

# The Modern Plantation: The Continuities of Convict-Leasing and an Analysis of Arkansas Prison Systems

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American prisons have a collectively dark history that lacks any silver linings. When examined on a national-scale, the problem of mass incarceration is undeniably overwhelming, and it is difficult to fully understand why penal institutions are structured as they are. Southern states are often highlighted in the news, and Arkansas particularly has continued making headlines in recent years. Between back-to-back executions, complaints regarding medical and health care, and the state's inability to maintain an adequate staff of guards and officers, it is clear that Arkansas penitentiaries still have "room for improvement," as noted by Arkansas Department of Corrections (ADC) director, Wendy Kelley last summer.<sup>1</sup> Instead of examining Arkansas prisons in different eras, or as separate pieces, I have attempted to

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<sup>1</sup>"Families of Arkansas inmates take complaints to legislators," *Associated Press*, Channel 3 News, 15 June 2018, Accessed 8 April 2019, <https://wreg.com/2018/06/15/families-of-arkansas-inmates-take-complaints-to-legislators/>; Jacob Rosenberg, "ADC can't retain guards," *Arkansas Times*, 1 February 2018, Accessed 26 March 2019, <https://www.arktimes.com/arkansas/adc-cant-retain-guards/Content?oid=14121658>; Mark Berman, "Arkansas carries out country's first back-to-back executions in almost two decades," *The Washington Post*, 24 April 2017.

understand this story in its entirety, from the first days of statehood, weaving together a larger narrative that traces the continuities of neglect that have consistently characterized the state's penal system.<sup>2</sup>

Since its creation, Arkansas penitentiaries have been understaffed and underfunded, fueling a cycle of violence and recidivism among inmates and officers that continues today. More than a third of the ADC's new hires in 2017 left before the year was up, despite having wages double (or more) than the state's minimum.<sup>3</sup> Former guards Christina Hall and Malik Appleby testified to a "hectic workplace where criticism of standard practice[s] [was] treated with hostility." Hall described the "internal culture" and the administration as one that "ignores the realities of being a correctional officer."<sup>4</sup> But despite whistleblowers like Hall and Appleby who have more frequently spoken with local Arkansas publications such as the *Arkansas Times*, these tales are nothing new, but rather another chapter in the story of the state's penitentiaries. For at least the last century, Arkansas prisons have existed in a cycle: making national news from uncovered scandals and atrocities, which results in attempted reforms that are ultimately insignificant. Arkansas has never known a time when African Americans are *not* disproportionately jailed. Further, Arkansas has

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<sup>2</sup>Arkansas presently has 22 prisons: Barbara Ester Unit, Benton Unit, Boot Camp Program, Cummins Unit, Delta Regional Unit, Diagnostic Unit, East Arkansas Regional Uni, Grimes Correctional Facility, J. Aaron Hawkins Sr. Center for Women, Jefferson County Jail/Correctional Facility, Maximum Security Unit, McPherson Correctional Facility, Mississippi County Work Release Center, North Central Unit, Northwest Arkansas Work Release Program, Ouachita River Unit, Pine Bluff Unit, Texarkansas Regional Correction Center, Tucker Unit, Varner Unit, Varner Super Max, and Wrightsville Unit. This paper primarily discusses Cummins (minimum, medium, and maximum) and Tucker Unit (minimum/medium).

<sup>3</sup>The ADC is the Arkansas Department of Corrections; 38% of the correctional officers hired in 2017; Rosenberg, "ADC can't retain guards," *Arkansas Times*, 1 February 2018.

<sup>4</sup>Rosenberg, "ADC can't retain guards," *Arkansas Times*, 1 February 2018.

never known a time when prisons prioritized rehabilitating inmates rather than capitalizing on them. Since the final hours of the Civil War, Arkansas has struggled with what to do with their prisoners. But with convicts out of sight, their well-being has continuously slipped the state's consciousness, making the present status quo seem inevitable and unfixable. Ultimately, the Arkansas penal system has never been structured for deterrence or rehabilitation. Instead, it has been repeatedly exploited as a free labor source.

Historian Calvin R. Ledbetter Jr. analyzed convict-leasing and what he calls the "eternal question" of what to do with the state's prison population, concluding that southern states used convict-leasing as a solution to build penitentiaries and house convicts while still allowing former slave owners a labor source.<sup>5</sup> The narratives and interviews from over 2,000 former slaves, that were discovered by historian Horace D. Nash, illustrate what life in Reconstructed Arkansas looked and felt like — both the opportunity of emancipation and the racial cleansing that coincided.<sup>6</sup> After his tenure in Arkansas running Tucker and Cummins Prisons, penologist Thomas Murton exposed his version of the institutional atrocities in his book *Accomplices to the Crime*, including inmate testimonies and first-hand accounts of the Tucker and Cummins Prison Units.<sup>7</sup> In more recent decades, Arkansas has made global news for selling dirty blood plasma internationally before and during Governor Clinton's tenure. Yet, there is still space for understanding the continuities that characterize the penal system, beyond the demographics that fill each cell. Black men disproportionately jailed is

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<sup>5</sup>Calvin R. Ledbetter Jr., "The Long Struggle to End Convict-Leasing in Arkansas," *The Arkansas Historical Quarterly* 52, no. 1 (Spring 1993): 1.

<sup>6</sup>Horace D. Nash, "Blacks in Arkansas During Reconstruction: The Ex-Slave Narratives," *The Arkansas Historical Quarterly* 48, no. 3 (Autumn 1989): 243.

<sup>7</sup>Thomas Murton & Joe Hyams, *Accomplices to the Crime*, (London: Michael Joseph, 1999).

unfortunately not a new revelation in the United States, nor is it the focus of this paper. Instead, the systematic flaws of the state's penitentiaries that have remained unchanged and continue to inspire recidivism are being questioned. Which systems of abuse have continued despite repeated attempts at reform? Why are Arkansas jails *still* overcrowded and understaffed today? And what are the current, outstanding factors that have led 26,000 Arkansans into cells?

To begin this essay, I attempt to understand life in Arkansas during Reconstruction for emancipated slaves, paying particular attention to opportunities presented to former slaves, the racial violence ex-slaves experienced, and the incredible precedent that the convict-leasing system put in place. I continue by addressing the ways in which brutality and torture defined Arkansas penitentiaries throughout the 20th century, as well as how these contentious problems were handled once they were brought to light. I discuss both the human and economic consequences of the dirty blood plasma program during the late twentieth century and the impact of such an expansive program. To conclude, this paper examines what human capacity inmates today have in society and the reality of prison farms and prison labor. Further, I elaborate on external factors such as poverty and eviction that lead a large fraction of Arkansans to prison cells.

Like the rest of the southern United States, the Civil War and emancipation caused intense economic disruptions in Arkansas. In many cases, freed slaves continued the same plantation labor they had been doing before the Civil War. By 1864, for example, over 3,500 freedmen were working on plantations throughout Arkansas.<sup>8</sup> Some had stayed with their former masters after working out a labor agreement, but many migrated throughout the southern United States.

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<sup>8</sup>"Arkansas and Reconstruction: 1862-1865," The Butler Center for Arkansas Studies, Accessed 25 March 2019, <https://www.butlercenter.org/arkansas-and-reconstruction/>.

Rumors and stories that Arkansas was “The Promised Land” where “money grew on trees like apples” circulated regionally, only for migrants to learn upon arrival that circumstances were “not much different [than] slavery.”<sup>9</sup> By 1865, around 110,000 African-Americans were living in Arkansas, but in the long run violence & oppression characterized the black experience in Arkansas rather than opportunity and promise.<sup>10</sup>

Drawn into the Arkansas River Valley to work on the Fort Smith-Little Rock railroad and with the promise of cheap land, ex-slaves migrated rapidly in the 1870s. In Conway County alone, the black population increased from 630 individuals in 1870 to 7,671 in 1890.<sup>11</sup> During the period, African Americans became increasingly politically active. Despite segregation, some educated, ambitious black men found opportunities for success and throughout the 1880s, Arkansas Democrats & Republicans supported some level of black political participation.<sup>12</sup> Pointedly, between 1880 and 1890, at least “thirty black legislators served in the general assembly with one elected to the senate.” However, the appearance of the Klu Klux Klan only one month after the first black legislator was elected, along with the refusal to ratify the fourteenth amendment solidified that Arkansas was still deeply defined by race.<sup>13</sup> The threat of a growing black middle-class and black

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<sup>9</sup>Nash, “Blacks in Arkansas During Reconstruction: The Ex-Slave Narratives,” *The Arkansas Historical Quarterly*, 248.

<sup>10</sup>Fon Louise Gordon, *Caste & Class: The Black Experience in Arkansas, 1880-1920* (Athens: University of Georgia Press, 1995): 4.

<sup>11</sup>Guy Lancaster, “Nightriding and Racial Cleansing in the Arkansas River Valley,” *The Arkansas Historical Quarterly* 72, no. 3 (Autumn 2013): 247.

<sup>12</sup>Brian D. Greer, “Klu Klux Klan (Reconstruction),” *Arkansas Encyclopedia of History and Culture*, Updated 11 December 2018, Accessed 25 March 2019.

<http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=229>; Gordon, *Caste & Class*, 8.

<sup>13</sup>‘Arkansas and Reconstruction: 1866-1869,’ The Butler Center for Arkansas Studies.

rural class resulted in many whites continuing to demand black disenfranchisement.<sup>14</sup>

While Arkansas, unlike its other neighboring states, did allow blacks to enjoy some political participation, make contracts, and own property, African Americans were still undeniably under siege and unable to escape individuals dedicated to racial cleansing and the convict-leasing system. Black codes made it the job of every officer to “arrest and carry back” any slave who had “quit the service of his or her employer before the expiration of his or her term of service.”<sup>15</sup> Black codes prevented freedmen from voting, participating in the militia, serving on juries, and intermarrying, reinforcing their status as second-class citizens, under the control of their white countrymen.<sup>16</sup> The institutionalization of Jim Crow continued to encourage exploitive legislation like the Arkansas Larceny Act of 1873, which ultimately accounted for much of the growing population of convicts.<sup>17</sup> Black inmates, however, could barely classify as citizens at all. Without chattel slavery in place, Arkansans became reliant on the state to supply “prison slaves” for labor.<sup>18</sup>

Throughout Reconstruction, the state paid private citizens and/or industries brought their work *to* the prison for inmates to do. As early as 1858, “the legislature allowed the state to lease the entire penitentiary

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<sup>14</sup>Gordon, *Caste & Class*, 24.

<sup>15</sup>LeFlouria, “Under the Sting of the Last,” *The Journal of African-American History* 100 no. 3 (Summer 2015): 9.

<sup>16</sup>Arkansas and Reconstruction: 1866-1869,’ The Butler Center for Arkansas Studies.

<sup>17</sup>Ledbetter , “The Long Struggle to End Convict-Leasing in Arkansas,” *The Arkansas Historical Quarterly*; Gordon, *Caste & Class*, 2. The Arkansas Larceny Act of 1873 made theft of two dollars or more a felony and resulted in 1-5 years in prison.

<sup>18</sup>Talitha L. LeFlouria, “Under the Sting of the Last”: Gendered Violence, Terror, and Resistance in the South’s Convict Camps,” *The Journal of African-American History* 100 no. 3 (Summer 2015): 9.

and grounds rather than just the convicts.”<sup>19</sup> Bidders were able to pay “the state in exchange for control over the lives of prisoners.”<sup>20</sup> Leases could be monthly or yearly, with no cap on how many total convicts a private citizen could lease. Initially, the state allowed prisoners to be leased for short periods of time, typically one or two years. Convicts undeniably provided a decent and familiar labor source to rebuild what was left of southern infrastructure, not demolished by the Civil War.<sup>21</sup> This was the case for the firm Hodges, Peay, and Ayliff in 1867, which paid the state 35 cents per convict, per day. Asa Hodges particularly exemplifies how intertwined personal and political motives could be. Hodges was the owner of a brick and wagon manufacturing company, as well as “prominent Republican politician,” and took over the prisons in 1869.<sup>22</sup> Just a year later, Hodges was elected as a state Senator.<sup>23</sup>

Convict leasing expanded swiftly after being codified in 1873. With codification, state legislatures revised the convict-lease program and ended payments to lessees to support prisoners.<sup>24</sup> These revisions were structured so that the state would not spend a single cent on convict-leasing, rather, the lessee would. That year, the state made a contract with John M. Peck (and his silent partner, Colonel Zebulon

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<sup>19</sup>Ledbetter Jr., “The Long Struggle to End Convict-Leasing in Arkansas.”

<sup>20</sup>Jaron Brown, “Rooted in Slavery: Prison Labor Exploitation.” *Race, Poverty, & the Environment* 17. no. 1 (Spring 2010): 79.

<sup>21</sup>Ibid.

<sup>22</sup>Carl A. Moneyhon, “Convict Lease System,” *Arkansas Encyclopedia of History & Culture*, Updated 3 March 2016, Accessed 6 April 2019, <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=4153>.

<sup>23</sup>William H. Pruden III, “Asa Hodges (1822-1900),” *Arkansas Encyclopedia of History & Culture*, Updated 25 January 2017, Accessed 6 April 29, <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=4631>.

<sup>24</sup>Steven Teske, “Penal Systems,” *Arkansas Encyclopedia of History & Culture*, Updated 9 April 2019, Accessed 25 March 2019, <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=3485>.

Ward), that required him to shelter, clothe, and feed the convicts he leased, ensuring the state would have no expenses.<sup>25</sup> By 1875, Ward bought out his partner and continued the contract until 1883, profiting greatly from his convict contract. It was Ward, and men in his position, who were the greatest beneficiaries of the rapid influx of prisoners due to legislation such as the Larceny Act and Black Codes. Pointedly, in his annual report to the Governor, Ward reported having 10 Arkansas convicts leased in December of 1875. That figure increased to 68 by November of 1876.<sup>26</sup> Ultimately, by the turn of the century, Arkansas had close to 800 incarcerated individuals, most of whom were black men being punished for petty crimes.<sup>27</sup>

It is undoubtedly clear that the the institution of slavery ultimately laid the foundation for southern penology.<sup>28</sup> Economic prosperity was an “elusive goal” for most individuals living in the impoverished state, consequently resulting in societal tensions across class and race lines. But African Americans in particular would be forced to wait almost another century for a ‘second Reconstruction’ to see their political, social, and educational rights begin to come to fruition.<sup>29</sup>

Specifically, convict-leasing set a century-long precedent for unsanitary and unhealthy living conditions for Arkansas inmates. When a measles epidemic killed 20% of the prison population in between 1880 and 1881, the Penitentiary Committee was sent to investigate. The

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<sup>25</sup>Moneyhon, “Convict Lease System,” *Arkansas Encyclopedia of History & Culture*.

<sup>26</sup>Jane Zimmerman, “The Convict Lease System in Arkansas and the Fight for Abolition,” *The Arkansas Historical Quarterly* 8, no. 3 (Autumn 1949): 173.

<sup>27</sup>Ryan Anthony Smith, “Laura Connor and the Limits of Prison Reform in 1920s Arkansas,” *The Arkansas Historical Quarterly* 77, no. 1 (Spring 2018): 55.

<sup>28</sup>Clyde Crosley, *Unfolding Misconceptions: A Study of the Arkansas Prison System* (Arlington: Liberal Arts Press, 1986): 21.

<sup>29</sup>A ‘Second Reconstruction’ refers to the Civil Rights Movement of the 1960s; ‘Arkansas and Reconstruction,’ The Butler Center for Arkansas Studies.



committee described the living conditions as “miserable” and categorized the “contract system” as “cruel, barbarous, and inhumane;”<sup>30</sup> three words that were again used to describe Arkansas prisons a century later. It comes as no surprise that the “conditions, trends, and attitudes” during this era reflected a pre-Civil War mentality that disproportionately affected black citizens. The criminal justice system essentially “perform[ed] the social function that had previously been carried out ... on slave plantations.”<sup>31</sup> Like slavery, convict-leasing was a violent and abusive institution that resulted in the death of approximately one in every four Arkansan inmates.<sup>32</sup>

Legislation was again revised for the convict-leasing program in 1883. Arkansas, like other states, required lessees to pay the states for their convicts. This transition alleviated some of the systematic abuse but simultaneously allowed the state to make great profits from the system. These revisions reinforced the continuation of convict-leasing and the financial gains only made it that much harder for the state to disassemble the program in the long run.<sup>33</sup> The Arkansas Industrial Company (AIC) illustrates how readily private citizens took to exploiting leased convicts.<sup>34</sup> The same year the state’s legislation changed, AIC began leasing convicts from the state for \$3.75 monthly, and subleasing them for \$12.75 monthly. By 1890, AIC was spending just \$28,894 annually for 690 convicts, equating to a little more than 12

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<sup>30</sup>Ledbetter Jr., “The Long Struggle to End Convict-Leasing in Arkansas,” 7.

<sup>31</sup>Malcolm M. Feeley & Edward L. Rubin, *Judicial Policy Making & the Modern State: How the Courts Reformed America’s Prisons*, (Cambridge: Cambridge University Press, 1998): 52.

<sup>32</sup>Brown, “Rooted in Slavery,” *Race, Poverty, & the Environment*, 80.

<sup>33</sup>Moneyhon, “Convict Lease System,” *Arkansas Encyclopedia of History & Culture*; Zimmerman, “The Convict Lease System in Arkansas and the Fight for Abolition,” *The Arkansas Historical Quarterly*, 174.

<sup>34</sup>The Arkansas Industrial Company was made up of three individuals, J.P. Townshend, L.A. Fitzpatrick, and L. Jones.

cents per day, per convict.<sup>35</sup> This example represents one of many situations that allowed revenue to be generated at the expense of human lives.

In 1887, the city of Coal Hill, Arkansas provided promotional pamphlets for prospective industries and workers in response to the rapid influx of coal mining in the region. To draw in migrants, the pamphlet described Coal Hill's "bright future" and "rich natural advantages," only to provide the opposite.<sup>36</sup> In 1888, a legislative committee began investigating conditions at Coal Hill after hearing rumors of its unregulated conditions. The Penitentiary Board was sent to investigate in 1890, and yet again their report found that "overcrowding, inadequate food and housing, and poor clothing" was the norm.<sup>37</sup> The conditions outlived the Coal Hill leased-convicts.<sup>38</sup>

In a forty-by-eighteen foot wide structure, with three small windows, between 60 and 140 convicts were housed.<sup>39</sup> Men were dying "by the dozens" for a multitude of reasons, mostly disease such as malaria, being overworked, or getting beaten to death.<sup>40</sup> As the Board began uncovering bodies, it was clear men were dying from getting whipped to death, just as they had been on plantations. Investigators

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<sup>35</sup>Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: University of South Carolina Press, 1996): 124; Mike Polston, "Coal Hill (Johnson County)," *The Encyclopedia of Arkansas History & Culture*, Updated 17 November 2016, Accessed 6 April, 2019,

<http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=912>.

<sup>36</sup>Polston, "Coal Hill (Johnson County)," *The Encyclopedia of Arkansas History & Culture*.

<sup>37</sup>Moneyhon, "Convict Lease System," *The Encyclopedia of Arkansas History & Culture*.

<http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=4153>.

<sup>38</sup>Ibid.

<sup>39</sup>Tom Dillard, "Convicts as coal miners," *Arkansas Times*, 10 March 2019, Accessed 28 April 2019, <https://www.arkansasonline.com/news/2019/mar/10/convicts-as-coal-miners-20190310/>.

<sup>40</sup>Ibid.

learned that three mine wardens had beaten convicts to death, one after receiving 400 lashes.<sup>41</sup> Another man was beaten so badly, he had no flesh on his back.<sup>42</sup> Moreover, the Warden of Coal Hill, J.A. Gifford, used convicts as resources for his own entertainment, forcing men to fight one another. After they died, men were carried across the street and taken to what had become a graveyard, put in a box, and buried about sixteen inches under the soil. Investigators, too, found 60 to 70 “bodies over which inquests had not been conducted as required by state law.”<sup>43</sup>

For leased convicts, generally, old railroad cars or “single-story wooden huts” could be called home, with cots filling the structure from wall to wall. To prevent runaways, authorities “shut up” the dwellings at night, leaving the air “indescribably foul.”<sup>44</sup> During the day, any number of preventative measures were taken to avoid runaways. Most notably, convicts’ feet were shackled together or iron balls were added to their shackles, and all convicts wore purposefully distinct black and white striped uniforms. However, once state legislatures became aware of conditions, there was the political space to make initial attempts to improve circumstances.<sup>45</sup>

Governor James P. Eagle called on state legislators in January 1893 to “erect a new penitentiary building supplied with machinery suitable for industrial work.”<sup>46</sup> The governor believed that “long-term and intelligent” convicts’ labor would best be put to use *inside* the prison walls, cutting granite or marble for new penitentiaries, making

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<sup>41</sup>Dillard, “Convicts as coal miners,” *Arkansas Times*.

<sup>42</sup>Mancini, *One Dies, Get Another*, 122.

<sup>43</sup>Dillard, “Convicts as coal miners,” *Arkansas Times*.

<sup>44</sup>Crosley. *Unfolding Misconceptions*, 21-22.

<sup>45</sup>Mancini, *One Dies, Get Another*, 122.

<sup>46</sup>Arkansas House Journal (1893), 84-87; Zimmerman, “The Convict Leasing System in Arkansas and the Fight for Abolition,” 176.

furniture and other products from timber, and producing textiles with cotton; outdoor farm labor was reserved for the “short-term and ignorant” inmates.<sup>47</sup> By March of 1893, the convict-lease program was again revised and put the penitentiaries under the control of the Arkansas Penitentiary board, which was also given rights to “purchase or lease farms upon which certain classes of convicts could be employed.”<sup>48</sup> The Arkansas Penitentiary Board (APB), however, was made up of only three individuals: the governor, secretary of state, and the attorney general. The APB was immediately authorized to “procure [convicts] as soon as possible” and to purchase, with available funds, “any lands, buildings, machinery, livestock, and tools” necessary to use and operate a penitentiary for “the largest number of convicts that can be accommodated.”<sup>49</sup> One of the first investments made by the APB after the Arkansas General Assembly’s ruling was purchasing a 10,000 acre plot in 1902. The land was quickly transformed into Cummins Plantation where black inmates were sent to pick cotton after conviction. The Tucker Prison Farm was purchased in 1916 for white inmates, who also picked cotton.<sup>50</sup> But despite being run by the APB, Arkansas prisons were consistently unsafe environments. As penal historian Clyde Crosley notes, “north of the 39th parallel the average death rate of twenty prisons was 14.9% per thousand, while south of that line there was an average mortality rate of 41.3% per thousand.”<sup>51</sup>

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<sup>47</sup>Arkansas House Journal (1893), 84-87; Ibid, 176.

<sup>48</sup>Zimmerman, “The Convict Leasing System in Arkansas and the Fight for Abolition,” 177.

<sup>49</sup>Ibid, 178.

<sup>50</sup>The Tucker Unit held only white inmates until 1970; Colin Woodward, “Tucker Prison Farm,” *Arkansas Encyclopedia of History and Culture*, Updated 8 September 2017, Accessed 15 March 2019, <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?search=1&entryID=7608>.

<sup>51</sup>Crosley, *Unfolding Misconceptions: A Study of the Arkansas Prison System* (Arlington: Liberal Arts Press, 1986): 24.

While it comes as no surprise that penitentiaries can be dangerous places, these staggering statistics indicate that it *would have* been possible to make Arkansas and southern prisons generally safe environments for inmates.

Governor Jeff Davis (1901-1907) took on penal reform directly throughout his tenure. The state penitentiary was demolished in 1899 in order to build a statehouse, begging the eternal question, what should be done with the state's prison population?<sup>52</sup> The APB decided to lease almost one-third of its convicts on ten-year contracts to build the new statehouse, despite its violation of state policies.<sup>53</sup> Governor George Donaghey (1909-1913) continued to demand penal reforms from the legislature throughout his tenure. In 1912, Donaghey determined how many prisoners could be held at a state farm in Grady, and subsequently paroled enough inmates to reduce the prison population to that figure.<sup>54</sup> The following year, Governor Donaghey pardoned 37% of the state's prison population (360 inmates), most of whom were serving relatively short sentences, effectively ending the convict-leasing system.<sup>55</sup> Within two months, the Arkansas legislature abolished convict-leasing.

But the official end of convict-leasing in 1913 did not end the "persistent evils that characterized it," but rather forced the creation of

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<sup>52</sup>Raymond O. Arsenault, "Jeff Davis (1862-1913)," *The Arkansas Encyclopedia of History and Culture*, Updated 17 August 2012, Accessed 6 April 2019, <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=98>; Ledbetter Jr., "The Long Struggle to End Convict-Leasing in Arkansas," 1.

<sup>53</sup>Ibid.

<sup>54</sup>Calvin Ledbetter, "George Washington Donaghey," *Encyclopedia of Arkansas History & Culture*, Updated 29 December 2019, Accessed 6 April 2019, <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?search=1&entryID=99>.

<sup>55</sup>Moneyhon, "Convict Lease System," *The Encyclopedia of Arkansas History & Culture*. <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=415>.

new strategies that continued to facilitate neglect and exploitation.<sup>56</sup> As the state brought convict-leasing to an end, it simultaneously purchased more farm land for prisons. Within three years of abolishing convict-leasing, there were seventeen convict camps across Arkansas, which paid the state nineteen cents a day, per convict.<sup>57</sup>

The Penitentiary Board and Commissioner of Agriculture, John H. Page, agreed to have convicts build a railroad to the recently purchased state farm, essentially continuing the convict-leasing system.<sup>58</sup> Inmates were placed under the control of the state penitentiary, which was authorized to use the prisoners for farming “on a self-sustaining basis.”<sup>59</sup> Convicts working and living in railroad camps were typically fed “sour beans and pork,” slept in “filth and vermin,” and the “slightest complaint” was rewarded with lashings.<sup>60</sup> The convict-leasing system was economically beneficial for the state during the Reconstruction era and throughout the early 1900s, but failed to create a system with sustainability. Consequently, Arkansas penitentiaries remained more or less unchanged for the first half of the twentieth century, despite calls for reform.

Black citizens and black convicts alike faced the constant threat of violence and brutality. Though convict-leasing had been abolished, both Tucker and Cummins prisons were expected to be “self-sustaining.” In reality, these self-sustaining prisons were underfunded, understaffed, and simply brutal environments. Despite reforms promising that convicts would not work “more than 10 hours a day,” wardens and men

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<sup>56</sup>Ledbetter Jr., “The Long Struggle to End Convict-Leasing in Arkansas,” 27.

<sup>57</sup>Mancini, *One Dies, Get Another*, 128.

<sup>58</sup>Zimmerman, “The Convict Leasing System in Arkansas and the Fight for Abolition,” 185.

<sup>59</sup>*Ibid*, 186.

<sup>60</sup>Mancini, *One Dies, Get Another*, 129.

on the Penitentiary Board agreed that men would work from “Light till Night,” resulting in up to 15 hour work days in the summer months.<sup>61</sup>

Prisoners wrote to reformers like Laura Cornelius Connor through the 1920s and 1930s, begging for “someone to keep [us] from being brutally murdered” and to examine “just how rough their flesh [was] from the whippings.”<sup>62</sup> Adversaries to penal reform refuted their concerns by arguing that “no penitentiary is a picnic” and that men are not “sent there to frolic or to enjoy all the comforts of life.”<sup>63</sup> But allies of prison reform were not expecting to transform Cummins Unit into Cummins Countryside Resort, but rather were advocating for basic Constitutional rights. To further escalate tensions, the Arkansas penal system provided no resources for rehabilitation. On the contrary, it practically guaranteed the recidivism of “embittered men” who kept up “a continuous stream of crime.”<sup>64</sup>

During the 1950s, Winthrop Rockefeller moved to Arkansas after buying land on Petit Jean Mountain. Shortly after, he caught the attention of Governor Orval Faubus and was hired to the Arkansas Industrial Development Commission (now the Arkansas Economic Development Commission).<sup>65</sup> After spending nine years in his position, Rockefeller had substantially improved Arkansas’ economy and

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<sup>61</sup>Laura Cornelius Connor, “Draft of letter from Laura Connor to editor of *Arkansas Gazette*,” Butler Center for Arkansas Studies, 1922. Laura Connor was prison reformer and educator. During the 1920s, she served on the Penitentiary Board.

<sup>62</sup>“Prisoners of the Cummins Farm to Laura [sic] Connor,” Laura Cornelius Connor Papers, Butler Center for Arkansas Studies, 5 May 1921.

<sup>63</sup>Laura Cornelius Connor, “Comments on the Jury’s Findings: The Grand Jury Report,” Butler Center for Arkansas Studies, 1921.

<sup>64</sup>Laura Cornelius Connor, “Draft of letter from Laura Connor to editor of *Arkansas Gazette*,” Butler Center for Arkansas Studies, 1922.

<sup>65</sup>Tom W. Dillard, “Winthrop Rockefeller (1912-1973),” *The Encyclopedia of Arkansas History and Culture*, Updated April 4, 2018, Accessed November 20, 2018, <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=122>.

decided to run for governor. Rockefeller ran a passionate campaign, promising an “Era of Excellence,” and was specifically dedicated to improving Arkansas prisons. Before his entering office, the penal system had repeatedly been described as in “splendid shape.”<sup>66</sup> But when Rockefeller brought in out-of-state experts to evaluate, it proved to be anything but splendid, particularly at Cummins and Tucker Prisons Farms. And although Rockefeller was able to improve the quality of life inside prison walls, one idealistic individual could not erase or reconstruct the abusive systems that essentially kept the penitentiaries functioning.

Maintaining a well-equipped staff of officers and guards has been a constant problem with prisons across the nation, and Arkansas was no exception. State penitentiaries were drastically underfunded, leaving them unable to hire an adequate staff. For Arkansas, this resulted in a ratio of 1 officer per 65 inmates. Contrastingly, the national average was a ratio of 1 staff member per 7 inmates.<sup>67</sup> Ultimately, the lack of state employees promoted the creation of the “trustee system.”<sup>68</sup> The “trustee system” was used across the nation, but by Governor Rockefeller’s time in office, Arkansas was one of only three states in the country that used “trustees.”<sup>69</sup> This system was a hierarchy where armed inmates became guards of other, lower-ranking inmates.

Thomas Murton, a penal reformist brought in by Governor Rockefeller, found “trustees” were allowed to shoot anyone they pleased, inflict “brutal punishments,” and “use bribery to control the

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<sup>66</sup>Sifakis, *The Encyclopedia of American Prisoners*, 173.

<sup>67</sup>Ibid.

<sup>68</sup>Sifakis, *The Encyclopedia of American Prisoners*, 173.

<sup>69</sup>Colin Woodward, “The Arkansas Prison Scandal,” *The Arkansas Times* (Little Rock, AR) March 22, 2018.



food and mail distribution.”<sup>70</sup> With hundreds of inmates in prison, the state employed 25 individuals, meaning the rest of the guards were really just armed prisoners.<sup>71</sup> One of Murton’s biggest priorities was to abolish this hierarchical system entirely, however, it was not until 1975 that the last gun was taken from the last “trustee.”<sup>72</sup>

A thorough inspection of Tucker Prison Farm exposed the medical facility had been certified and licensed without an on-site inspection and the prison’s doctor had no medical or nursing training. Moreover, “algae [was] growing on the floor” and flood protection was often unreliable “resulting in fecal matter floating on the floor.”<sup>73</sup> In his memoir, Thomas Murton described finding rotten mattresses, leaking showers, and only “one wash basin, one urinal, and six commodes for each barrack of 100 men.”<sup>74</sup> Assistant Attorney General Eugene B. Hale Jr. described “prisoners drinking water and coffee from cans “[you and I] would empty dog food or beans from.”<sup>75</sup> Anywhere from “4 to 11 men” were crammed into an “eight- by ten-foot cell” furnished with infection and contagious bedding.<sup>76</sup> Put shortly, the unsanitary and overcrowded conditions eerily mirrored that of the convict-leasing era.

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<sup>70</sup>Jeannie Roberts, “Prison Farms: A Growing Concern for Some Critics,” *Arkansas Democrat Gazette* (Little Rock, AR), February 16, 2016 and Carl Sifakis, *The Encyclopedia of American Prisoners*, 174.

<sup>71</sup>John L. Ward, *The Arkansas Rockefeller* (Baton Rouge: Louisiana State University Press, 1978): 103.

<sup>72</sup>Barbash, Fred, “Arkansas Let the Light Into ‘Brubaker’s’ Dark Ages Prison,” *The Washington Post*, September 21, 1980, Accessed November 21, 2018.

<sup>73</sup>Goldsmith, “The State of Prison Health Care,” *Public Health Reports*, 570.

<sup>74</sup>Thomas Murton & Joe Hyams, *Accomplices to the Crime*, (London: Michael Joseph, 1999) 9.

<sup>75</sup>“WR Will Release CID Report Today,” *Arkansas Gazette* (Little Rock, AR) January 16, 1967.

<sup>76</sup>Feeley & Rubin, *Judicial Policy Making & the Modern State*, 60.

At this time, Arkansas was *the* only state in the United States where “whipping [of prisoners] was authorized by law and still practiced at the whim of the superintendent.”<sup>77</sup> During the first inmate shake-down Murton conducted, he found “61 knives, 5 pairs of fighting knuckles, 2 palm weights, 5 blackjacks and clubs, 3 straight razors, and one hatchet.”<sup>78</sup> These findings made it clear that violence and brutality were deeply embedded in the genetic structure of the penal institution.

One inmate told Hale that he had been beaten with brass knuckles inside the prison compound.<sup>79</sup> Another discussed “needles being placed under his fingernails and pushed deeply into his flesh.”<sup>80</sup> It was later reported that inmates who testified during this investigation were beaten by a “good squads of prisoners.”<sup>81</sup> Hale described the Death Row room as filled with “pistols, shotguns, high-powered rifles, and a submachine gun” stacked next to boxes of ammunition.<sup>82</sup> Kenneth Nicely, who began serving time at Cummins Unit in 1958, told the *Los Angeles Times* that survival inside the penitentiary was dependent on “inner strength” and the “ability to keep up with work demands” on the farm.<sup>83</sup> Nicely also noted that his first day working on the prison farm also included being forced to lay on his stomach and subsequently getting whipped with bullhide. Women, too, were subject to such abuse.

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<sup>77</sup>Murton & Hyams, *Accomplices to the Crime*, 5.

<sup>78</sup>Ibid, 9.

<sup>79</sup>Sifakis, *The Encyclopedia of American Prisoners*, 173.

<sup>80</sup>“WR Will Release CID Report Today,” *Arkansas Gazette* (Little Rock, AR) January 16, 1967.

<sup>81</sup>Sifakis, *The Encyclopedia of American Prisoners*, 173.

<sup>82</sup>Ibid.

<sup>83</sup>Melissa Nelson, “Arkansas Prison Still Shackled to a Dark Past,” *Los Angeles Times* (Varner, AR) 6 January 2002, Accessed 15 March 2019.

<https://www.latimes.com/archives/la-xpm-2002-jan-06-mn-20643-story.html>.

Lucille Smith, who began her life sentence in 1974, claims she spent her first few years living in a “converted chicken coop.”<sup>84</sup>

During a two-hour testimony before the Senate Subcommittee on Juvenile Delinquency, Murton described Cummins and Tucker Prison Farms as “the worst in the world,” claiming that prisoners were treated “like wild animals,” and provided a tape recording secretly made by inmates of an alleged beating of a 19-year old.<sup>85</sup> Aggression was the rule, not the exception, of life at Cummins and Tucker. Dale Reed, former warden at Cummins, attested in 2002 that the mentality was “just different” back then and there was simply “no due process,” but rather guards and officers acting reactively, on a whim.<sup>86</sup>

The most infamous torture tool in the penitentiary was the ‘Tucker telephone,’ which used an electric generator connected to a crank-type telephone wired with dry cell batteries. Inmates were undressed and strapped down to the ‘treatment table’ while electrodes were connected to their toes and genitals.<sup>87</sup> The crank was turned, sending an electric charge into the inmate’s body. A “long-distance call” meant the inmate got several charges, typically ending just before the individual was about to faint.<sup>88</sup>

Jim Burton, superintendent of Tucker prison, invented the device and used the Tucker telephone to torture inmates and extract

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<sup>84</sup>Melissa Nelson, “Arkansas Prison Still Shackled to a Dark Past,” *Los Angeles Times* (Varner, AR) 6 January 2002, Accessed 15 March 2019.

<https://www.latimes.com/archives/la-xpm-2002-jan-06-mn-20643-story.html>.

<sup>85</sup>Jimmy Jones, “Murton Describes Arkansas ‘Barbarism.’” *Arkansas Gazette* (Little Rock, AR), March 5, 1969.

<sup>86</sup>Nelson, “Arkansas Prison Still Shackled to a Dark Past,” *Los Angeles Times*,

<sup>87</sup>Goldsmith, “The State of Prison Health Care: A Review of the Literature” *Public Health Reports* 89, 570.

<sup>88</sup>“Fear and Loathing in the Arkansas State Penitentiary,” *Prison Culture*, July 30, 2012.

<http://www.usprisonculture.com/blog/2012/07/30/fear-and-loathing-in-the-arkansas-state-penitentiary-a-historical-account/>

information from them. After his investigation of Tucker Prison Farm, Hale told the *Arkansas Gazette* that any human capable of imposing such a punishment or even looking at the device unmoved “must have Hades as his destiny.” Hale claimed the prisons had “become the site of torture, brutality, extortion, and gross wrongdoings ... that were sadistic and barbaric.”<sup>89</sup>

Upon the discovery of the telephone, Burton was put on trial for administering cruel and unusual punishment on two inmates in 1964. Judge J. Smith Henley sentenced him to a \$1,000 fine and a suspended one-year prison sentence, regretting that he could not punish Burton more severely.<sup>90</sup> Judge Henley refused to send Burton to jail on the likelihood that “some one or more of these persons or their friends with whom you have dealt with in the past as inmates of the Arkansas Penitentiary will kill [you].”<sup>91</sup> Although Henley refrained from giving Burton a harsh sentence, he became an influential figure in exposing the atrocities committed at Cummins and Tucker.

Although changes have been minimal in Arkansas penitentiaries, one adamant judge advocating that basic humanity be displayed and enforced helped improve Arkansas' penitentiaries. In 1969, several inmates filed a class-action suit, *Holt v. Sarver*, claiming that the treatment they experienced in Arkansas prisons was unconstitutional.

*Holt v. Sarver* began a series of cases when several inmates filed a class-action suit in 1969, claiming the treatment they experienced inside Arkansas prisons was fundamentally unconstitutional.<sup>92</sup> Attorney Philip

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<sup>89</sup>“WR Will Release CID Report Today,” *Arkansas Gazette* (Little Rock, AR) January 16, 1967.

<sup>90</sup>“Ex-Arkansas Prison Head Fined for Cruel Treatment of Inmates,” *The New York Times* (New York, NY), January 18, 1970.

<sup>91</sup>*Ibid.*

<sup>92</sup>Feeley & Rubin, *Judicial Policy Making & the Modern State*, 60. *Holt v. Sarver* (1969), *Holt v. Sarver II* (1970), *Finney v. Hutto I* (1976), *Finney v. Hutto II* (1977).

Kaplan consolidated his clients' grievances into three arguments. First, the use of forced and uncompensated labor violated the 13th Amendment's prohibition of slavery. Second, the conditions and practices within the prison were so unsanitary, unhealthy, and dangerous that they constituted cruel & unusual punishment. Third, the prison's racial segregation of inmates violated the 14th Amendment's equal protection guarantee.<sup>93</sup>

The plaintiffs won the case and quickly brought additional charges the following year, in *Holt v. Sarver II*.<sup>94</sup> In the subsequent case, Judge Henley confronted "the system as a whole: its structure, organization, philosophy, and consequences."<sup>95</sup> During *Holt II* Judge Henley stated:

Being sentenced to an Arkansas prison amount[s] to banishment from a civilized society to a dark and evil world completely alien to the free world, a world that is administered by criminals under unwritten rules and customs completely forgotten to the free world culture.<sup>96</sup>

*Holt II* and the following case, *Finney v. Hutto*, have been characterized as the "most comprehensive, thorough examination" of a prison system ever undertaken by a court.<sup>97</sup> The concept that "subjecting inmates to the risk of inhuman treatment, as well as to the treatment itself, may be cruel and unusual" was of primary significance

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<sup>93</sup>Ibid, 62.

<sup>94</sup>"Holt v. Sarver." Civil Rights Litigation Clearinghouse: University of Michigan Law School.

Accessed September 24, 2018. <https://www.clearinghouse.net/detail.php?id=553>.

<sup>95</sup>Feeley & Rubin, *Judicial Policy Making & the Modern State*, 63.

<sup>96</sup>Ibid, 64.

<sup>97</sup>Ibid, 71.

in this series of cases.<sup>98</sup> Inmates being forced to live with “relentless fear” surrounded by “inherent danger,” in itself was ruled as essentially dehumanizing and lacking psychological integrity.<sup>99</sup>

After this ruling, Arkansas penitentiaries were put under federal supervision for the following thirteen years.<sup>100</sup> Judge Henley requested a state commissioned report that eventually revealed the total profits made from penitentiary labor. Although Murton had claimed during his tenure that the state of Arkansas made \$300,000 in prison labor profits in 1966, his claims were grossly underestimated. The state’s report proved \$1,763,487.09 was made in prison labor profits for the fiscal year 1966.<sup>101</sup> Additionally, Judge Henley ordered testimonies of prisoners be administered at both prisons, and that a copy of each testimony be brought to him. This order alone resulted in 75 first-hand witnesses “testifying on virtually every facet of prison life.”<sup>102</sup> The expansion of *Holt v. Sarver* brought national attention to the issue of life in American prisons.<sup>103</sup>

Judge Henley left the prison system significantly different than he found it, largely removing the “worst elements of chaos and cruelty.”<sup>104</sup> By 1980, the prisoners work force had expanded from under thirty employees to around 650, and increased the number of prison

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<sup>98</sup>“Constitutional Law. Cruel and Unusual Punishment. Arkansas State Penitentiary System Violates the Eighth Amendment. *Holt v. Sarver*, 309 F. Supp. 362 (E. D. Ark. 1970).” *Harvard Law Review* 84, no. 2 (1970):: 460. <https://www.jstor.org/stable/1339719>.

<sup>99</sup>Feeley & Rubin, *Judicial Policy Making & the Modern State*, 70.

<sup>100</sup>Nelson, “Arkansas Prison Still Shackled to a Dark Past,” *Los Angeles Times*.

<sup>101</sup>This figure is adjusted for inflation. Feeley & Rubin, *Judicial Policy Making & the Modern State*, 63.

<sup>102</sup>*Ibid*, 171.

<sup>103</sup>*Ibid*, 460.

<sup>104</sup>*Ibid*, 79.

guards from around a dozen to over 350 guards.<sup>105</sup> However, at night, the prisons were still drastically understaffed, with only four guards per 1,000 inmates.<sup>106</sup> Although improvements in penal reform were made, the mentality of seeing inmates as sub-human and unworthy of basic rights has continued, making it necessary to examine the impact their rulings have had. Challenges like overcrowding have been left largely unregulated, with much room left for ambiguity. Although judges can agree crowded prisons are a violation of constitutional rights, it remains unclear “what level of crowding” constitutes a violation of rights, what level of crowding should be tolerated, or how to resolve the issue of overcrowding at all.<sup>107</sup>

With scandal being standard in the cycle of attempted prison reform, the revelation of inmates selling their contaminated blood plasma to the state during the 1990s seemed almost inevitable. Although Murton claimed to have effectively ended the “blood-sucking program” during his tenure, it became clear, internationally, that he had not.<sup>108</sup> The bleeding program began with the infamous Dr. Austin R. Stough in 1963. Stough was an Oklahoma native who was a well known “dirty doctor.”<sup>109</sup>

Just one year before getting hired in Arkansas, Stough began a “plasmapheresis” program at the Oklahoma State Penitentiary. Under this

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<sup>105</sup>Barbash, “Arkansas Let the Light Into ‘Brubaker’s’ Dark Ages Prison,” *The Washington Post*, 21 September 1980.

<sup>106</sup>Ibid.

<sup>107</sup>Joshua Guetzkow and Eric Schoon, “If You Build It, They Will Fill It: The Consequences of Prison Overcrowding Litigation,” *Law & Society Review* 49, no. 2 (June 2015): 404. <https://www.jstor.org/stable/43670481>.

<sup>108</sup>Jimmy Jones, “Murton Describes Arkansas ‘Barbarism,’” *Arkansas Gazette* (Little Rock, AR) March 5, 1969.

<sup>109</sup>“Government Didn’t Act During Prison Experiments,” *Morgantown Post* (Morgantown, WV) July 30, 1969; Stough’s companies had repeatedly been accused of using “dangerous methods” and “inadequate equipment.”

program, he drew a whole unit of blood, took the plasma out, and reinjected the remaining cells back into the inmate. While the idea of this program sounds innovative, it resulted in life-altering health issues for men like Tommy Lee Knott. At 47 years old, Knott donated his O-positive blood but was re-injected with A-negative blood. As a result, his “liver, lungs, brain, and kidneys” were injured, his nervous system underwent “shock,” and he lost fifty-eight pounds in just seventeen days.<sup>110</sup>

Although Stough lost his job in Oklahoma, his performance in one state did not prevent “the repetition of it in another.” Arkansas swiftly took him and his methodology in. Stough’s attempts at “protein extracted plasmas” and vaccinating inmates were hazardous and typically left inmates in a worse condition than they began. Inmate Andrew “Buddy” Crawford exemplified Stough’s experiments perfectly. Upon arriving at Cummins, Stough began giving Crawford weekly shots for his whooping cough in November of 1963. After a two-month lapse in treatment, he was given his eighth vaccination. He quickly became ill, dying slowly and painfully. It was not until 1969 that Pine Bluff and Little Rock physicians investigated and attributed Crawford’s death to repeated vaccinations.<sup>111</sup> By this time, Dr. Stough was already producing practically one-fourth of the nation’s total plasma supply, running operations through Arkansas, Alabama, and Oklahoma; and although officials claimed there was “no connection” between the plasma program and hepatitis, prisoners were “dropping like flies.”<sup>112</sup>

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<sup>110</sup>Government Didn’t Act During Prison Experiments,” *Morgantown Post* (Morgantown, WV) July 30, 1969. Tommy Lee Knott later sued Dr. Stough for \$270,000 in damages.

<sup>111</sup>Walter Rugaber, “Prison Drug & Plasma Project Leave Fatal Trail,” *The New York Times*, 29 July 1969, Accessed 21 March 2019, Page 1.

<sup>112</sup>*Ibid.*



After a few years of making anywhere between \$130,000 and \$150,000 from selling the blood plasma of Arkansas convicts, Dr. Stough was exposed and forced out of his job in 1967.<sup>113</sup> As Walter Rugaber reported in the *New York Times* in 1969, Stough “marked out” the “forbidden trail” of unregulated medical practices. While Stough had no official medical or pharmacological training, he was said to have conducted anywhere from “twenty-five to fifty percent of initial drug tests in the United States.”<sup>114</sup>

Ironically, the state decided to both continue *and* expand this program. Inmates were paid \$7 per donation (an improvement from Dr. Stough’s \$3 payment) and their plasma was sold abroad for more than \$100. Typically, anywhere from 300 and 500 units were collected each weekend.<sup>115</sup> The federal Food & Drug Administration had ruled the blood plasma too unsafe for products in the United States during the 1980s, due to the fact that it was contaminated with diseases like AIDS and hepatitis-C. Not only were inmates facilitating the “bleeding” program themselves, but many testified to the unsanitary conditions as well. Samples were drawn with dirty needles, and were used by more than one prisoner; other reports claimed spoiled plasma would be refrozen and then sold.<sup>116</sup> Mike Galster worked at Cummins Prison from

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<sup>113</sup>Government Didn’t Act During Prison Experiments,” *Morgantown Post* (Morgantown, WV) July 30, 1969. Dr. Austin R. Stough made \$150,000 before taxes in 1966.

<sup>114</sup>Rugaber, “Prison Drug & Plasma Project Leave Fatal Trail,” *The New York Times*, 29 July 1969.

<sup>115</sup>Sophia Chase, “The Bloody Truth: Examining America’s Blood Industry & its Tort Liability Through the Arkansas Prison Plasma Scandal,” *William & Mary Business Law Review* 597 (2012) 615-617.

<http://.wm.edu/wmblr/vol3/iss2/6.scholarship.law>.

<sup>116</sup>“Tainted Blood: Poison from the Prisons,” *The Economist* (Little Rock, AR) 11 March 1999.

1979 to 1983, and claimed to witness prisoners being given “illegal narcotics” as payment for donations. Further, Galster himself claims to have donated blood at Cummins for two years and was only “sporadically checked for hepatitis.”<sup>117</sup>

Nonetheless, Arkansas prisons continued selling the same blood plasma to countries including (but not limited to) Canada, Japan, and the United Kingdom. The consequences of Arkansas’ dirty blood had widespread longevity. Canada was particularly hard hit after receiving more than 4,800 “questionable units” from both Arkansas and Louisiana throughout the 1980s.<sup>118</sup> Between 1980 and 1990, at least 30,000 individuals were infected with blood contaminated with hepatitis-C. Across the pond, in the United Kingdom, campaign groups like ‘Tainted Blood’ argued that hemophiliacs were used as human guinea pigs, in contradiction of Nuremberg Codes. In France, the former health secretary was found guilty of manslaughter. Japanese senior health officials were jailed for negligence.<sup>119</sup>

State officials denied any knowledge of such a substandard practice, but several inmates testified otherwise. Pointedly, John Byus, medical director of the Arkansas Department of Corrections, claimed to have “complete medical histories” of every donation and that a “complete screening” was done before every inmate donated their blood.<sup>120</sup> Further, Governor Clinton’s 1986 police investigation of problems at the the penitentiaries found “little cause for concern,” while outside investigators found “dozens of safety violations.”<sup>121</sup>

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<sup>117</sup>Suzi Parker, “Blood Money,” *Salon*, 24 December 2007.

<sup>118</sup>Mara Leveritt, “Blood Money,” *Arkansas Times* (Little Rock, AR) March 1991.

<sup>119</sup>Simon Hattenstone, “Britain’s use of contaminated blood was ‘no tragedy’ - it was a scandal,” *The Guardian*, 17 April 2018, Accessed 12 February 2019.

<sup>120</sup>*Ibid.*

<sup>121</sup>Suzi Parker, “Blood Money,” *Salon*, 24 December 1998.

It is hard to comprehend the magnitude and consequences of such a program in its entirety. But as decades passed, the program expanded and inmates bled more frequently, ultimately resulting in thousands of these blood samples making their way around the world, sickening innocent people and rapidly spreading disease. Canadian reports alleged that some prisoners were bled as much as 60 times a year.<sup>122</sup> By 1986, approximately 960 units of plasma were collected each week. For the same year, the Pine Bluff Biological Program (PBBP) grossed \$2.5 million. When accounting for inflation, PBBP would gross approximately \$4,333,655.65 as of September 2018.<sup>123</sup> Millions of dollars made at the expense of human lives, yet another pattern in the Arkansas penitentiary system.

By the mid-1990s, news of the dirty blood circulating globally had become public knowledge. Canadian journalist Mark Kennedy followed the story attentively, drawing connections between Clinton's administration and the malpractices happening within the state penitentiaries. Kennedy asserted that it was "widely understood" that many inmates practiced unsafe sex or were "intravenous drug addicts" whose blood had a high-risk of carrying the AIDS virus.<sup>124</sup> Canada claimed that the dirty blood plasma caused the "worst-ever preventable public health disaster," which led to at least "ten billion dollars in legal claims and criminal investigations."<sup>125</sup>

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<sup>122</sup>Deborah Orin, "Bad Blood Between Clinton Pal and Clinton," *New York Post*, 23 February 1999, Accessed 15 February 2019.

<sup>123</sup>"CPI Inflation Calculator," U.S. Department of Labor, Bureau of Labor Statistics, Accessed 25 October 2018. [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm).

<sup>124</sup>Mark Kennedy, "HIV blood came from Arkansas prison," *The Ottawa Citizen* (Ontario, Canada) 11 September 1998, A1 & A2.

<sup>125</sup>Andre Picard, "Krever Inquiry," *The Canadian Encyclopedia*, 7 February 2006, Accessed 12 February 2019. [www.thecanadianencyclopedia.ca/en/article/krever-inquiry](http://www.thecanadianencyclopedia.ca/en/article/krever-inquiry).

In the last several decades, mass incarceration has grown exponentially across the United States, particularly so in Arkansas. While 698 of every 100,000 citizens are incarcerated in the United States, 900 of every 100,000 Arkansans are incarcerated today.<sup>126</sup> At the turn of the millennium, 11,915 Arkansans were incarcerated.<sup>127</sup> But in less than two decades, that figure has increased more than 54% percent, with 26,000 individuals currently incarcerated in Arkansas.<sup>128</sup> Between 2006 and 2013 alone, Arkansas held the second largest percentage growth in jail population across the nation.<sup>129</sup> Specifically, tightened parole requirements and restrictions in 2013, resulted in a 17.7% increase in the state's penal population the following year - an increase seven times higher than the rest of the nation.<sup>130</sup> By August of 2015, 19,000 individuals were incarcerated, 3,000 more than the state's maximum

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<sup>126</sup>"Arkansas Profile," Prison Policy Initiative, Accessed November 22, 2018, <https://www.prisonpolicy.org/profiles/AR.html>.

<sup>127</sup>"Prisoners in 2000," United States Department of Justice: Bureau of Justice Statistics, August 2001. Accessed 27 March 2019. <https://www.bjs.gov/content/pub/pdf/p00.pdf>.

<sup>128</sup>"State By State Data: Arkansas," The Sentencing Project, Accessed October 25, 2018. <https://www.sentencingproject.org/the-facts/#map>; "Prison Reform," Arkansas Citizens First Congress, Accessed 15 March 2019. <https://www.citizensfirst.org/prison-reform>.

<sup>129</sup>Lindsey Millar, "Arkansas jail population has grown faster than all but one other state," *The Arkansas Times*, 29 July 2016, Accessed 18 March 2019; Paul Guerino, Paige M. Harrison, and William J. Sabol, "Prisoners in 2010," United States Department of Justice Bureau of Justice Statistics, December 2011, Accessed 27 March 2019, <https://www.bjs.gov/content/pub/pdf/p10.pdf>.

<sup>130</sup>David Reutter, "Overcrowding in Arkansas Prisons, Jails Spurs Call for Reform," *Prison Legal News*, 9 March 2017, Accessed 21 March 2019. <https://www.prisonlegalnews.org/news/2017/mar/9/overcrowding-arkansas-prisons-jails-spurs-call-reforms/>.

capacity.<sup>131</sup> Last August, Governor Asa Hutchinson admitted that 20 of the 23 state prisons were at capacity and only growing in population.<sup>132</sup>

So, how has the state adjusted to housing more than double the prisoners they grew accustomed to? Were more facilities built and more officers hired? What does life on the inside look like today, more than a century after convict-leasing came to an end? Have issues like overcrowding, understaffing, and inadequate facilities improved?

Substandard medical facilities and staff has been a persistent thorn in the side of the Arkansas Department of Corrections, but it is particularly troubling considering that as of 2015, Arkansas was ranked “second in the nation for federal lawsuits concerning medical and other conditions in the state’s prison system.”<sup>133</sup> The same year, inmate Alexander Gilliana filed a federal lawsuit against the warden of the Varner unit for being repeatedly denied critical medication for his kidney. The lawsuit elaborated on the overall lack of concern from guards and nurses, denying him medication for five of his first twelve days at the unit and lost his medication at least four times.<sup>134</sup> Between 2005 and 2017, over 140 lawsuits were filed against Correct Care Solutions, which provides Arkansas’ prison health care. Moreover, at

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<sup>131</sup>Ibid.

<sup>132</sup>Governor Asa Hutchinson, “Reduce mental illness in criminal justice system with treatment, not incarceration,” 22 August 2018, Accessed 15 March 2019. <https://www.foxnews.com/opinion/gov-hutchinson-reduce-mental-illness-in-criminal-justice-system-with-treatment-not-incarceration>.

<sup>133</sup>“Inmate Medical and Mental Health Care Rights,” *wh Law*, 10 May 2018, Accessed 27 March 2019, <https://whlawoffices.com/inmate-medical-and-mental-health-care-rights/>.

<sup>134</sup>Max Brantley, “Lawsuit complains prison inmate not getting critical medication,” *Arkansas Times*, 20 May 2015. Accessed 7 April 2019. <https://www.arktimes.com/ArkansasBlog/archives/2015/05/20/lawsuit-complains-prison-inmate-not-getting-critical-medication/>; Alexander G. Gilliana ADC No. 159634 v. Randy Watson, Varner Unit, ADC. Eastern District of Arkansas, 19 May 2015.

least six lawsuits were filed in Arkansas alone in 2017.<sup>135</sup> As recently as June 2018, family members of inmates were expressing concerns about “poor medical care” and a “lack of transparency,” which made it hard to “stay informed about their loved ones behind bars.”<sup>136</sup> More than a dozen state residents issued complaints about their loved ones’ lack of health care, sufficient visitation procedures, and an overall lack of rehabilitation programs.<sup>137</sup> Director of the ADC, Wendy Kelly, responded to concerns by noting there is always room for improvement, but also that she believes inmates often lie or exaggerate to their loved ones about conditions and practices.<sup>138</sup> According to the November 2018 Medical Grievance Board Report, only six of the 139 medical grievances that were acknowledged or received had merit. Do inmates exaggerate about their lack of care? Or are guards and officers continuing to deny inmates proper health care as way to save money? Between the present lack of transparency with state officials and Arkansas’ history of uncertified facilities and unregulated programs, it is hard to come to a concise conclusion.

The *Arkansas Times* has taken particular interest in the Department’s practices and growing incarceration rates over the last several years, but has repeatedly hit dead ends with the ADC. Between August 2017 and March 2018, the *Times* requested to interview fifteen different inmates, all of which were denied for a multitude of reasons.

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<sup>135</sup>Joanna Purpich, “Prison Health Care Provider Sued 140 Times Now Blamed for at least Six Deaths,” *The Daily Beast*. 22 November 2017. Accessed 7 April 2019. <https://www.thedailybeast.com/prison-health-care-provider-sued-140-times-now-blamed-for-at-least-six-deaths>.

<sup>136</sup>John Moritz, “Assaults in Arkansas prisons slow to come out; lid kept on what news goes public,” *Arkansas Democrat-Gazette* (Little Rock, AR) 24 June 2018.

<sup>137</sup>“Families of Arkansas inmates take complaints to legislators,” Channel 3 News, 15 June 2018. Accessed 7 April 2019. <https://wreg.com/2018/06/15/families-of-arkansas-inmates-take-complaints-to-legislators/>.

<sup>138</sup>*Ibid.*

The ADC stated that eight inmates were being punished and could not be interviewed. In six of the 15 instances, the Department claimed the interviews would “place a burden on the Department’s already limited resources.” And, in one case, the inmate died between the time of the request and the Department’s response.<sup>139</sup> As Jacob Rosenberg of the *Times* notes, the ADC’s policies are problematic because they allow for “any inmate interview to be denied” if “all requests [can] be construed to cause a burden.”<sup>140</sup> Strict guidelines for news and media interviews allow the Warden or Director to deny interviews for practically any reason they see fit; whether it be “concerns with subject matter,” “pending appeals,” or the inmate’s conviction.<sup>141</sup>

The Department encourages other methods of communication, such as phone calls or traditional mail, as if they are *not* equally ineffective and problematic. The average Arkansan brings home under \$25,000 annually and has 2-3 people in their household, but is expected to pay more than thirty cents a minute to speak to their incarcerated loved one.<sup>142</sup> For one of the most impoverished states, whose poor are disproportionately incarcerated, these expensive phone calls are significant.<sup>143</sup> Inmates are unable to utilize their freedom of speech, if and when they are forced to leave media outlets in the dark. Further, inmates are unable to easily and regularly communicate with their

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<sup>139</sup>Jacob Rosenberg, “The Arkansas Department of Corrections woeful media policies and practices,” *Arkansas Times*, 30 March 2018.

<sup>140</sup>Ibid.

<sup>141</sup>“Regular News Media Interview Guidelines,” Arkansas Departments of Corrections, Accessed 26 March 2019.

[https://adc.arkansas.gov/images/uploads/News\\_Media\\_Interview\\_Guidelines.pdf](https://adc.arkansas.gov/images/uploads/News_Media_Interview_Guidelines.pdf).

<sup>142</sup>“Quick Facts: Arkansas,” United States Census Bureau, Accessed 15 March 2019, <https://www.census.gov/quickfacts/ar>; Wendy E. Lucas, “That’ll cost you,” *Arkansas Democrat-Gazette* (Little Rock, AR) 11 December 2017, Accessed 10 February 2019, <https://www.arkansasonline.com/news/2017/dec/11/that-ll-cost-you-20171211/>.

<sup>143</sup>Lucas, “That’ll cost you,” *Arkansas Democrat-Gazette*, 11 December 2017,

loved ones, deepening isolation. Yet, inmates are still expected to work, for free, on the state's prison farms each day.

Although the 13th amendment abolished slavery in 1865, Arkansas is one of two states whose constitution still uses rhetoric that allows slavery and/or involuntary servitude.<sup>144</sup> This inconvenient truth also calls into questions the significance of *Holt v. Sarver*, which argued that inmates "forced and uncompensated labor" violated the guaranteed in the 13th amendment.<sup>145</sup> In February 2019, Representatives Vivian Flowers (D-Pine Bluff) and Joyce Elliott (D-Little Rock) brought forward a constitutional amendment to remove such rhetoric.<sup>146</sup> Rep. Flowers stated that "society suffers when there's recidivism" and society suffers when people who have been imprisoned and reenter society and have no money, or the skills to make money.<sup>147</sup> Further, she argues that if inmates were compensated, most would send their profits back home to their family, which is undeniably necessary in one of the nations most impoverished states.<sup>148</sup>

Pointedly, what *are* inmates supposed to do when they are released and unable to even afford transportation home? Or basic

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<sup>144</sup>Roby Brock, "Democrats push to remove slavery, involuntary servitude from Arkansas Constitution," *Talk Business & Politics*, 17 February 2019, Accessed 22 April 2019, <https://talkbusiness.net/2019/02/democrats-push-to-remove-slavery-involuntary-servitude-from-arkansas-constitution/>; Alabama and Arkansas are the only two states in the nation with such rhetoric in their constitutions.

<sup>145</sup>Feeley & Rubin, *Judicial Policy Making & the Modern State*, 60.

<sup>146</sup>Matthew Mershon, "Lawmakers seek constitutional amendment to ban forced inmate labor," ABC 7 News, 13 February 2019, Accessed 22 April 2019, <https://katv.com/news/local/lawmakers-seek-constitutional-amendment-to-ban-forced-inmate-labor>; The constitutional amendment was supported and sponsored by 23 Democratic legislators and no Republican legislators.

<sup>147</sup>Ibid.

<sup>148</sup>Brock, "Democrats push to remove slavery, involuntary servitude from Arkansas Constitution," 17 February 2019.



necessities for their family when they get home? While the amendment quickly gained support from the representatives' Democratic colleagues, it was barely looked at by Republicans. The refusal by legislators to consider the real-life impact of such rhetoric in a state that suffers grave moral, economic, and racial consequences from mass incarceration illustrates the out of sight, out of mind mentality that has persisted throughout the lifetime of Arkansas penitentiaries.

365 days a year, Arkansas inmates go unpaid, working the state's farms, with no limit to their daily hours and without scheduled, guaranteed breaks.<sup>149</sup> With 21,500 acres for prison farming, spread across five facilities, these operations require "constant vigilance."<sup>150</sup> More than 2,000 head of cattle, 2,400 hogs, 396 horses, and around 221,000 chickens are to be cared for, along with some 400 dairy cows to be milked daily morning and night.<sup>151</sup> While Arkansas officials claim that a significant amount of the farmed food is for inmates, inmates claim canned food is the norm. Each week, between 350 and 400 prisoners are chosen to farm based on "attitude and experience" and are able to earn certifications as part of the state's penal "rehabilitation programs."<sup>152</sup>

Arkansas Agricultural Secretary Wes Ward claims the programs allow inmates to "learn skills they might not have had prior to being incarcerated." While factually true, the skills inmates learn during incarceration are unlikely to benefit them, if and when, they re-enter society. The jobs offered to inmates are performed overseas or in American prisons for a reason - they are not up to par with "First

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<sup>149</sup>Jeannie Roberts, "Prison Farms: A Growing Concern for Some Critics," *Arkansas Democrat Gazette* (Little Rock, AR), February 16, 2016.

<sup>150</sup>Jeannie Roberts, "Prison Farms: A Growing Concern for Some Critics," *Arkansas Democrat Gazette* (Little Rock, AR), February 16, 2016.

<sup>151</sup>Ibid.

<sup>152</sup>Ibid.

World” job standards.<sup>153</sup> As activist Jaron Brown suggests, “prisons [are] a reflection of the Third World within the United States,” as they are not protected by minimum wage laws or overtime.<sup>154</sup> Moreover, correctional officers are not regulated by Occupational Health and Safety laws or the Fair Labor Standards Act, leaving inmates all the more vulnerable. Finally, inmates are prohibited from unionization and striking.<sup>155</sup>

Realistically, how are agricultural farm jobs going to help inmates after they have served their time? In a nation that uses equipment, not individuals, for commercial farming, the possibility of an ex-convict finding a long-term agricultural job is slim to none. Some of the other certifications inmates can work towards include the “Hobby Craft Program” or the “Principles and Application for Life Program.”<sup>156</sup> The former sounding more like a summer camp activity, the latter mostly consumed with religious services, but neither bringing significant human capacity to a felon.

On one hand, what can really be expected of inmates after incarceration? Living in isolation from loved ones, surrounded by aggression, doing unpaid farm labor seems unlikely to inspire anyone to become a more productive member of society. On the contrary, the combination is a clear recipe for recidivism, and it is evident that American prisons are structured for punishment not rehabilitation. On the other hand, what can be expected of the state’s penal institutions?

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<sup>153</sup>Jaron Brown, “Rooted in Slavery: Prison Labor Exploitation.” *Race, Poverty, & the Environment* 17. no. 1 (Spring 2010): 79; Nike brought jobs back from Indonesia to Oregon prisons.

<sup>154</sup>Ibid.

<sup>155</sup>Sarah Holder, “Behind the Strike: The Not-So Invisible Labor Prisoners Do in Cities,” *City Lab*, August 28, 2018, Accessed October 25, 2018. <https://www.citylab.com/equity/2018/08/the-not-so-invisible-labor-prisoners-do-in-cities/568537/>.

<sup>156</sup>“Inmate Programs,” Arkansas Department of Corrections, Accessed October 25, 2018. <https://adc.arkansas.gov/inmate-programs-pg-3>.

Arkansas penitentiaries have never been structured *to* rehabilitate inmates but are rather a resource of continuously free labor for the state. Whether it has been leased convicts working to build railroads, men getting tortured for information, or contaminated blood plasma being sold internationally, the Arkansas prison population has been treated as a commodity. With a free labor source available, state officials have no real incentive to improve circumstances for inmates or find real ways to reduce recidivism.