a worthless hand, calmly stated that "[n]othing can be a real cool hand."²²² Dragline wants to establish a friendship with Luke, and as he slides over to be near him he bestows his new friend with his nickname. "Move over. I'm gonna sit in here next to my boy—Cool Hand Luke."²²³ The title symbolizes Luke's coolheaded, independent spirit that refuses to surrender to authority.

After a failed escape attempt, the Captain has a set of chains placed around Luke's ankles. This still does not stop his resistance. Very shortly after this first breakout, Luke once more slides away from the chain gang. Going to relieve himself he feigns "privacy" behind some bushy trees. To guarantee to the guards that he is still in the bushes, he tricks them by tying a string to a tree and while tugging on it from a long distance to shake the branches, clamors out continually: "Still shakin' it, boss, still shakin' it. I'm shakin' it, boss."²²⁴

Captured after this second failed flight, his broken and beaten body is deposited at the bunkhouse. The Captain, towering over Luke lying on the floor, threatens: "You run one time, you got yourself a set o' chains. You run twice, you got yourself two sets. You ain't gonna need no third set 'cause you're gonna get your mind right. And I mean RIGHT."²²⁵

Fearful that his behavior would encourage other prisoners' defiance, the Camp guards recognize they must put an end to Luke's independence. The Bosses, encouraged by the Captain, start a deliberate crusade to crush Luke's spirit. All variations of prison cruelty are employed. The Bosses savagely club him, deposit him in "the box," and force him to repeatedly dig a ditch and fill it up again. But their heartless behavior does not deter Luke from one last try for freedom. After this last escape, Luke is ultimately surrounded by the camp authorities and takes shelter in a church. As he talks to God, he asks for his counsel on how to cope, to fit in at the prison camp and in the world,

It's beginning' to look like you got things fixed so I can't never win out. Inside, outside, all 'em rules and regulations and bosses. You

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

made me like I am. Now, just where am I supposed to fit in? Ol' Man, I gotta tell ya I started out pretty strong and fast. But it's beginnin' to get to me. When does it end?²²⁶

When told to surrender, Luke contemptuously mimics the Captain with his own words: "What we've got here is a failure to communicate."²²⁷

Tragically, Luke is forever silenced, shot in the throat by the Boss in the mirror-lens sunglasses (the man with no eyes).²²⁸ But as he dies, we once more witness his infectious smile, and appreciate that his dauntless spirit has not been crushed.

V. THE ILLUSIONS OF THE MOVIES: THE REALITIES OF PRISON LIFE

Hollywood has produced movies that denounce human wrongs and appeal to our sense of righteousness. There are many parallels that can be made with the prison movies examined in this paper. Most importantly, each film attracted national attention. *The Shawshank Redemption* merited seven Academy award nominations, including best picture and best actor for Morgan Freeman.²²⁹ *Cool Hand Luke* earned George Kennedy an Oscar for best supporting actor, and an Oscar Nomination for Paul Newman as best actor.²³⁰ *Brubaker*, was nominated for best screenplay written for the movies.²³¹ The images torn from the screen force us to question the worth of imprisonment. The film maker, by tapping at the perceptions of prison that we carry around in our mind, stimulates the movie audience. The moviegoer has become familiar with the genre. The daily routines of prison life and the brutal treatment of the convicts are always vividly detailed. The jailors and their chief enforcers have become such well-developed personalities that they seem to be stereotypes, but ones shamefully based on the truth. Of course movies are an illusion, but unless we spend time in jail, is there any better place to experience the real prison nightmare?

There is no doubt that these powerful pictures move us and leave images that prick at our conscience long after the film has ended. *The Shawshank Redemption* evidences a sophisticated understanding of this power, as the horrors of prison existence are visually projected in a variety of ways. British cinematographer Roger Deakins' brilliant cinema photography eloquently captures the despair of prison life juxtaposed against an inspirational story of the human spirit: his camera graphically

226. *Id.*

227. *Id.*

228. *Id.* Throughout the movie, the silent sun-glassed Boss Godfrey serves as the Angel of Death, as he patiently waits behind the mirrored shades. His mission is starkly confirmed when he shoots the head off a poisonous rattlesnake (boldly caught by Luke in the thick grass along the country road where the men chopped wood) with one expert shot from his shotgun. "Man, you sure can shoot," Luke remarks on his proficiency to kill. *Id.*

229. See OSBORNE, *supra* note 41, at 322.

230. *Id.* at 192. The film was also nominated for two additional awards, Best Screenplay and Best Music.

231. *Id.* at 260.

sketches the gray granite of the prison stones, the gray of the steel bars, and darkened, cloudy skies. Frank Darabont's direction encapsulates the most serious social consequence of the penitentiary system: the disintegration of the human spirit of men held behind prison walls.

The founders of the penitentiary system had higher aspirations. The Quaker reformists envisioned an institution where the lawbreaker could ponder his transgressions in solitary confinement and in absolute silence. They believed that the penitentiary would provide a place for penitence, where the criminal, alone in his cell, with only the Bible to comfort him, would necessarily, "be compelled to reflect on the error of his ways, to listen to the reproaches of conscience, to the expostulations of religion."²³² Left totally alone, with no evils to distract him, the prisoner would reflect on his sins and repent. In fact, what the reformists actually aspired to were penitentiary cathedrals, where with the keepers' kindness, and proper ministerial direction, the "criminal penitent" would find personal redemption. This was the Quakers' conception of the American innovation—the penitentiary. The eminent French historian and philosopher Michel Foucault appreciated that the supporters of the penitentiary system anticipated a switched site of punishment; from the body to the soul.²³³ Foucault advocated this new transformation and professed that "[t]he expiation that once rained down upon the body must be replaced by a punishment that acts in depth on the heart, the thoughts, the will, the inclinations."²³⁴

Andy's escape from Shawshank (his breakthrough to the sewer conduit) is timed perfectly with flashes of lightning bolts and deafening thunder that rumble from heaven. Andy crawls head first to freedom through five-hundred yards of raw sewage, a passage of "shit smelling foulness," to be reborn again as he emerges from the dark cylinder.²³⁵ In the film's most popular image, after he lands waist-deep in the middle of the creek filled with cleansing water, Andy strips off his prison shirt and extends his arms up from his half-naked body to the sky, triumphant and redeemed. The inscription on the poster for *The Shawshank Redemption* ("FEAR CAN HOLD YOU PRISONER—HOPE CAN SET YOU FREE") illuminates this portrait that encapsulates Foucault's ideology of the penitentiary: the redemptive power of hope combined with the religious theory of resurrection.

At variance with Shawshank, prisons today are more appropriately characterized as "schools for crime" where moral decay trumps meaningful reform. The convict suffers from what may be called a loss of autonomy; he is constantly subjected to a vast array of rules designed to control his behavior in every detail. Only a few Supreme Court justices have

232. GEORGE W. SMITH, A DEFENSE OF THE SYSTEM OF SOLITARY CONFINEMENT OF PRISONERS 75 (1833).

233. See MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 16 (Alan Sheridan trans., Pantheon Books 1977) (1975).

234. *Id.* at 16.

235. THE SHAWSHANK REDEMPTION, *supra* note 42.

appreciated that the need for identity and self-respect is most compelling in this dehumanizing environment.²³⁶ Justice Thurgood Marshall, who tried to enlighten his colleagues, (and educate the public) admonishes us that after “the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor is his quest for self-realization concluded.”²³⁷

Former inmates who had spent time in Shawshank before it was closed were brought in to play extras.²³⁸ They had no need to imagine what prison life was like.²³⁹ Assistant Warden Richard Hall, Shawshank’s prison liaison, rounded up former guards to play themselves in the movie. “In the solitary wing,” says Hall, recalling the old days, “the 6-by-8-foot cells [had] nothing but a hole in the floor - no lights. Guys would be in the dark for four days with nothing but bread and water twice a day.”²⁴⁰ Andy, who spends more than his share of time in that dungeon, captures this experience.

The movie confirms that prison brings into play many disastrous influences: normal sociability is shown to be severely curtailed and self-assertion is practically forbidden. Additionally, the natural sexual outlet is totally prohibited. In *The Shawshank Redemption*, Andy is sexually assaulted by Bogs Diamond and two other men (the Sisters) who unmercifully taunt and beat him senseless: Red assures us that “prison is no fairytale world.”²⁴¹ The effects of all these factors are intensified by the regimentation and emotional cruelty practiced in many conventional prison settings. As a consequence of all the physical and psychological debasement, the inmate acquires a conscious resentment toward the prison system and those who put him behind bars. The result is not that a reformed prisoner is released to the community, but rather an emotionally dangerous person is unleashed, ready to avenge himself on society.²⁴²

236. See *Rhodes v. Chapman*, 452 U.S. 337, 367 (1981) (Brennan, J., concurring in the judgment); *Procunier v. Martinez*, 416 U.S. 396, 428 (1974) (Marshall, J., concurring); *Meachum v. Fano*, 427 U.S. 215, 230 (1976) (Stevens, J., dissenting).

237. *Procunier*, 416 U.S. at 428 (Marshall, J., concurring). See Melvin Gutterman, *The Prison Jurisprudence of Justice Thurgood Marshall*, 56 MARYLAND L. REV. 149 (1997) for a comprehensive discussion of Justice Marshall’s prison jurisprudence.

238. Hruska, *supra* note 50. “‘When I was a con,’ says extra Robert Green, echoing the story of Andy Dufresne, ‘I did what I had to do. It took me a few years to learn to stay away from the wrong people. Some inmates let time get to them—that’s hard time. But if you have a strong mind and a strong heart, you’re not going to let it beat you.’” *Id.*

239. *Id.* “Robert Green, a tall, gaunt local with weary blue eyes, donned the familiar uniform for the first time since his release eight years before. Now in his 40s, Green first came through the heavy prison doors just after his 18th birthday. ‘I wanted to lay old ghosts to rest,’ he says, then adds, ‘After doing so much time for the state, I kind of liked the idea of coming back and getting paid for it.’” *Id.*

240. Solitary in the new prison has a window and shower with hot and cold water, a radio, and air-conditioning. *Id.*

241. THE SHAWSHANK REDEMPTION, *supra* note 42.

242. See e.g., DONALD CLEMMER, THE PRISON COMMUNITY 300 (2d ed. 1958). For a review of the literature criticizing this theory see, Garvey, *supra* note 64, at n.11.

Cool Hand Luke symbolizes the central theme encountered in prison movies: the brutality of a penal system that encourages sympathy for the underdog convict.²⁴³ The movie spotlights the camp worker and cultivates his identity as a victim of the system, while at the same time denouncing the inhumanity of his supervisor. The Captain, who fears Luke's rebellious spirit is contagious is compelled to break him: Luke must bend to the Captain's authority or he will be destroyed. The authoritarian Captain is determined to crush Luke in front of the other men "for his own good":

Captain: You're gonna get used to wearin' them chains after a while, Luke, but you'll never stop listenin' to them clinkin'. 'Cause they're gonna remind you of what I've been sayin'—for your own good.

Luke: wish you'd stop bein' so good to me, Captain.

Captain: (Enraged the Captain savagely beats Luke with his stick) Don't you ever talk that way to me. Never, never.²⁴⁴

"Straight outta Hollywood."²⁴⁵ Commissioner Jones, in his stereotypical southern manner, relatively recently communicated to the national press how Alabama convicts were put in chains for their own good. "It became real humane on my part to put these inmates out there in leg irons because they have virtually no chance of escaping . . . [t]herefore they're not going to get shot."²⁴⁶ "If they try to escape," Jones adds, "our officers are going to shoot them."²⁴⁷ The Commissioner wanted to make sure there would be no failure to communicate in Alabama.²⁴⁸

Mr. Deech, the chairman of the prison board in *Brubaker*, accuses Redford of being too soft on the convicts. "Bottom line. You want to make life real easy for these men."²⁴⁹ In an analogous message, Commissioner Jones, a twenty-year veteran of the Alabama prison systems, boasts that he wants to make the prison experience in Alabama as miserable as possible. Education, drug counseling, and therapy in prison, he exclaims are "freebies" that have transformed convicts into a "class of parasites on the welfare wagon," and have done little to curb crime.²⁵⁰ Notwithstanding any studies that have linked a reduction in recidivism

243. See Osborne M. Reynolds, Jr., *Review of Cool Hand Luke*, 22 OKLA. CITY U. L. REV. 97 (1997).

244. COOL HAND LUKE, *supra* note 43.

245. Anne Hull, *Chained to a New Kind of Justice*, ST. PETERSBURG TIMES, June 25, 1995, at 1A.

246. John Leland & Vern E. Smith, *Back on the Chain Gang*, NEWSWEEK, May 15, 1995, at 58.

247. Adam Cohen, *Back on the Chain Gang: Alabama Revives Chain Gangs for Prisoners*, TIME, May 15, 1995, at 26.

248. *Id.* The inmates joked among themselves, laughing when they stumbled on the chains. One group even tried to sing an impromptu rap version of a chain gang song, smiling in defiance like modern Cool Hand Lukes. See William Booth, *The Return of the Chain Gangs: Work Crews of Alabama Prisoners Form a Link to the South's Past*, WASH. POST, May 4, 1995, at A1.

249. BRUBAKER, *supra* note 45.

250. Katherine M. Skiba, *Bustin' Rock: Alabama Resurrects Chain Gangs Under Scrutiny of Guards, Critics*, MILWAUKEE J. SENTINEL, Nov. 12, 1995, at 1.

with harsh punishment, the symbolic nature of chain gangs rapidly drew several states to enact statutes that endorsed the principle that prisoners spend a portion of their jail time in chains working on road gangs.²⁵¹

For African-Americans, black people in chains are the most forceful reminder of their heritage of racial oppression in America. The image of slavery, raised by predominately chained black prisoners, recalls the most regrettable period of southern racial intolerance and brutality. Given the number of African-Americans held in jail that will now be forced to work together in chains on heavily traveled roads in the South, the analogy to slavery is certainly justifiable and unavoidable. Alabama officials disagreed, although they readily conceded that humiliation and degradation are the essential components of their chaining program. But there can be no doubt that the reintroduction of chain gangs resurrected the portrait of Old Dixie and regenerated the southern racial stereotype—a genuine harm to the progressive image of the new South. African Americans consider chain gangs a hardship they were forced to endure during the Jim Crow years. The Nation's insensitive revival of a system woven into the cultural history of oppression of an entire race can only undermine the moral legitimacy of the whole criminal justice system.

Cool Hand Luke remains timely as a portraiture of a prison road work team, a form of prison incarceration that is especially propitious as several states begin to restore the chain gang. The brutal conditions portrayed challenge the wisdom and effectiveness of the camp's harsh penal measures. The audience sees the camp workers chained for their attempts to escape, and worked like animals without any pretense at rehabilitation. The Captain-convict relationship in *Cool Hand Luke* is drawn by calculation of raw power, unconcerned with abstractions like human rights and justice. Luke steadfastly refuses to bend to the Captain's demand to give up his humanity. It is not enough for the Captain to have his way with him, he wants to break Luke's (as well as the other convicts') spirit.²⁵² *Cool Hand Luke* pinpoints the pointless authoritarianism designed to bring Luke and the other camp workers to their knees, as every essential necessity requires permission from the Boss: to put on glasses, to take off a shirt, even to go to the bathroom. *Brubaker* broadens *Cool Hand Luke's* central tenet; it demonstrates the very useful lesson that politicians will never really share authority and lawbreakers especially will always be forbidden to influence prison policy.²⁵³ Both Luke (the

251. See *supra* note 211; see also *Recent Legislation: Criminal Law – Prison Labor – Florida Reintroduces Chain Gangs*, 109 HARV. L. REV. 876 (1996).

252. Mr. Costner admired the way the Captain and the guards were portrayed. "They are not cardboard villain, and they are not portrayed as stupid. Pains are taken to give them some sense of humanity and to underscore why they might feel a special sense of vengeance in Luke's case." Lyman, *supra* note 217, at B7.

253. See Francis Lieber, *Preface to GUSTAVE A. DE BEAUMONT & ALEXIS DE TOCQUEVILLE, ON THE PENITENTIARY SYSTEM IN THE UNITED STATES AND ITS APPLICATION IN FRANCE* (Herman R. Lantz ed., Francis Lieber trans., S. Ill. U. Press 1964) (1833) ("The progress of mankind from physical force to the substitution of moral power in the art and science of government in general, is but very slow, but in none of its branches has this

captive) and Brubaker (the warden) are powerless to change the established institutions. They were defiant souls, entrapped in a non-understanding environment by powerful forces beyond their control, eventually destroyed by those established in power.

The movie trilogy, *Cool Hand Luke*, *The Shawshank Redemption*, and *Brubaker* use different settings as a backdrop to explore both the victims and the perpetrators of the brutal prison system.²⁵⁴ Notwithstanding their public appeal, the films offer no alternatives to the brutal prison conditions; they advance no solutions for the corruption and degradation shown. As sentences become longer, old-timers like Abraham who cleaned Wakefield prison long after his sentence was completed, and Brooks, who ran Shawshank's prison library but is unable to function outside the prison (driven to commit suicide) will become more common—brutalized and institutionalized. Almost anything that can debase and demoralize the human spirit occurs in prison,²⁵⁵ and deepens the already anti-social behavior of the occupants. The movies permit us to view the degradation that occurs through the eyes of the convict.

What we observe is how prison life lends itself to sexual perversions, general physical and moral disintegration, and sporadic rebellion against the system. When the universally respected historians and diplomats Alexis de Tocqueville and Gustave Auguste de Beaumont were sent by France to officially evaluate the new experimental penitentiary, they wrote that a system that replaces death with imprisonment does not mean that a penitentiary system necessarily exists: “[I]t is further necessary, that the criminal whose life has been spared, be placed in a prison, whose discipline renders him better. Because, if the system instead of reforming, should only tend to corrupt him still more, this would not be any longer a penitentiary system, but only a bad system of imprisonment.”²⁵⁶ To make an abject lesson of Luke's running way, the Captain is determined to break his spirit “for his own good.”²⁵⁷ The Captain, enraged by the sassy remarks of Luke (“I wish you'd stop bein' so good to me, Cap'n”) lashes out at him, hitting Luke in the neck, and tumbling him

progress, which alone affords the standard by which we can judge the civil development of a society, been more retarded than in the organization and discipline of prisons . . .”).

254. See e.g., Hruska, *supra* note 50. “When I walked into this place I immediately felt an overwhelming weight of whatever tragedies had taken place here,” Robbins says of the 1896 Ohio fortress, which had its date with the wrecking ball postponed by Shawshank's production. “I don't think you can have square footage more filled with pain than a cell block.” *Id.*

255. *Bell v. Wolfish*, 441 U.S. 520, 558 (1979). Inmates (male and female) at all Bureau of Prison facilities are routinely required “to expose their body cavities for visual inspection as a part of a strip search conducted after every contact visit with a person from outside the institution.” *Id.* These intrusive body searches engendered fear in inmates of physical and sexual abuse by prison guards. The practice was so “unpleasant, embarrassing, and humiliating,” and placed inmates in such a degrading position, that it caused some of them to forego visits with friends and family altogether. Although hesitant, the Court continued to systematically permit these searches, despite its potential for abuse and the invasion of the inmates' personal privacy. *Id.* at 559.

256. BEAUMONT & TOCQUEVILLE, *supra* note 27, at 38.

257. COOL HAND LUKE, *supra* note 43.

into a ditch.²⁵⁸ As he stands over a defiant Luke, whom he has just savagely beaten for his cocky talk, the authoritarian Captain delivers the film's most familiar and poignant message. "What we've got here is failure to communicate. Some men you just can't reach. So you get what we had here last week—which is the way he wants it. Well, he gets it. I don't like it any more than you men."²⁵⁹

The Shawshank Redemption encourages us to applaud Andy as he struggles to turn the tables on the depraved corrections officials and the Sisters who sodomize him. But after his escape, we are left to ponder the ultimate fate of those left behind the massive Shawshank walls. The final screen image of *Brubaker* encourages us to clap hands with the convicts for the unbroken warden as he leaves the prison farm, even as we are simultaneously made aware that the new superintendent is about to resume the same tired brutal policies. We now come to appreciate that public humiliation and enforced respect for endless rules are all done "for their own good." The cons are told to take their medicine like adults even as prison officers attempt to "reimpose the subservience of youth."²⁶⁰ Red's difficulty in trying to adjust to his new found freedom is eloquently displayed. On his new job as a grocery bag boy he continually seeks the manager's permission to go to the bathroom. "Forty years, I've been asking permission to piss. I can't squeeze a drop without say-so. There's a harsh truth to face. No way I'm gonna make it on the outside."²⁶¹

There is, of course, a cardinal paradox in the movies: the protagonists on film are for the most part white, while in reality, the racial composition of most prison camps and penal institutions is disproportionately African Americans. The outcry the movies create for humanitarian penal reform cannot be separated from racial overtones. Paul Muni's portrayal in *I Am a Fugitive from a Chain Gang* of Robert Burns's first-person account of the cruelties he suffered on Georgia's chain gang, and the national scandal it generated, cannot be disconnected from the color of the actor's white skin. The mostly Caucasian audience is drawn to a white man's sufferings on the chain gang (Muni and Newman).²⁶²

258. *Id.*

259. *Id.*

260. GRESHAM M. SYKES, *THE SOCIETY OF CAPTIVES: A STUDY OF A MAXIMUM SECURITY PRISON* 76 (1958).

261. *THE SHAWSHANK REDEMPTION*, *supra* note 42.

262. The movie's counterpart may be found in the tragic tale of Martin Tabert, a white twenty-two-year-old, who left his family farm in North Dakota and was convicted in Florida as a vagrant, for riding on a train without a ticket. In exchange for a twenty dollar commission, the local sheriff leased Martin to the Putnam Lumber Company, which put him to work in the Florida swamps to strip turpentine. Martin could not keep up with the arduous work and was beaten to death. See N. Gordon Carper, *Martin Tabert, Martyr of an Era*, 52 FLA. HIST. Q. 115 (1973) for the entire heartbreaking story that drew national attention to the horrors of county leasing and helped to end the practice in Florida. See also FIERCE, *supra* note 73, at 82-84. The Martin Tabert tragedy exemplifies how perplexing the convict lease program had become in the South. The Ku Klux Klan in Florida was enraged about the incident. The Florida Klan opposed the lease system in the state especially since it victimized some whites, like Tabert, in the same fashion as it did many

As shameful as the abuses chronicled in the movie *Cool Hand Luke* were, it cannot capture the raw vivid details of daily life suffered by black convicts on the chain gang. They were restrained at all times with heavy chains. The chains were riveted to their ankles and were only removed (by a chisel) when the convict was released. At night a long chain was run through their legs, and every man was securely fastened to every other man, and no one was able to go to the toilet (a hole in the floor) without waking everyone on the gang.²⁶³ A passage from the book *Georgia Nigger* paints the dehumanizing portrait:

In Buzzard's Roost [a Georgia chain gang] there were vermin and stench, cursings and beatings and stocks but out of Slatternville seventeen Negroes went into the wilderness of the South Carolina hills in a floating cage, a cage drawn by four mules, a swaying, creaking, rumbling prison of thick wood with no bars or windows for air on nights that choked you, and bunks of steel with rungs for master chains to lock you in at night. Bedbugs slept with you in that cage and lice nestled in the hair of your body and you scratched until your skin bled and the sores on your body filled with pus. Meat for the floating kitchen wrapped in burlap bags, stinking meat swarming with maggots and flies, and corn pone soaked by fall rains, slashing rains that beat upon the wooden cage through the barred door upon the straw mattresses until they were soggy.²⁶⁴

Until very recently, visitors to Alabama were able to pull their cars to the side of the road above Interstate 65 and watch predominately black prisoners working along the highway together in chains.²⁶⁵ An elderly white woman, who had lived all her life in Limestone County, Alabama, admitted she liked what she saw. "I love seeing 'em in chains," she said, as 320 inmates from the Limestone Correctional Facility, their white uniforms and caps stamped CHAIN GANG, spread out along the road in groups of five. "They ought to make them pick cotton all day. It's a lot harder than what they're doing."²⁶⁶

blacks. *Id.* at 127 n.4. A most extraordinary account of forced labor in the turpentine camps may be found in CAPTAIN J.C. POWELL, *AMERICAN SIBERIA* (1891).

263. WALTER WILSON, *FORCED LABOR IN THE UNITED STATES 70-71* (1933).

264. *Id.* at 70 (quoting JOHN L. SPIVAK, *GEORGIA NIGGER* (1932)).

265. The revival of chain gangs in Alabama, partly to discourage crime by showing how miserable prison could be, came to a quiet end. *News Alabama Ends Chain Gangs*, ATLANTA J. & CONST., Tuesday, Oct. 26, 1999, at A6. A spokesman for Corrections stated that the Department could not spare additional officers to accompany medium-security inmates on roadsides. *Id.*

266. Leland & Smith, *supra* note 246. See also William Booth, *Show Time: It's the Sound of the Men Working on the Chain Gang. Oooh. Aaaah.*, WASH. POST, Dec. 17, 1995, at F1, F4, F8.

The five men leashed together are now allowed to form their own groups, and so blacks are mostly chained to blacks, whites to whites. The guards say this is better. Less fighting. The black inmates resting a few feet from the rock pile say they feel like slaves. And the white prisoners say they feel they are being treated like blacks." An inmate theorizes, "[t]hese white boys are just like sprinklings on a cake."

Id.

So once more (for a short interval), the state of Alabama, where the history of slavery was so deplorable, without very much national clamor took a giant step backward. Notwithstanding that convicts in many states routinely work on public roads (picking up litter and tidying up the landscape) clearly it was the chains that made the difference. As chain gangs appeared along the Alabama roadsides, they drew hundreds of national and international reporters and photographers. The international press included representatives from Japan and Europe, and they seemed fascinated by the shackled men. It was like the good old days, a stereotyped Dixie portrait of the Old South, typecast scenes of young black men as they shuffled along in chains under the watchful eye of the shot-gun totting white guards wearing mirrored glasses. The chains, as a southern emblem of slavery, were the whole point. The national press did not come to view a prison work crew. Sure, some of the guards were black and there was a handful of white convicts, but the basic point was the same.²⁶⁷

History and logic, as well as contemporary standards of decency, have shaped the progress of American prison jurisprudence. The Quakers had hoped to replace corporal punishment with penitence in a belief that it was more merciful, so they founded the penitentiary, with all their aspirations for moral reform and redemption. It is a paradox that today prisoners face both the demoralization of their spirit as well as wanton acts of physical brutality. The legacy of cruelty remains:

Outside the walls of Alabama's Limestone Correctional Facility stands a tall U-shaped metal bar, called "the hitching post," where a convict is chained for refusing to work on the chain gang. He can move around, but has no way to escape. The convict remains on the hitching post, with hands cuffed above his head, from 8:30 a.m. until 6:30 p.m.²⁶⁸

The Shawshank Redemption is especially timely for its portrayal of the brutal treatment of convicts in the Big House. To remove all traces of their former identity in the free world (and in part to demean them) the new convicts must undress, be hosed down with high pressure water spray, and dusted with white delousing powder. They are then given a new prison outfit and a Bible, and paraded naked to their individual six-by-eight foot cells; their new residence in the cellblock of a three-story structure of cement and dark steel. The old cons know that somebody always breaks down, sobbing. Red had bet his money on Andy: "that tall drink of water with a silver spoon up his ass."²⁶⁹

267. Booth, *supra* note 266.

268. Peter Morrison, *The New Chain Gang*, NAT'L L.J., Aug. 21, 1995, at A1. See also *Hope v. Pelzer*, 122 S. Ct. 2508 (2002). An inmate on Alabama's chain gang was twice handcuffed to a hitching post for disruptive conduct. The Supreme Court condemned the practice that permitted the corrections officers to attach the convict to a hitching post for a 7-hour period, with unnecessary exposure to the heat of the sun and with prolonged thirst and taunting, as well as deprivation of bathroom breaks, as punitive treatment that amounted to the gratuitous infliction of wanton and unnecessary pain in violation of the Eighth Amendment. *Id.* at 2514-15.

269. *THE SHAWSHANK REDEMPTION*, *supra* note 42.

The first night's the toughest, no doubt about it. They march you in naked as the day you were born, skin burning and half blind from that delousing shit they throw on you, and when they put you in that cell, when those bars slam home, that's when you know it's for real. Old life blown away in the blink of an eye. Nothing left but all the time in the world to think about it. Most new fish come close to madness the first night.²⁷⁰

As a diversion, the old cons bet on who will break, as they taunt, and "bait the fishes" and "they don't quit till they reel someone in."²⁷¹ The one nicknamed "Fat-Ass" is cold-heartedly tormented about being sodomized by "the big ol' bull queers that would just love to make your acquaintance, especially that big white mushy butt of yours."²⁷² When the squeamish victim bawls and pleads desperately to the Captain of the Guards that he does not belong here, and wants to go home, he is unmercifully whacked with a baton and kicked in the face until he lies still on the floor of the prison catwalk. "Call the trustees. Take that tub of shit down to the infirmary,"²⁷³ Captain Hadley tells his subordinates. Left without medical treatment in the infirmary, "Fat-Ass" succumbs to his savage beating.

As if plucked from these scenes of *The Shawshank Redemption*, correctional officers in the state of Georgia followed the movie script as they resurrected their past ghastly treatment of prisoners. Once nationally known for its inhuman handling of convicts on chain gangs, under the encouraging eye of its corrections Commissioner, Wayne Garner, the inmates at Hayes Correctional Institute in Georgia (like their counterparts at Shawshank) were brutalized for no apparent reason. Prison employees (counselors, librarians and even guards) at Hays State Prison exposed the shakedown attacks on unresisting inmates by outfitted members of the tactical squad of the Georgia Department of Corrections as "a grisly blood bath overseen by the head of the agency."²⁷⁴ Commissioner Garner, a mortician by trade and education, who had already undercut the professionalism of his appointed position when he indifferently classified "one-third of the inmates as 'ain't fit to kill,'" apparently participated in the brutality that occurred at Hays Prison.²⁷⁵ Garner donned the all-black uniform of the tactical squad (the highly trained tough enforcers of prison discipline) and set the tone for what happened in the shakedown.²⁷⁶ Georgia prison officials detailed how members of the tactical squad slammed prisoners' faces into cinder-box walls, dragged them

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. Rhonda Cook, *Prison Officials Recall Blood Bath*, ATLANTA J. & CONST., May 17, 1997, at D2.

275. Nat Hentoff, *Out of Control*, VILLAGE VOICE, July 29, 1997, at 22.

276. One witness said the Garner boasted to the prison staff that they had come in and "kicked butt." Special Editorial, *Garner: An Error in Corrections*, ATLANTA J. & CONST., MAY 25, 1997, at R4.

along concrete floors, tossed them over railings, and then refused medical treatment.²⁷⁷ Georgia once more became the model for a malevolent corrections system. Neither former Georgia's progressive Governor, Zell Miller, nor any other state public official voiced any inclination to investigate, nor has any other politician shown the slightest concern for the beaten prisoners. The state's official silence bolstered the conviction that the government (and perhaps the public) had once more turned a blind eye to the inhabitants in our prisons.²⁷⁸ The politicians seem to forget these people are our sons and daughters.²⁷⁹ The most poignant scene in *Cool Hand Luke* occurs when Luke's sickly looking, dying mother Arletta (Jo Van Fleet), chain-smoking and coughing, visits one Sunday afternoon to say her final goodbye. Stiffly and painfully propped up in the bed of the pickup truck she speaks about Luke's broken childhood and abandonment by his father, who though not much for sticking around, was otherwise a good man. Arletta, like most parents still cares deeply for Luke, and expresses warm affection for her favored wayward son. After Arletta confesses her disappointment about how he turned out (and guilt about her contribution as his mother) Luke tells her that she has done her best raising him. She wishes that she could forget, abandon him.

You know, sometimes, I wish people was like dogs, Luke.

Comes a time, a day like, when the bitch just don't recognize the pups no more, so she don't have no hopes, nor love to give her pain.

She just don't give a damn

277. Cook, *supra* note 274. The head of the elite tactical squad that spearheaded the shakedown told how he was swept up in the violence, which he characterized as "a dadgummed shark frenzy." ATLANTA J. & CONST., Editorial, Oct. 17, 1997, at A18.

278. In another of a series of surprise inspections at which Commissioner Wayne Garner was present, Frank Snyder told the FBI that his son, while confined at Wayne Correctional Institute, was beaten and had his penis stomped on by prison guards. Another inmate confirmed the story, telling his grandmother that the prison guards picked up Frank Snyder II numerous times and dropped him face down on the pavement, beat and punch him in the groin with riot batons, and stepped on his penis like a cigarette. Rhonda Cook, *Prison Beating Reported*, ATLANTA J. & CONST., Feb. 2, 1996, at D1. The Georgia Department of Corrections has apparently extended its degradation practices to include the humiliation of the inmate's family members. Many women have reported being harassed by prison guards over dress code and posture. They have been told to sit up straight and keep their knees together (even when wearing jeans), to refrain from crossing their legs, and turned away for wearing "suggestive and inappropriate" clothing. After holding committee hearings a state representative commented that the visitors are "human and they can't help [that] . . . there [stet] loved ones committed" crimes. "When they do their visitation, they are willing to visit by [the agency's] rules and regulations. But they are tired of being treated in such an impersonal manner by guards." Rhonda Cook, *Rules Unfairly Used, Inmates Families Say*, ATLANTA J. & CONST., April 26, 2002, at D6.

279. There is a growing and prevailing sentiment that criminals are coddled in prison. "Two [Hamilton County (Chattanooga) Tennessee] grand juries in a joint report recently told officials that life in the local jail was not tough enough. 'Luxuries such as television and telephone usage should not be so accessible and should be used more as a reward system. Until punishment is uncomfortable or painful enough to bring about a change in behavior, we will continue to see these same criminals as the main players in the game of the revolving door in the corrections department.'" Curriden, *supra* note 6, at 72.

Unable to do this, she hands him her pack of cigarettes.²⁸⁰

Prison movies help to humanize the lawbreaker by presenting him as a person loved by a family that envisions him as a valued citizen of our society. The period of incarceration is a time to encourage self-reliance and a sense of responsibility. We should spark an interest in the best that our democracy has to offer since almost all convicts will ultimately be released. But Red, he was wise to the community's need for revenge: "[T]hey send you here for life and that's exactly what they take, the part that counts anyway."²⁸¹ After spending forty years of his life sentence in Shawshank, he is now more straightforward with the parole board about his rehabilitation and the regret he feels for the crime he committed so long ago:

Rehabilitated? Well now, let me see. You know, I don't have any idea what that means . . . I know what you think it means, sonny. To me, it's just a made-up word, a politician's word so that young fellas like yourself can wear a suit and a tie and have a job. What do you really want to know? Am I sorry for what I did? . . . There's not a day goes by I don't feel regret. And not because I'm in here or because you think I should. I look back on the way I was then. A young, stupid kid who committed that terrible crime. I want to talk to him. I want to try and talk some sense to him. Tell him the way things are. But I can't. That kid's long gone. This old man is all that's left. I gotta live with that. 'Rehabilitated?' That's just a bull shit word. So you go on and stamp your forms, sonny, and stop wasting my time. Because to tell you the truth, I don't give a shit.²⁸²

Popular films serve as a barometer, and can operate as a catalyst to stimulate us to demand political action. Andy Dufrense's dreams and illusions ease him through daily prison life, as he discovers that he can survive by using his mind as well as his heart. Andy's aspirations provided his mind with an escape from reality, as well as a hope for future possibilities. The public must encourage political leaders to provide a more positive prison climate, one that does not imprison the convicts mind.²⁸³ Plato considered that the soul was linked to the world of ideas

280. COOL HAND LUKE, *supra* note 43. This is one of Mr. Costner's favorite scenes. The mother and son have a coquettish exchange. As his awestruck young nephew asks Luke about the chains on his ankles, Luke tells him that they are not medals. "[I]nstead of watching Mr. Newman deliver the line, the camera cuts to Ms. Van Fleet's face as she registers the pain." Lyman, *supra* note 217. After Luke's mother dies, the Captain orders him to be placed in the "windowless box" in order to keep him from getting "rabbit in his blood" and running away to attend his mother's funeral. One of the bosses, in a subtle moment of gentleness and sympathy, offers to pray for his Ma. "I wanna say a prayer for your Ma, Luke. . . . Sorry Luke. Just doin' my job. You gotta appreciate that." Luke explains that this is no way for men to behave. "Aw, callin' it your job don't make it right, boss." COOL HAND LUKE, *supra* note 43.

281. THE SHAWSHANK REDEMPTION, *supra* note 42.

282. *Id.*

283. See CHARLES DICKENS, AMERICAN NOTES AND PICTURES FROM ITALY 109 (Oxford Univ. Press 1957) (1842). Charles Dickens was critical of the Quaker theory of solitary confinement and after his visit to Cherry Hill blamed the penitentiary of "wear[ing] the mind into a morbid state." *Id.*

and was punished by being imprisoned in the human body.²⁸⁴ Andy pursued freedom from within his soul. His escape through the slime of Shawshank's sewage system yielded the final release of his body and spirit from prison.²⁸⁵

Andy sought to better the daily life of Shawshank's inhabitants. For a long time, with no success, he desperately sought to enhance the prison library. After six years of appeal to the state legislature, to his astonishment, boxes of donated books are dispatched to Shawshank. To cherish this moment, Andy browses through a stack of used record albums and finds Mozart's opera, *The Marriage of Figaro*. He locks the door to the warden's office, places the record on a phonograph player, and broadcasts the opera on the public address system. Failing to heed the Warden's demand to immediately open the door, Andy relaxes on the warden's chair, with his arms folded behind his head, and a sly smirk on his face, he senses the music and tastes his dream of redemption. The guards and the prisoners in the open yard are first astonished, and then mesmerized by the music as it streams from the prison loudspeakers and soars over them to the entire prison. Rhapsodized, Red reflects:

I have no idea to this day what those two Italian ladies were singin' about. Truth is, I don't want to know. Some things are best left unsaid. I like to think they were singin' about something so beautiful it can't be expressed in words and makes your heart ache because of it. I tell you, those voices soared. Higher and farther than anybody in a gray place dares to dream. It was like some beautiful bird flapped into our drab little cage and made those walls dissolve away. And for the briefest of moments, every last man at Shawshank felt free.²⁸⁶

Andy Dufresne was a different kind of convict; his carefree attitude shielded him from Shawshank's brutalities. Red tells how "[h]e had a quiet way about him, a walk and a talk that just wasn't normal around here. He strolled, like a man in a park without a care or a worry in the world. Like he had on an invisible coat that would shield him from this place."²⁸⁷ Despite the hardships, he was able to hold onto his sense of personal worth. Andy had Mozart's music in his head and heart. Andy shared his feeling with Red that music (hope) is especially needed in prison so that they don't forget that "there are places in the world that aren't made out of stone, that there's something' inside that they can't get to, that they can't touch. It's yours."²⁸⁸ Just as the music touched Shaw-

284. See HAROLD NORTH FOWLER, *PLATO IN TWELVE VOLUMES, PHAEDO* 229-395 (1982). "[T]he body is constantly breaking in upon our studies and disturbing us with noise and confusion, so that it prevents our beholding the truth, and in fact we perceive that, if we are ever to know anything absolutely, we must be free from the body and must behold the actual realities with the eye of the soul alone." *Id.* at 231.

285. See FOUCAULT, *supra* note 233, at 11. Foucault regarded that the body as the instrumentality to reach the soul.

286. *THE SHAWSHANK REDEMPTION*, *supra* note 42.

287. *Id.*

288. *Id.*

shank's inhabitants, good films impact our conscience, and reveal the realities of prison life.