

GATEWAY

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and our peer midwestern institutions.*

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LETTER FROM THE EDITOR

Following a one-year hiatus, we are pleased to present the seventeenth edition of the Gateway History Journal on behalf of Phi Alpha Theta at Washington University in St. Louis. We received submissions for this year's journal from a consortium of ten prestigious universities in the Midwest. These submissions cover a wide variety of topics and differ in theme, time period, opinion, and methodology, representing the broad scope of student interest. We greatly appreciate the enthusiasm on the part of both the Washington University community and broader inter-collegiate community, and it gives us hope that Gateway will continue to grow as a publication with each new edition.

After serious deliberation and numerous meetings, the editorial board has selected six works to feature in this edition. The collection of pieces represents some of the highest caliber and most engaging undergraduate historical research. Our chosen pieces offer a commentary on a diverse range of issues, including the role of the supernatural in Ancient Chinese court cases and how one woman balanced her desire for an independent Ireland with the need for female suffrage. We hope that giving our readers this glimpse into such varied, captivating topics will help them gain a deeper understanding and appreciation for history.

We are very happy to announce that Gateway is available both online and in print. Our goal as a student journal is to celebrate the hard work of our featured writers and promote scholarly conversations among students and faculty. Gateway's wide accessibility allows us to share the scholarly essays of our talented writers with the larger community, and we intend to continue increasing our readership over the coming years.

As the editor of Gateway, I have thoroughly enjoyed this experience and am excited to pass on the torch to future editors. I would like to thank our authors for their diligent work and endless patience, our faculty for their support, and Gateway's editorial board for their tireless efforts and good humor in dealing with my constant barrage of emails. I am particularly grateful to James Drueckhammer, President of Phi Alpha Theta, for his hard work in reestablishing the history honorary's presence to the Washington University campus, as well as Phi Alpha Theta's faculty advisor, Professor Elizabeth Borgwardt, for her guidance and encouragement throughout the year.

Your Editor-in-Chief,
Justin Kroll

LIBERTY: NO IRISH WOMAN NEED APPLY

Kendall Carroll

FEMALE SUFFRAGE AND THE INDEPENDENCE MOVEMENT
IN MODERN IRELAND THROUGH THE EYES OF HANNA
SHEEHY SKEFFINGTON

On June 13, 1912, eight women descended upon Dublin Castle in the center of Ireland's largest city. Among them was Hanna Sheehy Skeffington—educator, reporter, wife, mother, and feminist—clutching a purse full of stones. She managed to smash several windowpanes in the historic seat of political power before being arrested, even managing to throw a few extra pebbles while the shocked officers attempted to immobilize her.¹ By 1912, the suffragist movement in Ireland had reached militant levels, reacting to the failures of the early attempts at political discourse through print. Months earlier, in November of 1909, Sheehy Skeffington had published an opinion editorial in Dublin's *Bean na hÉireann*² magazine entitled “Sinn Féin³ and Irish Women.” In the passionate critique, Sheehy Skeffington argued that in order for women to join the cause of Irish independence, they must first obtain suffrage. The article brought to the forefront the varied political, social, and legal issues that Irish women still faced at the beginning of the twentieth century, and questioned the assurance from nationalists that the end of British rule would automatically abolish these circumstances. Most importantly, the piece highlighted the dilemma that Irish women faced during this period of looming rebellion and political change: the call by nationalists to unite as Irish citizens, set against the demand for immediate suffrage by feminists.

Hanna Sheehy Skeffington was a woman who lived her life in the liminal space between political nationalism and liberal feminism. As historian Margaret Ward notes in the introduction to her biography on Sheehy Skeffington: “(She) was born while Queen Victoria sat upon the British throne, her country governed unwillingly by an ‘Act of Union’ foisted upon the Irish people in the wake of the failed rebellion of 1798, and at a time when women were supposed to be content with their role as ‘angels of the house’ . . . She was born a Victorian, but she lived as a woman of the modern age.”⁴ Sheehy Skeffington was indeed the picture of the “New Woman” that was finally emerging in Ireland and across Europe. Hanna was born May 24, 1877 to a “Catholic bourgeoisie” family in County Cork.⁵ Her father, David, was a member of the local Irish Parliament (“forced to sit in the British House of Commons”) and her mother, Elizabeth, was “a strong-minded woman,

1. On February 6, 2018, Sheehy Skeffington's granddaughter Micheline reenacted the glass smashing at Dublin Castle at a ceremony establishing a blue plaque in honor of Hanna's protest.

2. Irish meaning “Irish Woman.”

3. Irish meaning “We Ourselves.” This can be taken as a literal translation, but is more notably the name of a prominent Irish nationalist political party founded in 1905 that utilized the name in its assertion of Ireland's unquestionable national sovereignty.

4. Ward, Margaret. *Hanna Sheehy Skeffington: A Life*. Cork, Ireland: Attic Press Ltd, 1997, xi.

5. *Ibid.*, I.

intelligent and ambitious.”⁶ Both were highly political and former Fenians,⁷ instilling in their children from a young age the idea that Ireland had a natural right to independence.⁸ Progressive before their time, the Sheehys ensured their daughters were educated in the same manner as their sons, and Hanna attended St. Mary’s University College after secondary school. She graduated in 1899, receiving a Bachelor of Arts Degree in modern languages, and returned almost immediately to receive the Master of Arts distinction in 1902.⁹ She was one of the few hundred Irish women receiving a higher education during the era, and she experienced significant gender prejudice from professors and peers alike. During her time at university, Hanna Sheehy befriended another languages student named James Joyce,¹⁰ one of the eventual fathers of the literary modernist movement, who introduced her to Francis Skeffington, a man that “always wore a large badge on his lapel declaring ‘Votes for Women.’”¹¹ Both Sheehy and Skeffington worked as teachers in Dublin in the months after Hanna’s graduation, and the couple was frequently seen together in coffee shops, discussing political ideas. Though Hanna was already on a personal crusade for equal education between the sexes and occasionally participated in nationalism rallies, she would later insist, “her feminism, as an intellectual understanding of the extent of women’s unequal position within society, had developed as a result of coming into contact with Skeffington.”¹² Consequently, the academic pair would soon become some of the most influential political voices in Ireland.

In June 1903 the couple married, each wearing graduation robes instead of traditional wedding attire, and Sheehy gained an ardent partner in her quest for gender equality. As Ward notes, although Sheehy was skeptical about the legal implications of marriage, at the ceremony “as proof of their absolute commitment to the equality of the sexes, Hanna and her husband took each other’s name. . . . There would be no danger of the wife losing her identity in the marriage.”¹³ The Sheehy Skeffingtons had a true intellectual partnership, in which Hanna was able to exercise her own autonomy and formulate her own political thoughts without worry of oppression from her husband (who was still at that time in Ireland her legal superior). But at heart, Hanna was an

6. *Ibid.*, 2.

7. The Fenians were a nineteenth-century radical Irish nationalist organization (most usually members of the Fenian Brotherhood or the Irish Republican Brotherhood). After staging a failed revolution in 1867, their influence faded until the IRA gradually absorbed them in the early 1940s

8. *Ibid.*, 2.

9. *Ibid.*, 15.

10. Joyce would write about the Sheehys in *Ulysses*—particularly Elizabeth, whom he portrayed as a social-climbing matriarch.

11. *Ibid.*, 19.

12. *Ibid.*, 20.

13. *Ibid.*, 27.

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“impatient young Irish woman ‘in a hurry with reform.’”¹⁴ By the end of 1908, the husband-wife team had founded the Irish Women’s Franchise League (IWFL) in their living room, and demanded “immediate enfranchisement” for women from both the Irish and British governments.¹⁵ In May of 1909, Hanna gave birth to their only child, Owen Lancelot,¹⁶ and she freely admitted she was “very sorry (he) isn’t a girl! I’d liked the woman warrior type.”¹⁷ Quickly returning to the political scene after recovering from the delivery, Sheehy Skeffington found herself in the midst of a heated argument between the newly-formed IWFL and Inghinidhe na hÉireann,¹⁸ a nationalist women’s group supported by Sinn Féin. In November of the same year, she penned the divisive article that would appear in Inghinidhe’s magazine, *Bean na hÉireann*.

Sheehy Skeffington’s article, which addressed the dangers and hypocrisy in delaying women’s full citizenship for Irish independence, had been written in response to the larger political debate evolving between nationalism and suffragism. While the suffragists insisted that the vote for women was essential to creating a “free Ireland,” nationalists were hesitant to focus the limited amount of Irish political clout on anything other than independence. In the beginning of “Sinn Féin and Irish Women,” Sheehy Skeffington lists how the provisional government failed the Irish woman and claims: “Nor will the evil disappear, as we are assured, when Ireland comes to her own again, whenever that may be. For until the women of Ireland are free, the men will not achieve emancipation.”¹⁹ Sheehy Skeffington, though an ardent separationist herself, firmly believed that the issue of suffrage had to be addressed before the Irish people could, together, face the larger issue of independence. As Ward contextualizes:

14. *Ibid.*, I.

15. *Ibid.*, 47.

16. Owen Sheehy-Skeffington would go on to be a prominent lecturer at Trinity College and was elected to four terms as a Senator in the upper-house of the Irish Parliament.

17. *Ibid.*, 51.

18. Irish for “Daughters of Ireland.” An Irish nationalist women’s group founded by Maud Gonne in 1900 that championed Irish independence, the use of the Irish language, and the popularization of Irish manufacturers. The group produced and staged the now famous Irish play “*Cathleen ní Houlihan*” at the Abbey Theater, whose titular character personified Ireland as woman.

19. Sheehy-Skeffington, Hanna. “Sinn Féin and Irishwoman.” November 1909. In *Handbook of the Irish Revival: An Anthology of Irish Cultural and Political Writings 1891-1922*, edited by Declan Kiberd and P.J. Mathews, 349-51. Dublin, Ireland: Abbey Theatre Press, 2015, 350.

“Within this polarized situation there were two obvious paths of intervention for women anxious to make their own political claim: either to put pressure exclusive upon the faction they identified with politically—home rulers or unionists—in order to ensure women’s enfranchisement would be included within any constitutional settlement; or to campaign wholeheartedly for one faction, in the expectation that once the crisis had been resolved, their victorious allies would reward their zeal. Both of these courses of action were indeed taken, but there was another group of women—the suffragists—who rejected such one-sided stratagems.”

Sheehy Skeffington did not trust that, if independence were to come about, women’s blind support would be “rewarded.” She adamantly insisted that the sexism prominent in the leaders of the nationalist political parties was not going to vanish overnight, if and when Ireland was allowed to govern itself. She warned extensively in her article: “Many worthy Gaelic Leaguers get restive at the thoughts of women having places on the Executive Body. . . One of the leaders afforded an interesting object-lesson to his women colleagues in the movement by founding university scholarships from which girls were expressly excluded. Irish-women may be excused, therefore, if they distrust all parties in Ireland.”²⁰ Her plea for the women of *Inghinidhe’s* readership to be wary of the intentions of the current male Sinn Féin leadership was propelled by a fear that if the suffrage issue was not dealt with before independence, women would lose even more power in the new nation.

However, other women’s groups that identified as stringently nationalist were far more popular among Irish politicians, men, and lower-class women. Irish independence had been the country’s uniform goal for centuries, and those not blatantly in support were seen as not wanting the best for the Irish people as a whole. In short, the IWFL’s reception was “uniformly hostile.”²¹ The *Inghinidhe* in particular was one of the IWFL’s most outspoken antagonists, chastising women like Sheehy Skeffington who, in its opinion, were not seeing the bigger picture of sovereignty. As Ward explains, “In nationalist eyes, this [suffrage] was an ‘English agitation,’ because in asking for the vote, the women were not also demanding an Irish Parliament. . . Constance Markievicz of the

20. *Ibid.*, 351.

21. Ward, Margaret. “Suffrage First, Above All Else! An Account of the Irish Suffrage Movement.” *Feminist Review* 10 (Spring 1982): 21-36. www.jstor.org/stable/1394778, 24.

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Inghinidhe replied [to the IWFL] by declaring that Irish suffragists were ‘so blinded by the light of the new half-truth that dazzles their visions, that they fail to see the glorious figure of Freedom that stands so near them.’”²² However, the clash of ideals was not necessarily mutually exclusive to group membership, as many suffragettes and members of the IWFL agreed with the notion of Irish independence—it was simply about order of importance. While the IWFL’s “defiant slogan of ‘Suffrage First—Before All Else’ made it clear that all other issues would be subordinated to this one end” they also mobilized to the cry of “Home Rule for Irishwomen as well as Irishmen!”²³ If there was going to be a new nation, Sheehy Skeffington was desperate to ensure that women would have full political rights as Irish citizens.



Smashing Times: A History of the Irish Women's Suffrage Movement 1889-1922. Copied from page 34.

An Irish political cartoon shows the “Angel of Freedom” holding a proclamation that reads “No votes for women by order of The New Liberator” dominating a bound suffragette holding *The Irish Citizen* (Sheehy Skeffington’s feminist newspaper)

Sheehy Skeffington’s concerns were not unfounded, as the social and political standing of Irish women had been under siege for centuries. In a country that was (and still is) famous for its worship of the past, Sheehy Skeffington remarked unhappily in the opening lines of her article: “It is barren comfort for us Irishwomen to know that in ancient Ireland women occupied a prouder, freer position than they now hold even in the most advanced modern states, that all professions were open to their ambitions (indeed ‘open’ is scarcely the word, for it implies concession, whereas the right seems never to have been questioned), that their counsel was sought in all affairs of state”.²⁴ “Sinn Féin and Irish Women” is a piece determined to remind women of their unsatisfactory place in Irish society, in an attempt to incite them to demand that female inequality be dealt with

22. Ward, Margaret. *Hanna Sheehy Skeffington: A Life*. Cork, Ireland: Attic Press Ltd, 1997, 50.

23. Ward, Margaret. “Suffrage First, Above All Else! An Account of the Irish Suffrage Movement.” *Feminist Review* 10 (Spring 1982): 21-36. www.jstor.org/stable/1394778, 17.

24. Sheehy-Skeffington, Hanna. “Sinn Féin and Irishwoman.” November 1909. In *Handbook of the Irish Revival: An Anthology of Irish Cultural and Political Writings 1891-1922*, edited by Declan Kiberd and P.J. Mathews, 349-51. Dublin, Ireland: Abbey Theatre Press, 2015, 349.

before the matter of independence. Even the evocation of the rights of the “ancient” women was an attempt to pander specifically to the members of *Inghinidhe*, who were well-known supporters of the romanticism of old Ireland and its traditions. As historian Declan Kiberd admits, “The rediscovery by scholars of the strong women of the Celts and of the legal rights which some enjoyed had the effect of buttressing this [IWFL stance].”²⁵ However, evoking a historical perspective would have fallen on many deaf ears. Sheehy Skeffington (and the rest of the IWFL) was uniquely and exceptionally well-educated for a woman of the time period. Her message would have been less applicable to lower-class women or those who did not live in an urban environment like Dublin. Ward compares: “The majority of women had few educational opportunities and most of those in paid employment worked as domestic servants. Irish life was predominantly rural, with the economy structured around small farms where members of the family worked without a wage—an insularity reinforced by the conservatism of the Roman Catholic religion.”²⁶ But not to be deterred by class divisions, Sheehy Skeffington made a point of listing the legal subjugations that affected all Irish women in 1909. In her article, the modern Irish woman still suffers “her education sacrificed to give her brothers ampler opportunities... her marriage a matter of sordid bargaining... her fortune... handed over blindly to her husband to dispose of it as he may think fit.”²⁷ Sheehy Skeffington spent the first third of her editorial chronicling the inequality of women in Ireland, and the legal and social subjugations that kept them from being full citizens. She even threw a jab at the middle-class domestic women who felt as though the male nationalists were allowing them a semblance of autonomy, saying, “It is primarily in her capacity as mother and housekeeper, not as individual citizen, that these movements have of necessity recognized her importance.”²⁸ Her tactic of brutally highlighting the disparity Irish women encountered was intended to demonstrate to nationalist-leaning women that the only course was “an Ireland not just free, but feminist, not just feminist but free—if women were not free, men would not be either.”²⁹ Sheehy Skeffington was willing to delay the independence of the entire nation in order to pursue her fervent determination for gender equality.

25. *Ibid.*, 338.

26. Ward, Margaret. “‘Suffrage First, Above All Else!’ An Account of the Irish Suffrage Movement.” *Feminist Review* 10 (Spring 1982): 21-36. www.jstor.org/stable/1394778, 23.

27. Sheehy-Skeffington, Hanna. “Sinn Féin and Irishwoman.” November 1909. In *Handbook of the Irish Revival: An Anthology of Irish Cultural and Political Writings 1891-1922*, edited by Declan Kiberd and P.J. Mathews, 349-51. Dublin, Ireland: Abbey Theatre Press, 2015, 350.

28. *Ibid.*, 351.

29. *Ibid.*, 338.

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But while most of the politically active women of Ireland acknowledged the nation's gender disparities, the struggle for full citizenship was increasingly hindered by the numerous female attacks on the suffragette cause. After her thorough appeals to nationalists detailing the inequalities women suffered in Ireland, Sheehy Skeffington finally ended her editorial with a call to action: "It is for Irishwomen of every political party to adopt the principle of Sinn Féin in the true sense of the word, and to refuse any longer to be the camp-followers and parasites of public life, dependent on caprice and expediency for recognition. It is for Irishwomen to set about working out their political salvation."³⁰ Sheehy Skeffington, after breaking down women's place in Irish society, now hoped that the individual would see "ourselves" as "women," not "nationalists"—crossing political lines to band together as a gender and work towards female betterment. However, some women would not be dissuaded from the fervent nationalist agenda. A counterpoint to Sheehy Skeffington's editorial was published a month later in the subsequent issue of *Bean na hÉireann*, and took on a decidedly more confrontational tone. The anonymous author confronted the IWFL leader directly: "I would Mrs. Skeffington to regard the question from a broader standpoint... from the point of an Irish nationalist. A woman who knows the truth, knows that in an independent Ireland alone can the men and women who compose the Irish nation ever hope to find justice and liberty, peace and prosperity."³¹ The counterpoint reiterated the stance taken by the *Inghinidhe*: that women should focus first on independence, and suffrage would naturally follow in the formation of a free Ireland. While Sheehy Skeffington's piece addressed all women and suggested a more abstract solution, the commentary signed "A Sinn Féinner" reads more like a campaign ad, with the author concluding her argument with: "Hitch your wagon to a star. Do not work for the right to share in the government of that nation that holds Ireland enslaved, but work to procure for our sex the right of free citizenship in an independent Ireland."³² Ironically, the attack piece seemed only to prove Sheehy Skeffington's point: that the "right of free citizenship" was not a right that women currently held. As she warned at the end of her editorial, "Until the parliamentarian and the Sinn Féin women alike possess the vote, the keystone of citizenship, she will count but little with either party... This is a fact of which we parliamentarians have long been aware to our cost, but which Sinn Féin women

30. *Ibid.*, 351

31. Sheehy-Skeffington, Hanna. "Nationalism Versus Suffragism." In *Women in Ireland, 1800-1918: A Documentary History*, edited by Maria Luddy, 301-04. Cork, Ireland: Cork University Press, 1995, 303.

32. *Ibid.*, 304

what Sheehy Skeffington now believed was a cause of life or death.³⁶ Partial suffrage was eventually granted to Irish women in 1918 at the conclusion of the war, under the same law that gave English women the right, but full suffrage would not come until the establishment of the Irish Free State in 1922. In the years following the success of independence and suffrage, Hanna Sheehy Skeffington turned once again to advocating for women's rights—founding leagues, making speeches, and writing pamphlets—until her death on April 20, 1946. Her legacy, as a feminist, nationalist, and prominent Irish historical figure, lives on in Ireland's continuing battle for women's political representation.³⁷ In 2016, on the anniversary of the Easter Rising, Micheline Sheehy Skeffington remembered her grandmother in an essay entitled "A Century of Progress?" where, after enumerating the many hardships women still face in Ireland, claimed: "My grandmother, Hanna, would be horrified at how little women are still valued in our society, just how little they are allowed to contribute and how rarely their voices are heard."³⁸ Though Sheehy Skeffington lived to see suffrage granted, women's struggle for full political citizenship still lives on in modern Ireland. The pursuit of legally protected gender equality—including marriage rights, equal pay, and bodily autonomy—continues to be one of the most pressing social issues facing Irish society.

When Hanna Sheehy Skeffington published her short editorial in 1909, she was attempting to address a nation of women that had been marginalized and politically oppressed for decades. She firmly believed that without suffrage, the women of Ireland could not be full citizens, and without citizenship, women would continue to be subjugated—regardless of whether or not the nation freed itself from British constraints. Indeed, women across Europe have confronted the unsettling notion that they are not truly citizens of their countries without full political representation. The French Revolution in 1789 proclaimed the rights of the citizen as one who could vote and participate in government, yet French women did not achieve suffrage until 1945. In other countries—such as Austria, Germany, Italy, and Russia—it took colossal governmental upheavals affecting the entire nation in order for equal suffrage to make its way into new legislation. The conflict between nationalism and feminism, the nonexistence of full political citizenship in the presence of female inequality, is a struggle that women around the world have faced for hundreds of years. Hanna Sheehy Skeffington's life, and the brief snapshot of her beliefs that is "Sinn Féin and Irish Women," highlight the historical and ongoing dichotomy between woman and citizen.

36. *Ibid.*, 162.

37. A bronze statue of Hanna, standing beside a "Votes for Women" ballot box, has been erected in her home county of Kanturk. The Gender Studies building at University College Dublin has been re-named the Hanna Sheehy-Skeffington Building.

38. Sheehy-Skeffington, Micheline. "Women's Status in Ireland: Where Are We 100 Years On?" In *A Century of Progress?: Irish Women Reflect*, edited by Alan Hayes and Máire Meagher, 385-403. Dublin, Ireland: Arlen House, 2016, 402.

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CHANGE IS THY OTHER NAME. PROFIT MOTIVES IN THE AMERICAN PENAL SYSTEM SINCE THE CIVIL WAR

Katherine Heiserman

“But it is not only the ‘slave drivers’ who are interested in this diabolical and barbarous plan for coining human flesh into gold.”
—*The Plain Dealer*, Feb. 21, 1890

I. Introduction

On February 21, 1890, the *Plain Dealer*, a Cleveland newspaper, published a livid excoriation of the South’s prison system. The article portrays Southern prisons as the nation’s disgrace, calling for a mass denunciation of them much the way antislavery writers had worked to rouse the sympathies and support of the American people just a few decades earlier. Indeed, the author identifies the obvious continuity between slavery and Southern imprisonment, decrying the disproportionate incarceration of Black men—and that convicts were forced to labor without compensation. The overseers of convict laborers, the article claims, were “depraved, inhuman wretches” who whipped and starved prisoners. In its most explicit analogy, the article insists that “it is not only the ‘slave drivers’ who are interested in this diabolical and barbarous plan for coining human flesh into gold.”¹ As the *Plain Dealer* shrewdly perceives, the exploitation of Black male bodies for profit has been intrinsic to the American penal system since the Civil War.

Historians agree that after the war the convict lease system—a system whereby local and state prisons leased out the labor of prisoners to private companies—became a surrogate for slavery throughout the South.² Forty years after the convict lease system was fully abandoned in 1933, the prison system was again reconstructed to enrich big businesses at the expense of Black liberty.³ By the mid-1970s, lawmakers and industries were partnering to design and manage a profit-producing prison system. This alliance blossomed into a full-fledged prison-industrial-complex wherein incarceration became a multi-billion dollar industry.⁴ In this paper, I will draw out certain striking similarities between the convict lease system and the prison-industrial-complex.

The endurance and adaptability of American systemic racism as it appears in our prison system has been the topic of many historical studies. While the story of the Southern convict lease system and its links to a recently outlawed slave system is hardly a part of America’s collective

1. “Sowing the Wind: The Record of Siberia Outdone by the United States,” *Plain Dealer*, February 21, 1890, accessed September 17, 2016.

2. W.E.B Du Bois, “Spawn of Slavery,” 1901; Milfred Fierce, *Slavery Revisited* (New York: Africana Studies Research Center, 1994); Douglas Blackmon, *Slavery by Another Name* (New York: Doubleday, 2008); Dennis Childs, *Slaves of the State* (Minneapolis: University of Minnesota Press, 2015)

3. Fierce, *Slavery Revisited*, 193.

4. “The Prison Industrial Complex,” last modified 2006, <http://www.ncsociology.org/sociationtoday/v42/prison.htm>

memory—one is hard-pressed to find anything on convict-leasing in an average American history textbook—historians and scholars have been drawing this connection for over a century. These authors agree that the convict lease system served both to enslave a significant portion of the recently emancipated Black population as well as to replicate the economic and social functions of antebellum slavery.⁵

Other historians have devoted studies to the current penal system, finding that the influence of slavery and Jim Crow on American corrections has continued into the contemporary era. Legal historian Michelle Alexander is one of the leading voices in this arena. In *The New Jim Crow*, she argues that mass incarceration has played a fundamental role in perpetuating racial hierarchy in the United States.⁶ My primary argument in this paper is closely related to Alexander's, as I expose a connection between slavery and the present-day American penal system. However, my analysis diverges in two ways: Firstly, I draw a connection between the present-day penal system and antebellum slavery by examining their relatedness to the convict lease system, whereas Alexander examines the continuity between slavery, Jim Crow, and mass incarceration. Secondly, I focus primarily on profit motivation—how slavery, as an economic institution that relied on the exploitation of Black bodies for producing profit, has been used as a model by prison profiteers instead of the role played by racial hatred and electioneering in producing a massive population of Black “criminals.”

My goal in this paper is not to argue that profit interests alone explain the modern and historic mass incarceration of Black men. Undoubtedly, there is more than one factor at play, and the role of white supremacy and racist political agendas are not to be ignored or underestimated. Nonetheless, I confine my study to the powerful role of business interests in constructing a prison system reliant on “coining flesh into gold” because that component, and how it has proved a resilient force over time, is alone worthy of close examination.

There are books and articles that more closely parallel my own study of the role of profit interests in reinventing the convict lease system. My study offers a synthesis of these materials in addition to primary source analyses of media sources, government documents, and policy reports published by lobbyists. Having completed these analyses, I've found that forty years after penal systems across the nation were fundamentally restructured to do away with the widely reviled convict

5. Such authors include W.E.B. Du Bois, Alex Lichtenstein, Matthew J. Mancini, Angela Davis, Christopher R. Adamson, Milfred C. Fierce, Douglas Blackmon, and Dennis Childs

6. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. Rev. ed. (New York: New Press, 2012), 14-19.

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lease system, lawmakers and corporations reversed these reforms, using the same strategies that had been used in the postbellum South to enable states and private individuals to exploit prison populations for profit.

Although the role of racism, as noted above, is not treated in depth in this analysis, I'd like to underline for the reader that, like slavery, the convict lease system and the prison-industrial-complex are highly racialized—and racist—institutions. Since this paper focuses on various tactics that have been used to make mass incarceration profitable, I do not also make an argument about penal systems' racial projects, beyond pointing out that Black men are disproportionately affected by prisons' profit ventures.

Further, this study does not offer an in-depth exploration of the state-use penal labor system that came to replace the convict lease system in the twentieth century and remained prevalent until the 1980s when private management of prison populations was reinstated. However, I will look at government reports from the state-use-period in examining arguments made in support of mandating prisoners to work because those arguments are repeatedly echoed in contemporary documents. Furthermore, such arguments do not appear during the convict lease era.⁷

Background: The Convict Lease System

After the Civil War, prison populations across the South expanded, and Black convicts came to outnumber white ones. This shift did not reflect the increased number of Blacks who, formerly enslaved, were now promised access to due process in the courts and uniform legal retribution and, as a result, faced prison time for committing criminal acts rather than privately administered punishments.⁸ Nor can ex-slaves' "maladjustment" to free society explain the extreme discrepancy between the numbers of Black and white convicts, an argument made by some historians to explain the altered prison demographics following emancipation.⁹ With Blacks comprising as high as 90 percent of prison populations in Southern states, there is no question that the South's penal system was intentionally and dramatically racialized.¹⁰

The practice of leasing convicts to private companies and agriculturalists for profit began in Kentucky in 1825, but only flourished after the Civil War.¹¹ As Milfred Fierce writes, "By the

7. Christopher R. Adamson, "Punishment After Slavery: Southern State Penal Systems, 1865-1890," *Social Problems* 30.5: (1983) 565, accessed November 27, 2016. doi: 800272.

8. Steve Fraser and Joshua Freeman, "In the Rearview Mirror: Barbarism and Progress: The Story of Convict Labor," *New Labor Forum* 21 (2012): 95, accessed October 30, 2016, doi: 43681907; Fierce, *Slavery Revisited*, 7.

9. Blackmon, *Slavery By Another Name*, 5.

10. Fierce, *Slavery Revisited* 87-90.

11. *Ibid.*, 8.

mid-1870s almost every former Confederate state was experimenting with some form of convict leasing.”¹² The legality of the lease system in the postbellum era hinged on a key clause of the Thirteenth Amendment that outlawed slavery and involuntary servitude except “as punishment for a crime.” With this exemption in place, Southern states went to work ratifying Black Codes, laws that defined criminality in terms of race.¹³ Postbellum Black Codes and convict leasing became essential means for preserving white hegemony and securing a cheap labor source for landowners and businessmen based on forced servitude. More than that, convict leasing became extremely profitable for Southern states, earning tens of millions of dollars for state treasuries.¹⁴ Leasing convicts out to private parties also saved states the cost of housing, feeding, and generally providing for an expanding prison population.¹⁵ The potential profitability of adopting the lease system as states faced the urgent need to rebuild after the Civil War, as well as the encouragement of business interests, became two important impetuses for implementation.¹⁶

Convict leasing took various forms. In some cases leasing was so large scale that a state’s entire prison population was leased to a single company. While the system took this form in Mississippi, Georgia, and Texas, other states contracted convict labor on a smaller scale. Small manufacturers and farmers contracted portions of a prison population, while large corporations including Tennessee, Coal, Iron & Railroad Company, Sloss-Sheffield Iron and Steel, and the Gulf and Ship Railroad Company sometimes leased entire penitentiaries.¹⁷ Convicts labored primarily for railroad, mining, lumber, brick, and turpentine companies, as well as plantation owners.¹⁸

Starting in the 1890s, Southern states began abandoning the convict lease system, as it became less profitable and came under greater public criticism. States were demanding higher prices from lessees, and the end of the railroad boom resulted in a lower labor demand by railway companies.¹⁹ In 1894, Mississippi was the first state to officially outlaw convict leasing, North Carolina was the last, banning it in 1933.²⁰ But convict leasing continued even after it was banned.

12. *Ibid.*, 9.

13. A.E. Raza, “Legacies of the Racialization of Incarceration,” *The Journal of the Institute of Justice and International Studies* 11 (2011): 159.

14. Blackmon, *Slavery By Another Name*, 7-8.

15. Fierce, *Slavery Revisited*, 9.

16. *Ibid.*

17. *Ibid.*, 10; Adamson, “Punishment After Slavery,” 562.

18. Blackmon, *Slavery By Another Name*, 4; Fierce, *Slavery Revisited*, 10; Adamson, “Punishment After Slavery: Southern State Penal Systems, 1865-1890,” 555-569.

19. Robert P. Weiss, “Labor,” *Encyclopedia of Prisons and Correctional Facilities*, Thousand Oaks: Sage Publications, 2005. 532.

20. Fierce, *Slavery Revisited*, 193.

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Douglas Blackmon finds that “Across the South, despite claimed reforms in many states, more prisoners than ever before were pressed into compelled labor for private contractors, but now almost entirely through local customs and informal arrangements in city and county courts.”²¹ Thus, Black men continued to be arrested for innocuous behavior and forced into penal servitude for private contractors. Even as convict leasing phased out, chain gang labor phased in, with convicts laboring on public works projects rather than for private enterprises.²²

At the time that the South was practicing convict leasing, and even before, Northern states were also contracting prison labor to private enterprises. Indeed, forced penal servitude was an important remedy to labor shortages in the manufacturing sector throughout the nineteenth century, and prison labor became compulsory in most Northern states between 1835 and 1885.²³ Yet, as Fraser and Freeman point out, there were significant differences between prison leasing in the North and South, for it was only in the South that the racial make-up of prison populations was overwhelmingly Black. Moreover, they argue that there was greater conspiracy between political players, law enforcement, planters, and industrialists in the South.²⁴

Background: Chain Gangs and State-Use

State-use of uncompensated convict labor on public works projects ensued in both Northern and Southern states even as legislators and reformers deemed corporate exploitation of convict labor unlawful. Chain gangs became a feature of the Southern landscape, as prisoners built roads, highways, and railways while chained ankle-to-ankle. In Northern states, prisoners often worked in prison factories, manufacturing items such as furniture for government offices.²⁵ By the 1950s, most Southern convicts were assigned to work on prison farms rather than construction projects, where they were forced to pick cotton and were subjected to routine violence that resembled slave system tactics, as well as frequent sexual assault.²⁶

Background: The Prison-Industrial-Complex

In the 1970s, correctional facilities across the country began restoring private contracting practices. In 1979, Congress created the Prison Industries Enhancement (PIE) Certification Program, which certified jurisdictions to engage in joint ventures with private enterprises to employ

21. Blackmon, *Slavery By Another Name*, 375.

22. Weiss, “Labor,” 532.

23. *Ibid.*, 530-531; Fraser and Freeman, “In the Rearview Mirror,” 94-95.

24. Fraser and Freeman, “In the Rearview Mirror,” 95-96.

25. *Ibid.*, 533.

26. *Ibid.*; Robert T. Chase, “We Are Not Slaves: Rethinking the Rise of Carceral States through the Lens of the Prisoners’ Rights Movement,” *Journal of American History* 102 (2015): 80, doi:10.1093.

prisoners.²⁷ Prisoners employed by PIE certified companies are to this day barely compensated for their labor, and the wages they do make are subject to deductions by the state to offset the cost of their imprisonment.²⁸ Some states have expanded on the federal PIE Program, allowing for laborers' wage deductions to go toward not just the cost of incarceration, but also the expansion of prison industries by paying for the implementation of work programs and the construction of facilities.²⁹ Thus, Fortune 500 companies such as Chevron, Walmart, and Bank of America have access to a labor source at a cost far below market value and are exempt from normal labor regulations.³⁰

Apart from contracting out inmate labor for state and corporate financial gain, contemporary contracting also resembles nineteenth century convict leasing because corrections departments have come to rely on private companies to house, manage, and supply services to inmates. In many states, private suppliers, who are exempt from regulations that apply outside of the prison context, provide prison food, medical, transportation, and telecommunication services.³¹ Additionally, for-profit "full-service" corrections providers who design and construct prisons, as well as manage state and federal prison populations, emerged in the early 1980s.³² As of 2002, thirty-two states, the District of Columbia, and the federal government were contracting with private prison companies.³³ In 2006, Correction Corporations of America (CCA)—one of the two largest private prison corporations in the world—had a market capitalization of two billion dollars.³⁴

As privatization was reintroduced, America saw an unprecedented rise in nation-wide incarceration rates. President Nixon's law-and-order campaign, followed by decades of "tough on crime" politicians on state and federal legislatures, led to this massive expansion of the prison population. Between 1970 and 2016, the prison population grew from approximately 300,000 to

27. Morgan O. Reynolds, *Factories Behind Bars*, Dallas: National Center for Policy Analysis, 1996, accessed December 2016, <http://www.ncpa.org/pdfs/st206.pdf>

28. S. Department of Justice. *Prison Industry Enhancement Certification Program*. FS0-00-046., Washington, DC, 1995, <https://www.ncjrs.gov/pdffiles/pie.pdf> (accessed December 2016).; "Mike Elk and Bob Sloan, "The Hidden History of ALEC and Prison Labor," *The Nation*, August 2011, accessed December 12, 2016, <https://www.thenation.com/article/hidden-history-alec-and-prison-labor/>; Tara Herivel, introduction to *Prison Profiteers: Who Makes Money from Mass Incarceration* comp. by Tara Herivel and Paul Wright, (New York: New Press, 2007), xvi.

29. "Hidden History of ALEC" AND http://laws.flrules.org/files/Ch_2000-278.pdf

30. Fraser and Freedman, "In the Rearview Mirror," 94; Herivel, *Prison Profiteers*, xiv-xv.

31. *Ibid.*

32. "Who We Are," last modified 2013, accessed December 2016, <http://www.cca.com/who-we-are>; "Privatization," *Encyclopedia of Prisons and Correctional Facilities*, Thousand Oaks: Sage Publications, 2005, 768.

33. *Ibid.*

34. Judith Greene, "Banking on the Prison Boom," in *Prison Profiteers: Who Makes Money from Mass Incarceration* comp. by Tara Herivel and Paul Wright, (New York: New Press, 2007), 11.

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2.3 million.³⁵ The Sentencing Project notes a five hundred percent increase over the last forty years.³⁶ Additionally, the United States comprises five percent of the World population, yet incarcerates twenty-five percent of the world's prisoners.³⁷ Black men have been disproportionately impacted by crime and law enforcement policy reforms and constitute the largest percentage of state and federal inmates (35.8%). Moreover, Black men are incarcerated at nearly six times the rate of whites and have a one-in-three lifetime likelihood of imprisonment compared to a one-in-seventeen likelihood for white men.³⁸

II. "The Way Government and Private Businesses Work Together"

What motivated local, state, and federal governments to incarcerate at unprecedented rates in the last decades of the nineteenth and twentieth centuries? Do these incarceration rates reflect crime rates? Are Americans today safer than ever? Leading social science research institutes have come to a consensus on the matter. In December 2016, the Brennan Center for Justice at NYU's School of Law published a report that offers in-depth empirical evidence that American mass incarceration is not responsible for declining crime rates over the last four decades. This report states that "Decades of data shows that increased incarceration played an extremely limited role in the crime decline."³⁹ More precisely, "When the incarceration rate is high, marginal crime reduction gains from further increases tend to be lower... In other words, crime fighting benefits of incarceration diminish with the scale of the prison population."⁴⁰ The Brookings Institute, the National Bureau of Economic Research, and the National Academy of Sciences have corroborated these findings.⁴¹ Unfortunately, this kind of data analysis does not exist from the convict lease period.

But if not peer-reviewed research, then what has informed legislators' decisions to pursue "tough on crime" agendas, both now and a century past? Academics and analysts have offered many

35. Herivel, *Prison Profiteers*, ix; The Sentencing Project, "Fact Sheet: Trends in U.S. Corrections," last modified December 2015, <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

36. *Ibid.*

37. NAACP, "Criminal Justice Fact Sheet," last modified 2016. <http://www.naacp.org/criminal-justice-fact-sheet/>.

38. *Ibid.*; The Sentencing Project, "Fact Sheet: Trends in U.S. Corrections," last modified December 2015, <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

39. James Austin, et al., *How Many Americans Are Unnecessarily Incarcerated?* (New York: Brennan Center for Justice, 2016), 5, accessed December 2016, <https://www.brennancenter.org/publication/how-many-americans-are-unnecessarily-incarcerated>.

40. *Ibid.*

41. *Ibid.*

answers to this question. Some explain “tough on crime” as a “knee jerk” reaction to rising crime rates.⁴² Others view mass incarceration in the context of political backlash to emancipation in 1865 and the Civil Rights Movement of the 1960s. In line with my prioritization of profit motivation in this study, I will look at how in the past few decades lawmakers have been guided by private prison companies and conservative think tanks, whose members include corporate executives in the prison industry, in designing crime bills. I will also discuss the intimate connections between northern businesses, ex-Confederate landowners, and southern legislatures during the convict lease period.

Convict Leasing

Politicians and historians alike have written that local, state, and federal legislatures—both in the convict lease and prison-industrial-complex eras—contracted prison management to private enterprises in part because states could not afford prison management costs themselves.⁴³ Fierce writes that “The increase in the prison population and the overtaxing of resources placed enormous economic demands on individual states. The effort to keep costs down in maintaining the penitentiary was uppermost as a motive of state legislators and other officials.”⁴⁴ However, many historians have found that collaboration between southern politicians, landowners, and businessmen also contributed to the establishment of the convict lease system across the South.⁴⁵ For one thing, after the war legislators felt a great amount of pressure from constituents to resolve the labor source “issue,” and thus did so by expanding the lease system.⁴⁶ Adamson writes that “By the early 1870s, railroad promoters, industrialists, and entrepreneurs, with connections in New York or Boston began to exert greater influence on political affairs in the [South].”⁴⁷

In addition to facing pressure from constituents, some politicians had personal stakes in seeing the convict lease system implemented. Colonel Arthur S. Colyar, a member of the Confederate Congress before the war, was a leader of the pro-industrialist Whig wing of the Democratic Party in Tennessee during the latter half of the nineteenth century.⁴⁸ In 1877, Colyar was elected to represent Davidson County on the state legislature. He also served as vice-president

42. *Ibid.*, 6; Handbook of Texas Online, Donald R. Walker, “Convict Lease System,” accessed December 16, 2016, <http://www.tshaonline.org/handbook/online/articles/jnc0L>.

43. Fierce, *Slavery Revisited*, 77; Robert P Weiss, “Privatization,” *Encyclopedia of Prisons and Correctional Facilities*, (Thousand Oaks: Sage Publications, 2005), 768-777.

44. *Ibid.*

45. Adamson, “Punishment After Slavery,” 561.

46. *Ibid.*

47. *Ibid.*

48. *Ibid.*, 563; Tennessee Encyclopedia, “Arthur St. Claire Colyar,” last modified January 2010, <http://tennesseeencyclopedia.net/entry.php?rec=297>.

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of Tennessee Coal, Iron and Railway Company. The Tennessee Encyclopedia of History and Culture writes that “As vice-president of Tennessee Coal, Iron, and Railway Company, [Colyar] avidly supported the state program of convict leasing, which supplied convict labor to replace free miners.”⁴⁹ After the system was outlawed by the state, Colyar became the subject of a legislative investigation for continuing to lease convicts.⁵⁰ Mississippi Governor Alderbert Ames was another politician who had a vested interest in maintaining and expanding the lease system. William Banks Taylor notes that Governor Ames and his associate O.C. French were “closely identified with various railroad interests. Those interests were the largest employers of unskilled labor in the state, and French was thus in a position to reap enormous profits through the distribution of convict labor.”⁵¹

Colyar, Ames, and French were just a few. Donald R. Walker’s study of Texas’s high-level prison officials, who were involved in formulating prison policy in the 1860s and 1870s, reveals that they also had a vested interest in the convict lease system. H.K White, a police commissioner who served during the early years of the lease system and represented Burleson and Brazos Counties in the state legislature toward the end of the century, leased state prisoners to work his farms for several decades.⁵² Lucius A. Whatley represented Cass County in the House of Representatives in the twentieth and twenty-first Congresses. Later, in 1890, he was elected to the state Senate, a position he resigned from to accept an appointment as superintendent of the prison system. Whatley publicly condemned the convict lease system, though Walker questions whether “his opposition was genuine,” as he leased prison laborers to work his farms in Madison County. According to investigation records, conditions on Whatley’s farms were no better than those of other leasing camps.⁵³ Whatley’s three consecutive successors took no steps toward abolishing the lease system and only reformed it so as to increase its profitability.⁵⁴ One of these men, Searcy Baker, had become successful in the farming and lumbering businesses—two industries that used convict labor—before taking a position in the prison financial agent’s office in 1899.⁵⁵ Thus, Texas prison authorities, who created and implemented prison policy, were themselves beneficiaries of the convict lease system.

49. Ibid.

50. Ibid.

51. William Banks Taylor, *Brokered Justice: Race, Politics, and Mississippi Prisons, 1798-1992*, (Columbus: Ohio State University Press, 1993), 42.

52. Donald R. Walker, *Penology for Profit: A History of the Texas Prison System, 1867-1912*. 1st ed. (College Station: Texas A&M University Press, 1988), 145.

53. Ibid., 149.

54. Ibid., 150.

55. Ibid.

Prison-Industrial-Complex

In the 1970s, think tanks and lobbyists started to play an essential role in writing America's crime laws on the state and federal levels. Judith Greene writes that

...increasing attention has been paid to the role the [private prison] industry appears to play in fostering growth in the number of people behind bars—political contributions made to politicians who set criminal justice policies—and the leadership positions various industry executives filled over many years with the American Legislative Exchange Council, a powerful lobby for prison privatization and 'get tough' penal policies.⁵⁶

As Greene notes, the American Legislative Exchange Council (ALEC) is particularly known to facilitate talks between politicians and prison industry representatives.⁵⁷ Its membership includes over one third of all state representatives and thus has immense influence. ALEC's Public Safety Task Force, a committee that in 2011 included nine Republican politicians, a CCA representative, and the Executive Director of the American Bail Coalition (a private bail bond company), wrote "model bills" that introduced laws that have been used to prolong prison sentences as well as repeal restrictions on private sector use of prison labor on the state level.⁵⁸ Speaking to ALEC in 2002, Tommy Thompson—former Wisconsin Governor and previous head of Health and Human Services in the Bush Administration—said, "I always loved going to these meetings because I always found new ideas. Then I'd take them back to Wisconsin, disguise them a little bit, and declare that 'It's mine.'"⁵⁹

However, some lawmakers and judicial officers have allied with prison industry executives without relying on ALEC and other conservative policy organizations as middlemen. Greene claims that since its founding CCA has "traded on close political ties."⁶⁰ Indeed, CCA has spent significant amounts of money lobbying the House of Representatives, the Senate, the Federal Bureau of

56. Greene, "Banking on the Prison Boom," 10-11.

57. "Hidden History of ALEC.;" Randall G. Shelden, *The American Legislative Exchange Council (ALEC)*, San Francisco: Center on Juvenile and Criminal Justice, 2011, http://www.cjcf.org/uploads/cjcf/documents/The_American_Legislative_Exchange_Council.pdf

58. *Ibid.*, 10-11; Randall G. Shelden, *The Prison Industry*, San Francisco: Center on Juvenile and Criminal Justice, 2010, accessed December 2016, http://www.cjcf.org/uploads/cjcf/documents/the_prison_industry.pdf

59. Scott Bauer, "Wisconsin Race Highlights Common Practice of Sharing Policy Platforms, Campaign Materials," *U.S. News*, September 22, 2014, accessed December 10, 2016, <http://www.usnews.com/news/us/articles/2014/09/22/campaigns-commonly-share-policy-platforms-slogans>.

60. Greene, "Banking on the Prison Boom," 11.

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Prisons, and other federal agencies in the past three decades. Between 1999 and 2009, CCA spent eighteen million dollars on federal lobbying.⁶¹ CCA's connection to the public sector is stated explicitly on their website: "Back in 1983, three enterprising leaders came together, united under the banner of a game changer that would transform the way government and private businesses work together."⁶² One of the three founders, Tom Beasley, was a chairman of the Tennessee Republican Party before forming CCA.⁶³ Before rising to party chairman, Beasley was appointed to Governor Lamar Alexander's transition team. Beasley founded CCA days after Alexander's second term inauguration, and Alexander's wife bought stock in the company that year.⁶⁴ Ned McWherter, then-speaker of the Tennessee House of Representatives, was another one of CCA's initial investors.⁶⁵ Thus, public officials such as these have had a personal financial stake in the success of private prison enterprises.

While some public servants have bought stock in private prison companies, others have taken bribes. A famous example is the 2008 "kids for cash" scandal in which two Pennsylvania judges—Mark Ciavarella and Michael Conahan—pled guilty to taking approximately 2.6 million dollars of kickback money from the operators of a private juvenile detention center in return for issuing long sentences to juveniles, most of whom were brought up on minor charges. Some of the offenses included trespassing in a vacant building and mocking a school principal on a social media site.⁶⁶ Thus, the convergence of public and private sector leaders' interests has exerted influence on penal policy, both now and during the convict lease era.

III. Crime Policy Now and Then: Prison Growth

Prison profiteers from the time of the Civil War until now have relied on large prison populations. During both the convict lease and prison-industrial-complex eras, elaborate webs of legislation have been constructed with help from private interest groups to make high numbers of arrests and prolong prison sentences. Across time we see the proliferation of new crimes—that is,

61. American Civil Liberties Union, "Banking on Bondage: Private Prisons and Mass Incarceration," last modified November 2, 2011, accessed December 13, 2016, https://www.aclu.org/files/assets/bankingonbondage_20111102.pdf

62. Corrections Corporation of American (CCA), "Who We Are," last modified 2013, accessed 2016, <http://www.cca.com/who-we-are>.

63. Ibid.

64. Greene, "Banking on the Prison Boom," 11.

65. Ibid.

66. Sheldon, *The Prison Industry*, I.

the criminalization of certain activities for the express purpose of rounding people up—as well as revised sentencing laws. The changes in crime and law enforcement policy that define both eras are remarkably similar, and have been an essential precondition for successful prison profiteering across time.

Convict Leasing

In the wake of abolition, as ex-Confederates still mourned the recent dismantling of the economy and the unchallenged presumption of white supremacy in the social and political realms, states began passing new laws designed to imprison the recently emancipated, and thus recapture their labor. Postbellum Black Codes were not far off from Slave Codes, serving as tools for racial intimidation by imposing curfews, prohibiting Blacks from leaving employers' farms without permission, and restricting free movement.⁶⁷ As Smith and Hattery write, “Black Codes emerged to criminalize legal activity for African Americans.”⁶⁸ New statutes also prohibited “vagrancy,” a catchall term for gambling, petty thievery, begging, public disorderliness, breach of contract, and other “roguish” behaviors.⁶⁹ These statutes often worked by issuing fines that offenders could not afford to pay, thus leading to a prison sentence and a work stint. As a result, local prison populations swelled, primarily with Black male bodies.

Black Codes and vagrancy laws were so loosely construed that law enforcement agents could make a high volume of arrests with barely any exertion. As Milfred C. Fierce writes, “Southern Blacks could easily be jailed under one pretext or another.”⁷⁰ Once imprisoned, convicts might serve far longer sentences than those issued to them, often being held as long as their labor remained useful to their lessees.⁷¹ Many Black men also simply disappeared without the theater of legal process.⁷² Others became the subjects of former Confederates' resentment and were brought up on fabricated charges.⁷³

New laws were also created during the convict-lease period at the state level to increase sentences and convert misdemeanors to felony crimes. In 1875, the Georgia legislature passed a

67. Milfred Fierce, *Slavery Revisited* (New York: Africana Studies Research Center, 1994), 76.

68. Angela Hattery and Earl Smith, “Incarceration: A Tool for Racial Segregation and Labor Exploitation,” *Race, Gender and Class* 15 (2008): 86, accessed October 30, 2016. doi: 41675359.

69. Dennis Childs, *Slaves of the State: Black Incarceration from the Chain Gang to the Penitentiary* (Minneapolis: University of Minnesota Press, 2015), 63.; History is a Weapon, “Mississippi Black Codes (1865),” <http://www.historyisaweapon.com/defcon1/mississippiblackcode.html>.

70. Milfred Fierce, *Slavery Revisited*, 76.

71. *Ibid.*, 85.

72. *Ibid.*, 84.

73. *Ibid.*, 8.

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bill that made stealing hogs a felony. The legislature also increased sentence lengths for felonies, resulting in a tripling of the prison population in two years.⁷⁴ Mississippi passed a “pig law,” defining the theft of any property worth 10 dollars or more as grand larceny. Between 1874 and 1877, Mississippi’s prison population increased by close to 300 percent. North Carolina did not distinguish petty and grand larceny at all, thus allowing petty theft to result in three to ten years of penal servitude.⁷⁵

Prison-Industrial-Complex

Beginning in the 1970s, postwar penal theory based on inmate rehabilitation was supplanted by a new emphasis on highly punitive policies.⁷⁶ It was at this time that the U.S. began to see an exponential growth in the national prison population. Between 1970 and 2016, the prison population grew from approximately 300,000 to 2.3 million.⁷⁷ The Sentencing Project notes a five hundred percent increase over the last forty years.⁷⁸ Most of the policies that account for this unprecedented growth trace back to the War on Drugs. The Drug War officially began in 1971 when President Nixon declared drug abuse “public enemy number one” at a press conference.⁷⁹ It would continue for decades and give birth to the prison-industrial-complex.

The restructuring of sentencing policy was central to the anti-drug effort, and has served the interests of prison industry heads just the way sentencing changes benefited nineteenth century lessees. In the late 1970s sentence severity began to increase, a trend that took off in the 1980s with the adoption of mandatory minimum sentences by local jurisdictions and the federal government.⁸⁰ In 1986, President Reagan signed the Anti-Drug Abuse Act, establishing mandatory minimums for drug possession. By eliminating judicial discretion, federally determined minimum sentences forced judges to issue sentences for drug offenses that were often longer than ones issued to violent offenders.⁸¹ The Supreme Court has repeatedly upheld harsh mandatory minimums for nonviolent drug offenses. For instance, in a 1991 decision the Supreme Court upheld a life sentence for a defendant with no prior convictions who had attempted to sell 672 grams of crack cocaine. As

74. Raza, “Legacies of the Racialization of Incarceration,” 163.

75. Adamson 562

76. Sara Sun Beale, “Still Tough on Crime? Prospects for Restorative Justice in the United States,” *Utah Law Review* 413 [2003]: 414.

77. “Fact Sheet: Trends in U.S. Corrections.”; Herivel, *Prison Profiteers*, ix.

78. *Ibid.*

79. “Thirty Years of America’s Drug War: A Chronology,” last modified 2014, <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/>.

80. Sun Beale, “Still Tough on Crime?” 415.

81. Michelle Alexander *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. Rev. ed., (New York: New Press, 2012), 89

Michelle Alexander writes, “This ruling was remarkable given that, prior to the Drug Reform Act of 1986, the longest sentence Congress had ever imposed for possession of any drug in any amount was one year. A life sentence for a first-time drug offense is unheard of in the rest of the developed world.”⁸²

The passage of new legislation designed to increase prison sentences continued into the 1990s with new, highly punitive recidivism statutes. The wave of “three-strikes-laws,” which still exist today in twenty-eight states, require courts to issue especially long sentences to convicted criminals who have two prior convictions. In practice, this has meant that people who have been convicted of nonviolent drug possession three times may face upwards of twenty-five years. In California, where a three-strikes law was adopted in 1994, people are subjected to the law even if only one of their crimes was violent.

By the end of the 1990s, U.S. inmates’ prison durations had increased dramatically. The average sentence imposed in 1995 was nearly double that imposed in 1984 for some of the same crimes.⁸³ While some states began modifying sentencing laws to reduce prison duration in the early 2000s, in some cases getting rid of mandatory minimums for certain nonviolent offenses, U.S. incarceration rates nonetheless remain the highest in the world.⁸⁴ Moreover, such reforms are far from widespread and have continued to face opposition in spite of a shift in public discourse in the past decade. For instance, in 2003 the governor of California vetoed a bill that would have allowed nonviolent offenders to obtain early prison release in order to participate in education and work programs.⁸⁵

Another tactic of “zero-tolerance” politicians has been to reclassify some offenses from misdemeanors to felonies, just like convict lease legislatures. This means that people convicted of crimes that may have resulted in a warning or a fine previously now receive prison sentences, sometimes decades long. Alexander writes, “It is not uncommon for people to receive prison sentences of more than fifty years for minor crimes. In fact, fifty years to life was the actual sentence given to Leandro Andrade for stealing videotapes, a sentence upheld by the Supreme Court.”⁸⁶ Likewise, in *Atwater v. City of Lago* (2001), the Supreme Court held that police officers can reserve the right to arrest drivers for minor traffic violations even if the statutory penalty is a fine.⁸⁷

82. *Ibid.*, 90.

83. *Ibid.*, 416.

84. “Fact Sheet: Trends in U.S. Corrections.”; Sun Beale, “Still Tough on Crime?” 436.

85. Sun Beale, “Still Tough on Crime?” 437.

86. Alexander, *The New Jim Crow*, 91-92.

87. *Ibid.*, 68-69.

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Finally, the growth of the War on Drugs has relied on laws and court decisions that hamper the Fourth Amendment, which ensures protection against unreasonable search and seizure. The Reagan administration's legalization of constitutionally forbidden seizures demonstrates a legalization of the extralegal kidnapping of Black men during the convict lease era. After the 1968 Terry v. Ohio Supreme Court ruling, "probable cause" was redefined, legalizing the "stop-and-frisk" policy that allows law enforcement to conduct warrantless searches if they sense an individual to be dangerous.⁸⁸ Likewise, in 1970 Congress passed the Comprehensive Drug Abuse Prevention and Control Act, allowing police to conduct "no-knock" searches.⁸⁹ The 1996 decision in Ohio v. Robinette determined that officers do not have to tell people that they have the right to refuse consent to a search. With these legal protections in place, amongst several others, law enforcement was given free reign to perform arbitrary searches on citizens in order to "clean up the streets" by picking low level drug offenders off the streets and imprisoning them for unprecedentedly long durations.

Indeed, the Reagan Administration designed a program to mechanize such arrests. In 1984, "Operation Pipeline" was launched, a federal training program for state and local law enforcement on how to conduct searches and make arrests on a large scale. Some of the tactics taught included training officers how to use minor traffic violations to conduct drug searches, how to prolong a routine traffic stop in order to conduct a search, how to obtain search consent from a reluctant driver, and how to use drug-sniffing dogs to obtain probable cause.⁹⁰ Operation Pipeline demonstrates a highly orchestrated government effort to swell the prison population.

IV. Making The Case for Uncompensated Convict Labor

In September 1996, the National Center for Policy Analysis (NCPA), a conservative public policy research organization that has worked with ALEC, published a report entitled "Factories Behind Bars."⁹¹ The report proposes the repeal of numerous restrictions on state and private sector use of prison labor. The NCPA claims that the advantages of inmate labor far outweigh the disadvantages.⁹² The report makes a historical argument, calling for a revival of convict lease style

88. Ibid., 63.

89. "Thirty Years of America's Drug War: A Chronology."

90. Alexander, *The New Jim Crow*, 70.

91. Because the American Legislative Exchange Council does not have an accessible digital archive of their policy reports dating back to the 1990s, I am working with reports from an affiliated policy organization.

92. Morgan O. Reynolds, *Factories Behind Bars*. Issue brief No. 206. National Center for Policy Analysis, Sept. 1996. Web.

inmate labor. The report reads, “Things used to be different. In 1885, three-fourths of U.S. prison inmates were involved in productive labor, the majority working under prison contract and leasing arrangements with private employers.”⁹³ The report decries the decline in “productive labor” inside prisons since the end of the lease system.

Few advocates of private sector use of inmate labor have made a case based on historical precedent; indeed, prison privatizers have often shied away from the comparison when it has been made. More common are arguments that present prison labor as a public service. The ideas put forth to make that claim include: that money made by prison labor can save states and taxpayers money by offsetting the cost of mass incarcerating; that prisoners prefer work to idleness; that work is rehabilitative; and that working inside prisons will help inmates get jobs after their release.

Offsetting Costs

Thomas J. Tynan, Warden of the Colorado State Penitentiary, was enthusiastic about the economic advantages of employing convict labor when he published a report entitled “Prison Labor on Public Roads” in March 1913. The article begins, “Colorado owes many of its wonderful thoroughfares and beauties to the men who are housed in the gray prison at Canon City.”⁹⁴ It continues, “By working convicts on highways we have saved the state many thousands of dollars and the taxpayers have received the benefit of this tremendous saving.”⁹⁵ He notes over \$160,000 of savings to the state from 1909 to 1910, and \$223,479 from 1911 to 1912.⁹⁶ Tynan draws an explicit connection between taxpayer savings and the work and living conditions of prison workers. He writes that before his tenure began, “entirely too much attention was paid to the safe-keeping of the men at work,” and that in the years that followed, “the cost to maintain these men was just thirty-two cents per day per man.”⁹⁷

Other reports written by state and county commissioners who oversaw prison labor discuss cost savings. In 1913, the State Highway Commissioner of Ohio reported on Ohio’s first experimentations with having prisoners perform roadwork. The offset costs are described: “For the services of the convicts \$1.00 per day was paid to the board of administration, the board that has charge of penal and correctional institutions of the state. No part of the pay went to the credit of

93. Ibid. 3.

94. Tynan, “Prison Labor on Public Roads” 58.

95. Ibid., 59.

96. Ibid.

97. Ibid.

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the convicts.”⁹⁸ Additionally, the Commissioner notes, “The convicts were all colored men.”⁹⁹

Similarly, William M. Bryant, the Chairman of the County Road Commission in Kalamazoo County, Michigan, wrote, “Prisoners, as a rule, leave jail penniless. . . . Convict road work is a two-edged sword—it works both ways; it is a clean, moral and physical uplift for the men, and, by making use of what has been waste material, a valuable by-product is created.”¹⁰⁰

Close to seventy years later, the Department of Justice published a fact sheet on the PIE Certification Program that uses the same reasoning in enumerating its benefits. The report says that the program has two primary objectives, the first of which is “To generate products and services that enable prisoners to make a contribution to society, help offset the cost of their incarceration, compensate crime victims, and provide inmate family support.”¹⁰¹ It goes on to say that “Because of inmate worker contributions to room and board, family support, victims’ compensation, and taxes, the program provides a way to reduce the escalating cost of crime.”¹⁰²

It explains that the corrections departments offset costs by taking a series of deductions from prisoners’ wages, and that deductions can total up to eighty percent of their gross wages.¹⁰³

The NCPA’s “Factories Behind Bars” policy report also argues that, in a system where state and county prisons are reimbursed for contracting out their inmates to private employers, the prison system is able to sustain itself. The report turns to the convict lease system as a model. “Under [the lease] system, many prisoners posted financial surpluses rather than burdening taxpayers. . . . putting one in four prisoners to work could reduce taxpayer costs by \$2.4 billion per year.”¹⁰⁴ The report offers a case study from Texas in 1912, showing that the lease system offset “most of the operating expenses of the penal system.”

Under the system described in the report, workers would be compensated, although the wording is tricky. It states that they would “reasonably expect” an average wage of \$5.00 per hour for prison laborers, or \$10,000 per year. This wage would actually have been higher than the national minimum wage in 1996, set at \$4.75.¹⁰⁵ However, the report adds that “If the majority of

98. Marker, “Experimental Road Work in Ohio,” 97.

99. *Ibid.*

100. Bryant, “Outdoor Work in Michigan,” 91.

101. U.S. Department of Justice, Prison Industry Enhancement Certification Program, FS0-00-046. Washington, DC, 1995, <https://www.ncjrs.gov/pdffiles/pie.pdf> (accessed December 2016).

102. *Ibid.*

103. *Ibid.*

104. Reynolds. Factories Behind Bars. I-6.

105. United States. Department of Labor. Minimum Wage—Chart I. 2012. Web. 6 Nov. 2016.

these earnings were allocated to taxpayer compensation, say 60 percent, then at least \$6,000 a year per prison worker would be available to compensate taxpayers.”¹⁰⁶ This added stipulation brings the prison worker’s hourly wage down from \$5.00 to \$2.00. As attorney and prison scholar Tara Herivel points out, industries that are eager to tap into the prison labor pool are unobstructed by standard labor protections. Despite what the NCPA “reasonably expects,” journalist Ian Urbina reports that as late as 2007, prison workers employed by UNICOR, a federally created corporation, on average received a wage between 23¢ and \$1.15 per hour.¹⁰⁷ A report published by the NCPA in 1990, entitled “Crime Pays, But So Does Imprisonment,” makes the same argument—that prisons can and should pay for themselves.

Prisons were originally intended to be self-supporting, and many state prisons ran surpluses and returned excess funds to state governments in the 19th century. In fact, our government’s economic incompetence is highlighted by its huge drain on taxpayer wallets to support criminals despite millions of available hours of healthy, prime-age male labor.¹⁰⁸

It is important to point out that, contrary to the assertion above, prisons did not “originally” self-support; this only happened after the adoption of convict leasing. The report gives the example of South Carolina, where inmate labor was used to construct a prison, and thus reduced construction costs by an estimated 50 percent.¹⁰⁹ We must consider whether the availability of extremely cheap, “healthy, prime-age, male labor” begets a self-sustaining prison system, or whether that system is designed to capture the requisite cheap labor for such financial success.

Beneficial for Prisoners

Beyond arguing that prison labor benefits taxpayers by shifting the costs of incarceration onto prisoners themselves, advocates have also claimed that inmates receive benefits. Thomas Tynan, warden of the Colorado State Penitentiary in 1913, wrote that “Not only are they building

106. Reynolds, *Factories Behind Bars*, 6.

107. Tara Herivel and Paul Wright, comps. “Introduction.” *Prison Profiteers: Who Makes Money from Mass Incarceration*. New York: New Press, 2007. Print. XVI.

108. Reynolds, *Crime Pays, But So Does Imprisonment*, 18.

109. *Ibid.*, 15.

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good, substantial roads, but also, under competent overseers, they are obtaining a knowledge and physical condition that will enable them to earn honest livelihoods when they are released from this institution.”¹¹⁰ Chairman of the County Road Commission in Kalamazoo County, Michigan, William Bryant agreed that convicts gain jobs skills and have an easy time reintegrating into the work force upon release. In a 1913 journal article he wrote, “When the men are discharged they have no difficulty in obtaining work on the roads in this state if they so desire.”¹¹¹

Local authorities also argued that forcing inmates to work is reformatory and teaches them to become productive members of society. Bryant states that “after serving their sentence, they come out clear-eyed, with hardened muscles and good appetites, willing to do men’s work,” and Tynan agrees that prisoners cultivate “increased self-respect, stamina of character and an added sense of reliability.”¹¹² The idea that labor offers benefits to prisoners is, for some, tied up in an alleged desire for general societal betterment. Writing on a bill passed by the Arkansas legislature in 1909 allowing counties to utilize convict labor on public projects, County and Probate judge of Little Rock, Arkansas, Joe Asher, claimed that prisoner work projects “would have a good effect on petty crime, and would eliminate the tramp nuisance.”¹¹³

Joseph Hyde Pratt, who served on the State Highway Commission in North Carolina during his tenure as State Geologist from 1906 to 1917, had a more complex view on the effects and purposes of convict labor.¹¹⁴

To my mind, one of the main objects of punishment of a convict is to bring forcibly to his mind the fact that he has committed a crime against society, but that society will be ready to receive him again as a citizen if he makes good during the serving of his sentence, and for this reason every opportunity should be taken by the state to give the convict every chance possible to make a man of himself.¹¹⁵

In his view, prison labor is both a punishment and an opportunity for redemption.

This argument that prison labor is more than just financially compelling appears in contemporary documents as well. The Department of Justice’s PIE Program Fact Sheet echoes Tynan and Bryant, claiming that “The program offers a chance to work, to meet financial

110. Tynan, “Prison Labor on Public Roads,” 59.

111. Asher, “County Road Camps in Arkansas,” 89.

112. Bryant, “Outdoor Work in Michigan,” 91; Tynan, “Prison Labor on Public Roads,” 58.

113. Bryant, “Outdoor Work in Michigan,” 90.

114. Dictionary of North Carolina Biography, University of North Carolina Press, “Pratt, Joseph Hyde,” last modified 1 January 1994, accessed December 2016, <https://www.ncpedia.org/biography/pratt-joseph-hyde>

115. Pratt, “Convict Labor in Highway Construction,” 78-79.

obligations, to increase job skills, and thus, potentially, to increase the likelihood of meaningful employment upon release from incarceration.”¹¹⁶ Eleven years later, in 1990, the NCPA argued for an expansion of the PIE Program by drawing on ideas about labor’s reformatory power and practical benefits. The NCPA’s 1990 report uses the example of a prison-based industry in Florida called PRIDE, which “made a \$4 million profit in 1987. This work benefits nearly everyone. It enables prisoners to earn wages, acquire skills, and subtly learn individual responsibility and the value of productive labor.”¹¹⁷ Indeed, on the PRIDE website the company says that its work programs are designed to provide work training: “Think of PRIDE as a vocational program. But instead of classrooms, we use real factories that produce real products meeting the quality demands of real customers.”¹¹⁸ The NCPA’s “Factories Behind Bars” report adds to the discourse on prison labor benefits by saying that inmates enjoy working in manufacturing: “Prisoners overwhelmingly prefer work to the tedium of prison life. This is common knowledge among experts. Prisoners especially value opportunities to work for private-sector firms”.¹¹⁹

V. Critical Voices

Across time, reformers and critics have denounced prison conditions, contending that they are unsafe, unsanitary, and have abnormally high rates of mortality and sexual assault. Prison labor abuse has also been widely exposed and condemned since the birth of the penitentiary.¹²⁰ However, there are certain critiques of the penal system that have only surfaced during periods of private contracting—these are the arguments I will explore. The stark consistencies between grievances from the convict lease and prison-industrial-complex eras are a testament to the relatedness of the two systems and the lack of progress toward real reform.

Should We Be Contracting Out?

Since the Civil War, critics have argued that allowing non-governmental parties to assume responsibility for the prison population is unjust and undemocratic. The *New York Globe* raised

116. U.S. Department of Justice, Prison Industry Enhancement Certification Program, FS0-00-046. Washington, DC, 1995, <https://www.ncjrs.gov/pdffiles/pie.pdf> (accessed December 2016).

117. Reynolds, *Crime Pays, But So Does Imprisonment*, 17.

118. PRIDE Enterprises, “Why PRIDE?” last modified 2015, accessed December 13, 2016, <https://www.pride-enterprises.org/WhyPride.aspx?page=WhyPride#PeopleImpact>; Florida State Resource Center, “PRIDE Enterprises,” last modified 2016, accessed December 16, 2016, <https://www.hg.org/florida-government.html>.

119. Reynolds, *Factories Behind Bars*, 7.

120. Weiss, “Labor,” 529-531.

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this concern in an article titled “Infamies of the Convict Lease System” on February 2, 1884. The articles calls leasing an “abdication” of the state’s function and declares that “under no condition has a State the right or the power to transfer its supervision and care of such disenfranchised citizens to the selfish greed and cruelty of private citizens...”¹²¹ About twenty years later, U.S. District Attorney Hooper Alexander published an article entitled “The Convict Lease and The System of Contract Labor—Their Place in History.” Alexander speaks out against leasing on similar grounds.

It has always been a favorite fallacy of ‘practical’ men that the graver problems of government can best be solved by farming out its duties to private contract. The fools and the cowards always believe it because it is the line of least resistance; the greedy and bold pretend to believe it because it opens to them the door of opportunity.¹²²

Both the *Globe* and Alexander imply that private contracting is not only undemocratic, but also motivated by greed.

In a 1985 congressional hearing on “Privatization of Corrections,” the president of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), David Kelley, made the exact same point. Speaking to the Chairmen of the Subcommittee on Civil Liberties and the Administration of Justice, Kelley said, “Our Declaration of Independence declares that there are ‘certain unalienable rights, that among these are life, liberty, and the pursuit of happiness’... The Government, and only the Government, can deny individuals these rights.” Kelley’s apprehension is grounded in the fact that “unlike other government functions, prisons don’t do things for people, they do things to people.”¹²³ This conviction mirrors Robert Weiss’ argument that imprisonment is an entirely different matter than, say, garbage collection or road maintenance, where private contracting may be more appropriate.¹²⁴

Limited Supervision

Closely connected to critics’ concerns about whether private contracting is a safe and appropriate policy are those complaints that the public does not have access to prison condition information when prison management is contracted out. “Infamies of the Convict Lease System” includes an excerpt of a letter sent by Zeb Ward, the lessee of the entire Arkansas State Penitentiary,

121. “Infamies of the Southern Convict Lease System,” *New York Globe*, February 2, 1884, accessed September 17, 2016.

122. Hooper Alexander, “The Convict Lease and the System of Contract Labor—Their Place in History,” in *The South Mobilizing for Social Service* ed. James E. McCulloch (Nashville: Southern Sociological Congress, 1913), 161.

123. U.S. Congress, House, Committee on the Judiciary: Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, 99th Congr., 1st and 2nd sess., 1985-1986, 159.

124. Weiss, “Privatization,” 771-772.

to an unnamed recipient, in which he reserves the right to withhold information on “his private business.” He writes, “Your inquiries, if answered, would require much time and labor...of course the business of the prison is my private business.” The article explains that Ward is required to report to the state legislature on the administration of the prison, including the health and treatment of prisoners and the number of deaths, only once every two years.

Likewise, in November 2011 the ACLU published a report on private prisons and mass incarceration called “Banking on Bondage” that explains the problem of limited supervision.

A private prison loophole in open records laws contributes to this lack of accountability. Under the Freedom of Information Act (FOIA), members of the public can request documents from federal prisons and immigration detention facilities—but when the federal government sends prisoners to a private prison, the private prison is exempt from FOIA requests.¹²⁵

This concern is widespread among opponents of private prisons.¹²⁶

Unfair Sentencing

Across time critics have also claimed that contractors have a vested interest in seeing prisoners serve longer sentences, and that sentence lengths have been unreasonable as a result. In “Infamies of the Convict Lease System,” the *New York Globe* reports that severe sentences are issued for trivial offenses and that misdemeanants are being remanded with sentences deserved of felons. The article provides some examples: “One man was under a twenty year sentence for ‘hog stealing.’ Twelve men were sentenced to the South Carolina penitentiary, in 1881, on no other finding but a misdemeanor commonly atoned for by a fine of a few dollars...” Governor George W. Donaghey of Arkansas voices a similar concern in a statement he published just one month after Arkansas abolished the lease system in February 1913.¹²⁷

A negro from another justice of the peace court in the same county [served] 319 days for petit larceny... In the same county another negro was found serving 1,481 days for petit larceny and carrying a pistol... In Mississippi county a negro was found serving a sentence

125. American Civil Liberties Union, “Banking on Bondage: Private Prisons and Mass Incarceration,” last modified November 2, 2011, accessed December 13, 2016, https://www.aclu.org/files/assets/bankingonbondage_20111102.pdf.

126. Weiss, “Privatization,” 771.

127. Fierce, *Slavery Revisited*, 22.

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of 180 days for disturbing the peace... In Craighead county a white man was found serving over 200 days for assault and battery... In Miller County a negro convicted in a justice of the peace court was pardoned by me from serving a sentence of over three years for stealing a few articles of clothing off a clothes-line.¹²⁸

Governor Donaghey notably pardoned 360 convicts during his term.¹²⁹ The racial make-up of the convicts in the governor's profile is also noteworthy.

That same year, the vice president of a shoe workers' union in Boston drew the connection between contractors' interests and sentence lengths. In an article published in a ten cent prison labor leaflet circulated by the National Committee on Labor, as well as the *Annals of the American Academy of Political and Social Sciences*, he states that "It is to the interest of the contractors to keep them longer in prison... Nearly half a million persons are sent to prison every year in the United States. Most of these people are not really criminals; most of them are first offenders."¹³⁰ It is thus clear that union leaders, along with politicians and journalists, understood and spoke out against the prevalence of unfair sentencing.

News media have continued to comment on unfair sentencing in the past few decades. In March 1985, the same year that Congress was deliberating on privatization of corrections, the *New York Times* published an article by Kenneth Schoen titled "Private Prison Operators" on the "troubling industry" that was developing. Schoen somewhat prophetically likens private prison contracting to the military-industrial-complex. He keenly predicts that "private operators whose growth depends upon an expanding prison population may push for ever harsher sentences."¹³¹ Journalists have continued to condemn excessive sentences. In 2012 the *New Yorker* published a lengthy feature called "The Caging of America: Why Do We Lock Up So Many People?" Author Adam Gopnik laments that the American justice system issues sentences that are longer than those given out anywhere else in the world for the same crimes. He insists that "Neither the streets nor the society is made safer by having marijuana users or peddlers locked up, let alone with the horrific

128. George W. Donaghey, "Why I Could Not Pardon the Contract System," *The Annals of the American Academy of Political and Social Science* 46 (1913): 24, accessed October 27, 2016, doi: 1012361.

129. Fierce, *Slavery Revisited*, 22.

130. Collis Lovely, "The State-Use System," *The Annals of the American Academy of Political and Social Science* 46 (1913): 138-140, accessed October 27, 2016, doi: 1012382; National Committee on Prisons and Prison Labor, *Prison Labor Leaflets*, (New York: National Committee on Prisons and Prison Labor, 1911), 102.

131. Kenneth F. Schoen, "Private Prison Operators," *New York Times*, March 28, 1985, Accessed December 13, 2016, <http://www.nytimes.com/1985/03/28/opinion/private-prison-operators.html>.

sentences now dispensed so easily.”¹³²

Free Labor Can't Compete

Lastly, private sector use of prison labor has been condemned for disadvantaging union workers and companies that employ free labor. In 1889, the Huntsville Gazette denounced the “odious lease system” on these grounds, complaining that “those mine workers who employ convicts get their labor 30 percent cheaper than those who employ free labor.” A vice president of a shoe workers’ union agreed, writing that “manufacturers engaged in similar industries and employing free labor cannot possibly compete with manufacturers having the advantage of a prison contract, the labor cost of which is usually less than one-third of its real value.”¹³³

In 1927, scholar Henry Theodore Jackson published an article in the *Journal of the American Institute of Criminal Law and Criminology* that discusses trade unions’ consistent opposition to productive prison labor, offering the example of the New York City mechanics union that petitioned the state legislature to end prison industry. At a convention, a representative of the union explained that prison-made products are manufactured at forty to sixty percent of the cost of goods made by free labor, and “thus the wages are driven down to a point where a free laborer cannot live and support his family, and the consequence is that hundreds of mechanics are thrown out of employment and, in many cases, their families are reduced to beggary.”¹³⁴ Jackson explains further that during the convict lease period, wages tended to lower so dramatically that in some instances free laborers were entirely driven out of their field.¹³⁵

These criticisms have appeared in the contemporary era as well. When an amendment to the federal penal code that would revise restriction on Federal Prison Industries was introduced in 1998, the AFL-CIO testified against it.¹³⁶

The AFL-CIO and its affiliated unions, nationally and in the states, have consistently supported efforts to provide training opportunities for prisoners to help in their

132. Adam Gopnik, “The Caging of America: Why Do We Lock Up So Many People?” *The Critic at Large*, *The New Yorker*, January 30 2012, Accessed September 17, 2016, <http://www.newyorker.com/magazine/2012/01/30/the-caging-of-america>.

133. Lovely, “State-Use-System,” 139.

134. Henry Theodore Jackson, “Prison Labor,” *Journal of the American Institute of Criminal Law and Criminology* 18:2 (1927), 245.

135. *Ibid.*, 246.

136. “Tracy F. H. Chang and Douglas E. Thompkins, “Corporations Go to Prisons: The Expansion of Corporate Power in the Correctional Industry,” *Labor Studies Journal* 27 (2002): 45-69, accessed December 13, 2016, doi: 18827; U.S. Congress, House, Judiciary Committee. H.R.4100 - Free Market Prison Industries Reform Act of 1998. 105th Congr, 1998, H. Doc., <https://www.congress.gov/bill/105th-congress/house-bill/4100>.

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rehabilitation, and to reduce recidivism, but always with caution that prisoners should never be used in competition with free labor or to replace free labor. . .¹³⁷

The Free Market Prison Industries Reform Act of 1998 never made it past subcommittee review.¹³⁸ Yet, as economist Frederic L. Pryor points out, “private enterprises have complained that prisons have an unfair competitive advantage in several ways,” and contends that “in certain ways” the complaints have merit.¹³⁹ For instance, manufacturers who employ prison labor not only have the advantage of paying extremely low wages, but also do not have to adhere to a number of federal and state standards, including the Fair Standards Labor Act.¹⁴⁰

VI: Conclusion

“Dear Lovely Death,
Change is thy other name.”

—Langston Hughes, *Dear Lovely Death*, 1928¹⁴¹

The goal of this paper was to highlight the ways in which profit-seeking businesses have exerted influence on the laws and practices that shape the American criminal justice system since the Civil War. In the immediate post-Civil War years, the convict lease system was implemented to appease ex-Confederate landowners by resupplying them with a labor source that could be as cruelly and exploitatively treated as antebellum slaves. Convict labor also became instrumental in the industrialization of the South, and provided U.S. Steel and other corporations with a cheap labor source. State and county governments also sought revenue from the contracts they negotiated with lessees.

The convict lease system was widely reviled by the end of the nineteenth century and entirely outlawed by the early 1930s. Yet forty years later, the system was beginning to be reborn. This time prisons were not filling with ex-slaves who were being auctioned off to ex-slave-owners.

137. *Ibid.*, 60.

138. U.S. Congress, House, Judiciary Committee, Free Market Prison Industries Reform Act of 1998.

139. Frederic L. Pryor, “Industries Behind Bars: An Economic Perspective on the Production of Goods and Services by U.S. Prison Industries,” in *Review of Industrial Organization* 27 (2005): 10, doi:10.1007/s11151-005-4401-3.

140. *Ibid.*

141. Langston Hughes, “Dear Lovely Death,” in *Dear Lovely Death*, (New York: Troutback Press, 1931).

Nor were prisoners being sent off to pick cotton under the whip. Nevertheless, prisons did begin swelling with Black bodies as a result of collusion between politicians and business interests. For-profit companies again were responsible for managing prison populations, and certified manufacturers could again employ convicts instead of free labor and were uninhibited by labor protections designed to prevent abuses. Criticisms have been close to identical for over one hundred years.

In assessing the privatization of our prison system, we must look at where and when a system that enables private individuals to profit off of a legally disenfranchised and imprisoned population originates. We must further ask ourselves why Black men, a historically oppressed group, are so disproportionately represented in our contemporary prison system, and whether the conflation of criminality and blackness that dates back to the nineteenth century has any bearing on the present day.

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EXAGGERATED EPHEMERAL EVIDENCE: EXAMINING LITERARY PORTRAYALS OF THE RELATIONSHIP BETWEEN THE SUPERNATURAL AND LAW IN CHINA

Robert Molnar

To better understand the past, historians must analyze a variety of texts in order to formulate a cohesive chronology of events. While recorded legal cases, conversations, and other primary sources are vital in this endeavor, it is equally important to consider other sources such as literary novels. Even though much can be gleaned from literary novels, confusion can also arise from analyzing said sources as seen with the Celebrated Cases of Judge Dee. In this detective novel about legal cases in the Tang Dynasty, the protagonist Judge Dee uses logic, methodical deduction, and many other skills in order to resolve three seemingly impossible cases. While these tales are quick to revere the wisdom of Judge Dee, it is important to note that he would not have been able to solve all the cases if it were not for the spirit he encountered in a graveyard¹ and a strange dream he experienced one night in the temple.² Judge Dee bases a fair amount of his subsequent actions on his interpretation of these events, believing they were attempts from the victim to aid him in solving the cases. While this could be viewed as nothing more than a literary plot device, judicial recognition of such supernatural phenomenon is considered to be a distinctive feature in the Chinese legal culture, to the point where dreams and hallucinations were viable pieces of evidence.³ This recognition can be taken a step further, as the Qing dynasty readily accepted cases of sorcery and witchcraft, with the legal code detailing specific punishments for someone guilty of performing said acts.⁴ To that end, one has to wonder: is the literary portrayal of the relationship between supernatural events and the legal system (particularly with criminal cases) founded on an accurate historical precedent? This essay will prove that supernatural occurrences were considered to be viable evidence in the Chinese legal system; however, the literary portrayals of this fact are problematic in nature, as they undermine the historical context and promote inaccurate reporting to the point where it becomes difficult to discern the historical facts from literary fiction.

It is important to note that the literary rhetoric analyzed in this essay mainly pertains to Judge Dee; yet, this piece will also touch upon other renowned stories of Chinese literature regarding the supernatural, such as *Strange Tales from a Chinese Studio* and *What The Master Would Not Discuss*. While a brief summary of Judge Dee will be included for the sake of clarity, there will be no such complete synopsis for the other two, as they are a collection of various Chinese stories regarding the supernatural. As for the historical precedent being analyzed, this paper will centrally revolve around three incidents, which are separated into two distinct categories. The first category

1. Dee Goong An, *Celebrated Cases of Judge Dee*, trans. Robert Van Gulik (New York: Dover Publications Inc., 1976), 45.

2. *Ibid.*, 85.

3. Joanna Waley-Cohen, *Politics and the Supernatural in Mid-Qing Legal Culture*, 331.

4. Jones, William C., *The Great Qing Code*, (Oxford: Clarendon Press; New York: Oxford University Press, 1994), 174.

(and the one that will be the central focus of this paper) will involve incidents of supernatural occurrences in ongoing cases. Specifically, this group will focus on the cases of Li Yuchang and Liu-Kai-Yang, as both of them involve some form of supernatural aid directly tied to their closing. The second category pertains to incidents of witchcraft and sorcery, with the chief event being the Chinese Sorcery Scare of 1768. While such an incident may not be considered appropriate for this paper due to its unique characteristics and broad reach when compared to Chinese court cases, it gives insight into the behavior towards these incidents at a provincial level and the consequences of such behavior.

Another crucial point to note is that instances of bad weather (i.e., floods, droughts, earthquakes) were perceived as being supernatural signs, and were often associated with unjust actions having transpired. For instance, Empress Dowager Wu imprisoned a magistrate convicted of torturing an innocent man to confess during the Tang dynasty, which—according to the people at the time—subsequently led to rainfall in the drought-ridden capital.⁵ The two acts occurring in such close proximity led the government, interpreting the rain as a sign of past injustices, to revisit previously closed cases. In turn, punishments were reduced and prisoners could be pardoned in the hopes of alleviating the aforementioned atmospheric conditions, resulting in premature liberations for what could be interpreted as just bad weather. However, these instances involved supernatural incidents associated with the emperor himself and/or his administration, where the judicial process would have been different in comparison to a standard criminal case. Ergo, such instances will not be evaluated in this piece.

To briefly relate the supernatural components within the literary novel *Judge Dee*, the titular character is befuddled by a murder case in which a man meets an untimely end, leaving his wife, Mrs. Djou, widowed. Despite the tragedy, her demeanor appears to be dramatically opposite to the behavior of a traditional widow, leading the Judge to suspect that she is the culprit. Coupling this with Judge Dee seeing the victim's spirit manifest near its grave in the form of a gust of wind, he decides to pursue his suspicions and interrogate Mrs. Djou, but to no avail. With no confession from her and a lack of any further evidence to justify this claim, he decides to ask otherworldly spirits for guidance in a temple. He begs the powers on high to help him with the case due to his earnest desire for justice, and he is thus able to obtain insight from divination slips and a dream.⁶ This reveals that literary portrayals of the relationship between legal cases and the supernatural revolve around

5. Ch'u, T'ung-tsu, *Law and Society in Traditional China*, (Paris: Mouton, 1961), 214.

6. Dee Goong An, *Celebrated Cases of Judge Dee*, trans. Robert Van Gulik (New York: Dover Publications Inc., 1976), 79.

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the notion of righting a wrong. Near the end of the tale, Mrs. Djou does admit to committing the crimes; it is important, however, to note that she confessed because she believed she was dead and was being tried by the Black Judge (a king in one of the ten levels of the Chinese underworld who dolls out punishments based on the crimes a person has committed during their life), although this was nothing more than a trick by Judge Dee and his assistants. Mrs. Djou believed her former husband was about to report his death to the Black Judge, who would then make a verdict that would determine what sentence Mrs. Djou would serve for all eternity.

This is not the only literary instance where supernatural intervention transpired while solving a crime. A plethora of other stories from different periods of Chinese history have incorporated similar tactics into their plots, such as *Strange Tales from a Chinese Studio* and *What The Master Would Not Discuss*. Such supernatural evidence took place in the form of a tiger confessing his crimes in front of a court⁷ and the Wutong King spirit intervening in a case involving a desecrated temple.⁸ When comparing the appearance of supernatural intervention in these pieces with that of Judge Dee, the literature portrays that any form of supernatural intervention only occurred when restorative justice was needed. It did not appear that the spirits acted of their own accord in these tales either; rather, only when one requested their intervention did some form of otherworldly aid occur. Finally, it is important to note that in the instances where there were supernatural acts, such acts were not decisive in directing the outcome of a case. Rather, they simply resulted in further evaluation of these cases, similar to historical incidences of supernatural intervention.

With these themes in mind, one can begin to see how the literary narrative mirrors historical incidents. One particular example includes the circumstances in which a magistrate would rely upon otherworldly spirits for aid. In Judge Dee, the aforementioned magistrate only goes to the temple when he cannot figure out how to solve the crime on his own. Because of the belief that people were unable to catch all the crimes of evildoers, but gods and spirits could see all, magistrates and prefects would annually make sacrifices to such ethereal beings, asking that satisfactory justice be done.⁹ They believed that the law depended to some degree upon the supernatural for help, particularly in instances where the offender could not be identified. To that end, the intervention of the supernatural was reserved as a type of last resort; if the magistrates/government officials were unable to

7. Pu Sung-ling, "The Tiger of Chao-Ching" in *Strange Tales from a Chinese Studio*, Trans. John Minford (New York; Penguin Classics, 2006), 108.

8. Yuan Mei, Paolo Santangelo, and Yan Beiwen, "Wutong God Treated People Differently" in *What The Master Would Not Discuss*, (Leiden: Brill Publishers, 2013), 489.

9. Ch'u, T'ung-tsu, *Law and Society in Traditional China*, (Paris: Mouton, 1961), 211.

restore justice in order on their own, only then could they ask for help from gods and spirits.

The real story of Liu-Kai-Yang (who will be referred to as Liu for the sake of clarity) reflects the historical truth that officials would sometimes pray before a god or ask for help and instruction through a dream in times of uncertainty.¹⁰ In this case, Liu ordered his son, Yun-xi, to kill Liu's brother, Liu Kai-lu, and then blamed the murder on another family. Unable to discern the truth from Liu or the head of the other family, magistrate Wang Hui-cu prayed before the gods. Shortly after, he found Yun-xi at his office confessing the truth of the story. Yun-xi explained that a man knocked at his door and warned him that the magistrate's men were coming, and so Yun-xi followed the man to the magistrate's office. The magistrate believed that this man was a spirit that aided him in the case by bringing the assassin to him. From that point on, Wang Hui-cu believed that prayer was always effective, and he vowed to continue to obtain help from the gods when judging homicide cases.¹¹ While later interpretations of the case criticized the magistrate for looking too deeply into what was interpreted as ghostly affairs, this case nevertheless provides insight towards the attitude the magistrates had towards the spirits.

Another point of similarity is how the spirits never directly resolved the cases at hand. While they may have a direct hand in the matter (by guiding the assassin to the magistrate's office to confess), it was ultimately up to a magistrate or appointed figure to properly resolve the imbalance through a judicial sentence. This can be seen most clearly with the aforementioned Yun-xi case, as well as with the incident of Li Yuchang.¹² In this case, Li—a magistrate who held the highest degree in the civil-service examination system and imparted this knowledge onto some students—was assigned to help administer a famine relief program in Shanyang, and during his stay, the district magistrate asked him to participate in pocketing money from state funds. Refusing to partake in this, Li Yuchang unknowingly drank some poisonous tea, leading to his untimely death. While the corrupt individuals of Shanyang were able to cover up the incident with the help of a cooperative coroner, suspicious details began to arise, culminating in what was believed to be otherworldly intervention from Li Yuchang, who gave one of his students hallucinations and possessed him.¹³ Both supernatural occurrences resulted in the disclosure of pertinent information related to the case and eventually led to the perpetrators' conviction. It is interesting to note that in this case, the supposed

10. *Ibid.*, 211.

11. *Ibid.*, 212.

12. Robert E. Hegel, "Li Yuchang: A Magistrate Murdered for His Integrity" in *True Crimes in Eighteenth-Century China* (University of Washington Press: Seattle, 2009).

13. *Ibid.*, 227

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spirit did not try to extract vengeance on his own; rather, he simply helped the magistrate identify and condemn the murderers. The spirit of Li Yuchang's direct intervention leaves one to wonder why he did not attempt to do something on his own accord to enact vengeance, rather than possessing his student and giving him hallucinations.

One final point of similarity is how the Chinese judicial system instilled the fear of otherworldly punishment in defendants to coerce confessions from them. Judge Dee utilized this strategy with Mrs. Djou after she refused to admit to the crimes she committed, convincing her that she had entered the netherworld by having his subordinates impersonate the Judge of Hell and his minions.¹⁴ While Judge Dee was a reverent man (as evidenced by his disposition towards otherworldly spirits), he has no qualms about manipulating her strong beliefs in the afterlife. Despite this, it is important to note that not all officials believed in a theatrical approach; in fact, some of these officials used prayer as nothing more than a way to fool criminals into confessing the truth.¹⁵ This can be seen most clearly in the story *The Death of Woman Wang*, in which two perpetrators murder a woman. The district magistrate Huang Liu-Hong decides to use the fear of the City God to compel frightened witnesses to tell the truth, which leads to both of the perpetrators confessing.¹⁶ While the witnesses did not experience any supernatural occurrences in the temple of the City God, their presence in the building alone was enough to incite fear in them. Even though Judge Dee's methods to instill the fear of otherworldly punishment vastly differed from historically recorded methods—convincing the perpetrator to believe that she was dead and about to face eternal suffering rather than simply having her contemplate such a fate—the intent behind such an action was similar: to compel an individual to confess for their crimes. Based on the events that transpired in Judge Dee's case, tying an otherworldly element into a case was not always done to invoke certain gods or spirits. Rather, it was done for psychological manipulation, to obtain the information from an individual out of fear of some form of supernatural punishment.

While these examples provide strong evidence to highlight the historical accuracies in literary stories, there are a few key distinctions between the literary and historical tales that are imperative to better understand the relationship between the Chinese legal system and the supernatural. Interestingly, Judge Dee only goes to the temple to obtain the wisdom needed to help solve the case, but still has no doubts in his mind regarding Mrs. Djou's guilt. While the book does state that

14. Dee Goong An, *Celebrated Cases of Judge Dee*, trans. Robert Van Gulik (New York: Dover Publications Inc., 1976), 203

15. Ch'u, T'ung-tsu, *Law and Society in Traditional China*, (Paris: Mouton, 1961), 213.

16. Spence, Jonathan D., *The Death of Woman Wang*, (New York: Viking Press, 1978), 137.

Judge Dee “supplicated the powers on high that they . . . would deign to show him the right way,” he still believes that she is responsible for the murder.¹⁷ This is best displayed when Judge Dee has Mrs. Djou return to the jail of the tribunal and forces her to stay there until further notice, after he fails to elicit a confession from her.¹⁸ Rather than continuing to explore other possible perpetrators of the case, such as any other citizen in town, he fervently continues to believe that Mrs. Djou killed her husband and goes to the temple for proof. While this works in Judge Dee’s favor, it appears that he only searches for supernatural aid if it serves him and his beliefs. This conviction is demonstrated again when Judge Dee prays near the victim’s grave, asking the spirit to show itself if it was indeed murdered. This is an instance of Judge Dee performing an ordeal, in which he seeks the help of spirits to determine an individual’s guilt.¹⁹ By asking for such intervention, he was looking for a sign that would allow him to concretely determine Mrs. Djou’s guilt. If this were not the case, then he would have no reason to keep Mrs. Djou in jail while searching for evidence in a dream. Despite its use in this story, there is no historical instance of ordeals occurring in China.²⁰ While this could be attributed to the fictional nature of the piece, the consequences of such depictions for those studying the legal history of China can be severe. It can lead one to believe that historically, the magistrates only accepted the use of supernatural evidence if it fit into their narrative, rather than looking at such evidence objectively (or at least, as objectively as one can get when it comes to otherworldly acts) as was done with the Li Yuchang case.

Another point of distinction was Judge Dee’s belief that the spirit pointing him towards the victim’s tomb could have been evil, and was trying to send him astray.²¹ If this was an evil spirit and it had led Judge Dee to open up the wrong grave, he would have violated a law of the Qing code that strictly prohibits the act of disturbing a tomb.²² This, in turn, would have severe consequences for the magistrate, leading to both his separation from the district’s inhabitants as well as some sort of punishment from those higher up in the administration. Based on such circumstantial and hypothetical reasoning, readers would be inclined to think that Chinese culture believes in evil spirits capable of interacting in the corporeal world without the need to be called upon. Such a claim can be further substantiated when looking at the various tales within *What The Master Would*

17. Dee Goong An, *Celebrated Cases of Judge Dee*, trans. Robert Van Gulik (New York: Dover Publications Inc., 1976), 79

18. *Ibid.*, 77

19. Ch’u, T’ung-tsu, *Law and Society in Traditional China*, (Paris: Mouton, 1961), 208.

20. *Ibid.*, 209.

21. Dee Goong An, *Celebrated Cases of Judge Dee*, trans. Robert Van Gulik (New York: Dover Publications Inc., 1976).

22. Jones, William C., *The Great Qing Code*, (Oxford: Clarendon Press; New York: Oxford University Press, 1994), 260.

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Not Discuss, as there are notable instances of evil spirits acting on their own volition.²³ This is of particular interest, as the only instances in which an evil spirit is mentioned in historic legal cases are associated with forms of sorcery or witchcraft, acts which Judge Dee had no reason to believe were associated with the case.

While cases of witchcraft and sorcery have certainly been mentioned throughout the legal history of China, this paper does not focus on them due to their unique nature. Rather than serving as supplementary points of evidence in an ongoing case, these instances of supernatural intervention often instigate investigation. Nevertheless, it is critical to consider the literary and historical portrayals of these instances as well, as they are just as significant when it comes to understanding the beliefs about the supernatural in the Qing dynasty. A prominent story that involves sorcery is *Black Magic*, from the collection of *Strange Tales from a Chinese Studio*, about a diviner who predicts the death of a man simply known as Yu.²⁴ On the day of his supposed death, Yu fights off what he initially believes to be monsters that have come to kill him; however, they turn out to be nothing more than human-like objects, such as wooden idols and wooden puppets. Believing that the monsters were sent by the diviner in order to verify his predictions, Yu gathers his friends and acquaintances to capture the diviner, who is turned over to the authorities for execution.²⁵ While this story may appear to be dissociated with any form of sorcery (the diviner could have hired assassins to kill the man instead of supposedly summoning monsters, or the man could have hallucinated/incorrectly believed that he was being attacked by monsters out of fear), it is important to recognize that Yu genuinely believes in the power of a diviner. While Yu's beliefs in the diviner's predictive prowess change after he survives the day of his supposed death, Yu still thinks the diviner has the supernatural power to summon monsters.

It is important to note that this was not the only way one could be accused of sorcery or witchcraft. The acts labeled under the broad crime of sorcery took many forms, including killing an individual through means entirely unknown. One such recorded case in the late 1920s involved many women in the Chu Yuan district of China who were accused of sorcery for using poison to kill their victims.²⁶ It is important to note for this case that the act of sorcery was harshly judged, just as with Yu. The associate magistrate in charge was reprimanded for his failure to use stern mea-

23. Yuan Mei, Paolo Santangelo, and Yan Beiwen, "Monkey Spirit" in *What The Master Would Not Discuss*, (Leiden: Brill Publishers, 2013), 558.

24. Pu Sung-ling, "Black Magic" in *Strange Tales from a Chinese Studio*, Trans. John Minford (New York: Penguin Classics, 2006), 37

25. *Ibid.*, 51

26. "Magic Arts in Yunnan," *North China Daily News*, (Shanghai, China) August 11, 1928.

suers during case, forcing the district magistrate to step in.²⁷ This serious belief, that individuals can contact supernatural elements for their own nefarious purposes, caused one of the greatest terrors within Chinese history: the Chinese Sorcery Scare of 1768.

Prior to this event, the Qing dynasty was entering what was known as “The Prosperous Age,” as China started to grow agriculturally (with the onset of new crops from the Americas), economically (due to the increase of silver from Spanish America), and in population size (with conditions ripe for a population explosion).²⁸ However, reports of sorcerers stealing the souls of individuals by obtaining hair clippings and casting magical incantations over them caused pandemonium within the nation. While these cases that initially occurred within the Shantung province were perceived as absurd,²⁹ the continuous reporting of such cases, along with an increased amount of challenges towards the Qianlong Emperor’s claim on the mandate of heaven, forced the emperor to act.³⁰ Eventually, after many false leads and further consolidation of power from Emperor Hungli, the soul stealer scare disappeared. Yet its legacy is one that ultimately reveals the widespread nature of supernatural acts throughout Chinese history.

Now that a correlation between literary tales and historical narratives has been established, it is important to put all of this into context. It is easy to dismiss this information as not meriting much importance: such cases may have been sparse in nature, or were perhaps a commonly accepted occurrence throughout China’s legal history. However, for the inhabitants of the Qing dynasty, such reports would have undoubtedly instilled fear into the populace. This can be seen most clearly with the incident of the soul stealers in the late seventeenth century. There were multiple perpetrators moving from province to province within China that supposedly stole the souls of their victims, making all of the provinces within the nation unsafe. Coupling this with the fact that a single Chinese province within the Qing dynasty would have a greater population than any European nation at the time, the total number of individuals within these twelve provinces affected by these scares totaled over two hundred million.³¹ The effects of the scare impacted everyone within China; beggars were killed,³² men of the clergy who did not specialize in rituals were ordered to have their property

27. *Ibid.*,

28. Philip A. Kuhn *Soulstealers* (Harvard University Press; Cambridge, 1990), 30.

29. Fuheng, Yenjisan, and Liu T’ung-hsun to the provisional officers of Chekiang, Kiangsu, and Shantung, July 26, 1768, in Philip A. Kuhn *Soulstealers* (Harvard University Press; Cambridge, 1990), 76.

30. Philip A. Kuhn *Soulstealers* (Harvard University Press; Cambridge, 1990), 118.

31. *Ibid.*, 236

32. *Ibid.*, 47

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confiscated,³³ and some individuals prepared for what they thought to be the end of the world.³⁴

This widespread fear and panic is especially true for those within the Qing government, particularly the emperor and provisional officials. While the emperor might have issued directives to halt the spread of sorcery and malicious supernatural incidents, it was ultimately up to the provisional officials to implement the orders in a way that would follow the will of the emperor while not causing mass disorder within the system. There was a lot at stake for those provisional officers; due to the accountability system established within the Qing dynasty, failure to catch a criminal could lead to their dismissal as an officer.³⁵ This led to provisional officers intentionally withholding information from the emperor, which often did more harm than good, bringing upon themselves the emperor's disapproval as the soul stealer scare grew more sensationalized.

Another equally important group to consider is the authors of these works, factual or fictional. In their desire to craft a marketable and memorable product, the authors may tell stories that are not entirely true. Certain details may be fudged for the sake of the author's chosen narrative, leaving readers to determine the extent to which such instances had an actual historical precedence. A major example can be seen within *Judge Dee*; while the majority of the cases revolve around the stories of an actual magistrate that was alive in the Tang dynasty around 700 A.D., there are bound to be cultural elements that are distinctively Ming or Qing in nature simply because it was written in the nineteenth century.³⁶ Even though this could be overlooked due to the inherent difficulties in accurately describing cultural practices and traditions that were commonplace over a millennium before, it nevertheless suggests to the reader that the traditions present in those cases were similar in nature to those of the Tang dynasty. This, in turn, can leave the reader of *Judge Dee* to falsely believe that the culture of China was in a stasis, and supports the unfounded notion that China did not progress or advance as a nation. While the extent of said problem of historical accuracy might vary depending on the genre of the piece and its intended audience, there is still that concern over whether the information is presented to educate, or to push the author's chosen narrative. Of course, there is always the possibility that the historical inaccuracies are simply accidental mistakes, the result of poor diligence; however, these seemingly trivial mistakes exacerbate the issue for historians, who have the added role of discerning accidental mistakes from constructive mistruths.

Ultimately, it is quite evident that there are a great number of parallels between the literary

33. *Ibid.*, 109

34. *Ibid.*, 146

35. *Ibid.*, 119

36. *Dee Goong An, Celebrated Cases of Judge Dee*, trans. Robert Van Gulik (New York: Dover Publications Inc., 1976), back cover.

narratives of supernatural aid in legal cases and the historical precedence of such instances occurring. As seen with the various cases involving possession, acts of sorcery, and ephemeral spirits, literary authors have had a plethora of recorded historical moments to inspire their works on China's attitude towards the supernatural. However, it is important to recognize that such parallels between literary and historical narratives can be as problematic as they can be helpful. While they can help strengthen one interpretation of the past, they increase the possibility of inaccurate interpretations gaining traction within popular and academic forums. Therefore, it is imperative to look at such pieces with some reservation, in order to prevent a cacophony of different viewpoints from inhibiting a more holistic understanding of the past.

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EMBARGO: SOCIAL UNANIMITY AND ECONOMIC CATASTROPHE IN NEW ENGLAND

Nicholas Rogers

Decayed and barnacled wharfs, shuttered businesses, distorted prices in every shop, and thousands of tons of goods rotting aboard a vast fleet of enervated merchant vessels. This bleak collage of economic destitution manifested in the year 1808 on the American Northeastern seaboard. Coastal cities, particularly those in New England, closed their ports to all foreign trade, their hands forced by the most domineering political and economic act yet passed by the U.S. federal government. When President Thomas Jefferson signed the Embargo Act into law in 1807, he did so with the bold endorsement of Congress and with the proximate intent to damage the economies of Europe's belligerent powers: Napoleon's French Empire and the United Kingdom. In practice, the embargo proved entirely ineffectual in its express purpose of hijacking European economic prospects, and had the poisonous, latent effect of devastating the United States' already embattled merchant economy. The deep malaise caused by the embargo was only mitigated by a counteractive and concerted effort spanning the social strata of coastal towns in New England and the Mid-Atlantic states. This multi-level resistance circumnavigated, foiled, and brazenly ignored the stipulations of the embargo. Politicians, merchants, and the working class of the Northeast became fully aligned in their opposition to the embargo. Newspapers became the catalysts for resistance by publishing anti-embargo writings, featuring advertisements for businesses harmed by the embargo, and were complicit with merchants and other citizens who eschewed legal restrictions and blatantly ignored the demands of the federal government to obey the Embargo Act. Ultimately, the embargo gave new life to the Federalist Party in New England, revivifying political divisions that had been dead for the better part of a decade along the dividing line of support or opposition to the embargo and its tenets.

When the 10th U.S. Congress gathered to discuss issuing an embargo, it did so in a climate of tension and international conflict. The Napoleonic Wars were raging on land in Europe and around the globe at sea ever since the renewal of conflict in 1803. Both the French and British hired privateers and seized neutral shipping. However, a key political concern of the United States was with impressment, an act by which the British Navy boarded American vessels and pressed sailors without sufficient American identification into service. The British did not pursue this policy without pretense. Due to widespread desertion, British seamen "composed 35 to 40 percent of U.S. naval crews in the early 19th century".¹ While many of the men being seized were British citizens, the prospect of American sailors being wrongfully forced into service in the Royal Navy besmirched American national pride and made seafaring as a merchantman a far riskier prospect than in previous decades. By compiling advertised postings of merchant ship destinations in New York, a subset of

commercial shipping reveals a decline in merchantmen departing New York harbors between 1796 (preceding the Quasi War and subsequent Napoleonic conflicts) and 1807. In 1796, 377 such advertisements were published, announcing a ship and its destination upon setting sail. Just over a decade later, the 1807 numbers declined to 217 postings, constituting a 42% drop over that 11-year span. Incidentally, the data shows New York to be a consistently international seaport, with 55.4% of postings bearing foreign destinations in 1796 and 55.8% in 1807.² Cities with high levels of foreign trade were hit much harder by the effects of the embargo. Together, these data points reveal the impact that international conflict and uncertainty levied on American commercial trade in the years preceding the embargo, with the threat of impressment playing no small part. Altogether, roughly 10,000 to 15,000 American seamen were impressed into the Royal Navy between 1789 and 1815, though historians' estimates differ.³ The issue of impressment came to a boil on June 22nd, 1807 when the HMS Leopard opened fire on the USS Chesapeake off the coast of Virginia. The British attacked the vessel after the captain of the Chesapeake, James Barron, refused to surrender four recent British deserters who had joined the vessel's crew. After hitting the American ship with broadsides, the British boarded the ship, seized the four crewmen, and left three Americans dead and 18 wounded.⁴ This event incensed the American public and provided President Thomas Jefferson with an opportunity to cow the British out of their impressment policy with the threat of war. The British were unperturbed by Jefferson, pushing the President to consider economic measures in lieu of military ones. The embargo was the measure chosen by the President, and its consequences would be dire.

The Act was passed by the U.S. Senate 26-6 on December 18th, 1807 and by the House 82-44 on the 21st. The President swiftly signed it into law the following day. This shocked the American public, which was not privy to Congress's secretive discussions of the measure. Even greater than the public's shock was their perplexed understanding of the motives for an embargo. This confusion is well-expressed by the editors of the New York Daily Advertiser on December 30, 1807: "Every one inquires, 'What has been the immediate cause of the Embargo? Is it a measure hostile to England, or France? Or both?'—We are not yet able correctly to answer the inquiries. The accounts from Washington are multitudinous and contradictory."⁵ The New York Commercial Advertiser, quoting the United States Gazette, mirrored this confusion and appends to it a suspicion regarding the Democratic-Republican-controlled Congress and its unwillingness to consult James Monroe, returning ex-minister to Great Britain: "Mr. Monroe is expected here this evening. Would it not have been proper and wise for the government to have forborne taking

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any important and decisive measure till the arrival of Mr. Monroe? He may perhaps be able to communicate some valuable information on the subject of foreign relations. Or was the measure, which has been discussed in secret, hurried through congress lest Mr. Monroe should arrive too soon, and in some way prevent its adoption?"⁶ In the wake of the passage of the Embargo Act, these commercial papers, which principally focused on business happenings and advertisements for a local audience, began to express an early and sharp skepticism toward the embargo, especially in America's Northeastern port cities, whose trade was targeted directly by the embargo, and whose social fabric was deformed by the effects of the new law.

Shipping records of key New England and Mid-Atlantic cities demonstrate the material impact of the embargo and, in turn, its social consequences. Boston and New York were major population and commercial hubs, with New York ranking first in population in the 1810 census with 96,373 people, and Boston at number four, with 33,787.⁷ Both cities' economies relied heavily on sea trade, especially trade with foreign nations. Merchants received news of the embargo through newspapers, which re-published the law and President Jefferson's announcement. The announcement read: "Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that an Embargo be and hereby is laid on all ships and vessels in the ports and places within the limits or jurisdiction of the United States; cleared or not cleared, bound to any foreign port or place".⁸ The embargo proceeded to order that any ship sailing domestically would have to first provide a bond to the local collector to be recouped upon arrival at the destination. It was through this measure that the entire naval merchant economy of the Northeast suffered a blow. The aforementioned data on published ship departures tells the story of economic contraction in a decisive fashion. Shipping postings from the *Commercial Advertiser* in New York City show a significant drop in merchant activity, from 217 posted departures in 1807 to 134 in 1808, representing a decline of 38%. This decline included domestic and foreign-bound shipping. In Boston, the *Columbian Sentinel's* pages demonstrate a similar slump. Advertised merchantmen dwindled from 282 in 1807 to 218 in 1808, and the subset of international voyages suffered a near-total decline. By November 1808, the *Connecticut Gazette* reported that New York harbors were clogged with 231 ships, 130 brigs, and 90 schooners, totaling 451 vessels. The *Gazette* painted a bleak picture of the New York merchant economy: "The tonnage of the above vessels probably amount to 85,000 tons; and would require to navigate them at least four thousand seven hundred seamen. Besides, there are still in the fresh water rivers a great number of vessels of all descriptions, more out of the danger of worms than the above. The whole however are rotting." The excerpt is

capped off with a final dooming fact, that “if the embargo was now raised, there could not be found more than two seamen for each vessel; this useful class of men having deserted their country to earn their bread.”⁹

The economic losses in New England eclipsed those in New York, and invariably pushed the citizens of New England into desperate economic straits. A July 1808 issue of the Connecticut Herald expressed the expected 1808 losses in revenue for the state of Massachusetts in terms of the previous years’ shipping. For Massachusetts alone, they estimated the total tonnage sitting derelict in harbor across the state to be greater than 450,000 tons, and that “if the embargo continues one year (at present there is no hope of its being sooner removed) the single state of Massachusetts will suffer a diminution of its customary profits in the single article of shipping, the immense sum of dolls. 10,800,000. A loss each day of 29,589, each hour of 1,272.”¹⁰ One may wonder why the crushing toll of the embargo weighed so heavily on New England. Not only was New England’s coastal economy more dependent on seafaring than the economies of Mid-Atlantic states like New York, but other more chance elements may have contributed to the success of some coastal cities relative to one another in the face of new shipping restrictions.

This variant factor was the ability of customs collectors to permit passage of vessels overseas based on their individual judgment. Customs collectors could grant certain ships transit to foreign ports, effectively allowing them to evade the embargo’s effects. In 1808 in New York, according to the aforementioned data compiled from the *Columbian Sentinel* in Boston and New York’s *Commercial Advertiser*, 43 out of 134 ships were advertised with foreign destinations, constituting 34% of the total postings that year, compared to a meager 7% or 16 ships in Boston in the same year. Nearly all of these New York ships were granted “Special Permission” by the United States government, conferred by the collector for that city. This data suggests there was potentially great personal discretion on the part of customs collectors to determine which vessels’ journeys were in the national interest. One collector, whose city and state provide an excellent case study of the embargo and its effects on New England society, took advantage of his office to make money off of the embargo and resist a government policy that was roundly despised and decried by all levels of New England society. The man, himself a member of the upper crust of Connecticut society, was Jedediah Huntington.

Huntington served as a general in the Continental Army during the Revolutionary War and became among the first customs collectors when George Washington appointed him to the position of Collector of the Customs for New London, Connecticut in 1789. He also served as Lighthouse

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Superintendent to New London lighthouse. Customs officials played a key role in raising revenue for the federal government through the Treasury Department. Alexander Hamilton outlined the proper role of a customs collector in correspondence with Huntington in 1791, stating that “It is the duty of the Collectors of the several districts to pay attention to all vessels arriving within the same by whatever cause they may be led thither.”¹¹ Hamilton explained how ships that remain in the harbor for a period longer than 24 hours must make an “entry” with the customs official, and that “The officers of the customs who do the duty consequently become entitled to a compensation.”¹² It is this commensurate relationship between maritime business and the earnings of customs officials that inflated the emoluments of such officials so greatly. In 1802, 13 years into his office as Customs Collector, Jedediah Huntington received \$37.45 annually for his office as Lighthouse Superintendent and a total emolument of \$3,135.24 annually for the office of Collector, placing him as the 49th highest compensated Federal employee and 8th highest compensated collector out of 448 across the nation.¹³ This accumulation of wealth and prestige served to make Huntington a man of fine repute in Connecticut society, whose judgment impacted his community and state as a whole. The 1807 Embargo posed many problems for Huntington, as he made his fortune through the passage of ships in and out of New London’s ports. Huntington’s decision to resist the new federal law highlighted the tendency of many New England customs collectors to actively subvert federal law, possessed by a function of political and financial motives.

While it is unclear whether Huntington’s motives were purely pecuniary or furnished by a desire to oppose the embargo as a matter of principle, he began issuing a large number of “permissions” to departing vessels, allowing them to visit foreign ports and arrive with foreign goods.¹⁴ This act of defiance against the embargo represented one facet of vertically integrated social defiance in the face of federal enforcement. Fittingly, Huntington’s own state of Connecticut and town of New London provide apt instances of such resistance and adaptation, not only through Huntington’s actions but through the individual defiance of store-owners, the compliance of the press, and a growing political mobilization that would resuscitate the Federalist Party, which had long seemed doomed to gaze into the halls of power from the outside.

The cities of New London and New Haven, Connecticut, like New York and Boston, were heavily affected by the embargo, embodying the destitute portrait of rotting vessels and economic turmoil in the everyday lives of citizens. An immediate effect on the streets of coastal Connecticut towns was that of confusion among businesses, soon followed by a perplexingly open flaunting of the embargo’s restrictions. The January 19th issue of the Connecticut Herald opened its columns

with an advertisement stating, "Prepare for War."¹⁵ Such sensational headlines were mirrored by advertisements for individual businesses. W.M.A. Babcock & Co. notified their customers on January 1st, 1808 that "To prevent an embargo on our business, and the sheriff declaring our shops in a state of blockade, we must call on our customers for assistance".¹⁶ The advertisement lists their provisions of "A few thousand Muskrat for sale," likely imported from Canada, a country from which imports were now entirely banned. One cannot fault the proprietors of this business for their concern and confusion regarding the unprecedented embargo, as the proceedings in Congress had been kept secret, and neither the federal government nor the citizenry had any experience reckoning with or implementing a complete embargo on all foreign goods.

One of the main effects of the embargo was that it dramatically forced up the prices of commonly imported products, such as textiles. In March 1808, the New Haven business Trowbridge & Atwater posted an advertisement headlined "Non-importation act," in which they marketed "Broadcloths and Cassimeres." They report that "These goods have risen 15 or 20 per cent, but will be sold at the old prices".¹⁷ Oddly enough, the field of textile production made strong headway during the embargo, which stimulated domestic manufacturing of cloth products as foreign textiles disappeared from the market. These changes were also detectable in commercial papers through solicitations by expanding textile businesses. By March 1808, textile production received a great deal of publicity in the Connecticut Herald. On March 8th, an advertisement was published by an Oracea Smith, with the headline "To the friends of Domestic Manufactures." The advertisement mentions that Smith would now be weaving tablecloths with "as great a variety of 8 shaft diaper as is wove in any shop in the state."¹⁸ Another solicitation from March 17th tells of "Improvement in American Manufactories," and advertises "Constant employment and prompt pay to weavers, and to a few persons who understand the spinning of wool."¹⁹ These notifications in regional newspapers displayed a reflexive and opportunistic economic adaptation to the embargo's conditions on the part of businesses in New England, who were unprepared for the new economic conditions foisted on them and were compelled to adapt.

While some of Connecticut's influential figures like Jedediah Huntington were resisting the embargo through unscrupulous economic measures, others were busy forming a political resistance, one that was fostered by a resurging Federalist allegiance in the papers. The papers acted as the oil to the machine of embargo resistance. By mid-1808, political dissatisfaction towards the embargo and Jefferson's Democratic-Republican government had reached a fevered pitch. A September 3rd piece published in the Columbian Sentinel expressed these emotions with prideful angst: "New-England

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is approaching an awful crisis; but her prosperity may yet be retrieved: Her destiny is still within her own control; and her hardy sons must now decide whether she shall remain humbled, prostrate, debased at the feet of the haughty mistress of the Union, or whether she shall at length assert her violated rights, and vindicate her insulted honor.”²⁰ Whether or not the writer was recommending secession from the union, dissatisfaction in New England was a potential source of separatism by late 1808. New England separatism would reach its peak in the Hartford Convention of 1814–15, commonly recognized as the last major political statement of the Federalist Party, where New England Federalists threatened to secede unless their demands for constitutional changes were met. In 1808, however, towns across New England gathered to petition the government to suspend the embargo. A list published in the Connecticut Gazette of New London, Connecticut reported on 19 New England cities and towns that voted by at least a two-thirds majority to lift the embargo. The towns, including Boston, had a collective population in 1800 totaling 70,344 citizens; their 1808 populations were surely even higher.²¹ This voting body alone constituted 1.3% of the United States population based on the 1800 census, and a much larger percentage of white males, who were enfranchised. When one considers that these votes came only from a small region of the nation, one grasps the full breadth of the embargo’s unpopularity throughout the Northeast. All these elements of resistance, political and otherwise, were published in newspapers. Both commercial and political newspapers served as catalysts that united the multifarious sociopolitical elements of New England’s resistance to the embargo, tying together the dissidence of the elite, the merchants, and average shop-owners.

There were several specific ways that the papers aided the resistance to the Embargo Act, some overt and others subtle or even unintentional. The active effort taken by papers like the Connecticut Herald and Columbian Sentinel took the form of publishing consistently critical writings and legal critiques of the embargo. Additionally, and potentially inadvertently, the papers published numerous advertisements for foreign goods, many of which were almost certainly obtained in disregard of the embargo. An example of this phenomenon was found in the May 17th, 1808 issue of the Connecticut Herald in the form of a front-page advertisement titled “Spring importation,”²² in which recently arrived goods from Liverpool are advertised with no mention of their legality. These sorts of advertisements were common in the papers, and little effort was made to identify which goods had arrived with permission and which arrived under questionable legal circumstances. The third mode through which the papers aided in embargo avoidance was in their inconsistent publishing of merchant shipping in Connecticut ports. Papers like the Herald

and Gazette occasionally marked ships departing or arriving from foreign ports as “permitted” by the federal government, but also published numerous ship departures without this stipulation, not mentioning whether the ships were providing passage only (a common work-around to the embargo) or taking shipping on board. In New York, the marking of ships with permission was consistent and common. When ships sailed without permission, it was almost always noted that the ship would take passengers only. There was no such consistency in the Connecticut papers, and given the proclivity of collectors like Huntington of New London to spuriously permit transit to ships, the papers were likely performing a critical function for the resistance of the embargo by broadly publishing all ship departures and arrivals, with rare mention of permissions or passenger restrictions. It was through these various vectors, some intentional and decidedly political, and others with more ambivalent motivations, that the newspapers of New England served as the catalyzing force for resistance to the Embargo Act.

The Embargo Act of 1807 was an ill-fated venture. It was conceived in an environment of international conflict, in which the United States and President Jefferson felt the need to assert American will in the face of British and, to an extent, French violations of U.S. neutrality and honor. The embargo brought with it a host of unintended effects, the foremost being the near-total collapse of the merchant marine economy of the American Northeast. The policy proved so unpopular that it managed to turn respected public officials into corrupt actors, previously dispassionate commercial papers into incensed Federalist mouthpieces, and law-abiding merchants and shopkeepers into potential criminals. In the face of economic collapse, a unified, diverse set of actors sought to navigate difficult economic waters and foil the law and its effects. This New England society, and the larger Northeastern society, defined and united in dissidence, represents both a unique moment in the history of the young American Republic and an early trial for the nation’s political cohesion.

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BY MEMORY INSPIRED: THE CREATION OF THE LEGACY OF 1798

Brennan Steele

*By Memory inspired, and love of country fired,
The deeds of men I love to dwell upon;
And the patriotic glow of my spirit must bestow
A tribute to the heroes that are gone, boys, gone —
Here's a memory to the men that are gone!¹*

On 24 April 1916—Easter Monday—Patrick Pearse stood on the steps of the General Post Office in Dublin and read a proclamation declaring that Ireland was, and would forever remain, a sovereign republic, independent from the British Empire. He opened this proclamation by referencing the “dead generations” of Irishmen and women, using patriotic and national memory in the service of the rebels. This invocation of patriotic tradition served as a stand-in for democratic support, permitting the Irish Republican Brotherhood to appeal to a nationalist republican tradition as a necessary and sufficient rationale to rebel.² The birth of this tradition can be traced back to the 1798 Rebellion. The 118 years between 1798 and 1916 saw the creation of a republican tradition and memory that would inspire rebels and revolutionaries, changing the face of Ireland. During this period, the actual events of 1798 have been obscured in favor of a mythical version. In this paper, I will demonstrate the obfuscation that occurred, connect it to the actual events, and attempt an explanation of why this change has happened.

To begin, I will lay out the conventional timeline of the 1798 rebellion.³ The upheaval of the French Revolution sent shockwaves across Europe, including Ireland. In 1791, William Drennan founded an organization that would become the United Irishmen (UI). Theobald Wolfe Tone, another founding member of the UI, managed to convince the French Directory to sponsor a French invasion of Ireland to overthrow the British. This expedition attempted to land at Bantry Bay, Co. Cork, in 1796, but the serendipitous “Protestant Winds” turned it away. English authorities at Dublin Castle, surprised at the willingness of Revolutionary

1. Anonymous, “By Memory Inspired,” *The ’98 Reader*, ed. Padraic O’Farrell (Dublin: The Lilliput Press Ltd., 1998), 187.

2. Peter Hart, *The IRA at War*, (New York: Oxford University Press, 2005), 24.

3. Unless otherwise noted, this chronology will come from Thomas Bartlett’s *Ireland: A History*. Thomas Bartlett, *Ireland: A History*, (Cambridge: Cambridge University Press, 2010), 206-27.

France to attempt an invasion, began taking the insurrectionary threat posed by the UI more seriously. A heavy government crackdown ensued. Authorities raided suspected leaders of the movement, and declared martial law on 2 March 1798.

Fears about the real intentions of the crackdown sparked an uprising in May, beginning in the counties surrounding Dublin. This rebellion found little success. However, news of this rising combined with, to quote Thomas Bartlett, the government's "campaign of terror" sparked another rebellion in Co. Wexford.⁴ Initially successful, the Wexford rebellion reinvigorated the action around Dublin and helped to provoke an uprising in Ulster. Following the storming of Wexford town, the rebels were pushed back and defeated at Vinegar Hill in June. In Ulster, rebels hastily rose in various areas, but were summarily defeated. A contingent of French soldiers about 1,100 strong landed near Killala, Co. Mayo, in late August. An initial victory was followed by multiple defeats, and the French forces surrendered on 8 September. Violence continued in some areas, but the end of the rising is typically dated to sometime around the French surrender.

This narrative, although necessary for understanding the 1798 rebellion (or more accurately, rebellions), does not show the whole picture. Violence was prevalent across Ireland well before the rebellion around Dublin began, and many sources indicate that the Dublin Castle government believed that a state of rebellion existed prior to March.⁵ The UI, although being the dominant force behind the rebellion, had achieved this prominence by working with the Defenders, a Catholic agrarian militia group. Nothing remarkable changed within the Defenders following their alliance with the UI, and their brand of small-scale violence continued. Historians have usually centered dates of the rebellion around French intervention, a convention that exaggerates the role of the French forces. Overall, these forces had little impact in 1798, and only arrived after the major engagements had been fought. Their campaign ended within a month of landing, and rebel actions continued after their surrender.

The question of how to characterize the events of 1798 also generates debate. 1798 is often referred to as a rebellion, but this term is not entirely adequate. The UI and

4. Bartlett, *Ireland*, 221.

5. Thomas Bartlett, "Why the History of the 1798 Rebellion Has Yet to Be Written," *Eighteenth-Century Ireland / Iris an dá chultúr* 15, (2000): 181-190, accessed 6 February, 2017, <http://www.jstor.org/stable/30071449>.

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the Defenders, like the IRA that would follow in their footsteps, were not homogenous groups, and were often heavily influenced by their locality.⁶ The term rebellion serves to lump together distinct events: the initial revolts around Dublin, the Wexford rising, the Ulster risings, and the French campaign were connected in the sense that each saw forces fighting against British soldiers, but no unified leadership guided these actions since many of the potential leaders were imprisoned. As it happened, many of the leaders who could have unified the movement were imprisoned. To reflect these issues, I will be using the term “rebellions” to refer to the events of 1798.

Similarly, terminological differences have significant implications: Was Wolfe Tone a rebel, or a revolutionary? Was the Battle of Vinegar Hill a military debacle or a heroic last stand? The descriptors used skew the historiography, allowing historians and politicians to make claims with a veneer of justification that may not actually exist.⁷ These issues of dating and terminology raise problems with the basic narrative, making a reexamination necessary. I contend that the distortion of the rebellions was a conscious attempt by the next few generations to reclaim the legacy of 1798.

In order to explain how this legacy was created, I will be examining popular politicization, the role of martyrs, and the aftermath of the rebellions. These topics have received limited scholarship, yet are essential to understanding why the rebellions have achieved the mythical position they hold in the republican tradition. The conscious attempt on the part of the United Irishmen to popularize the political rebellion is often overlooked in favor of discussing the beliefs and deeds of the leaders. However, the strength of the rebellions lay in their ability to galvanize the people at large. This popularization is reflected in the legacy, especially in the ability of later rebels to hold up martyrs as emblematic of the spirit of 1798. To address a deficiency in the historiography, I will be placing a special emphasis on popular works, especially songs.

A central aspect of the creation of 1798's legacy was the broad range of support the UI gained. They began as a Belfast-based society of educated Protestants, and their core leadership remained basically the same throughout their existence. Although irrevoca-

6. Breandán Ó Buachalla, “From Jacobite to Jacobin” in *1798: A Bicentenary Perspective*, ed. Thomas Bartlett et al. (Cornwall: Four Courts Press, 2003), 95.

7. For example, the 1916 Proclamation of the Irish Republic mentioned above actively linked 1798 to the current actions being taken by the IRB, which simultaneously portrayed 1798 as a revolution through its goals and normalized the actions being taken by the IRB.

bly connected with the events in France, the UI had much closer ties to the English Whig tradition.⁸ They initially called for reforms to English treatment of Ireland, but found Westminster unwilling to compromise.⁹ They then began drifting towards complete separation from Britain. Their largely Protestant leadership appeared early on to be a barrier to their access to the Catholic population, which was absolutely crucial to the spread of the UI message. Wolfe Tone emphasized the importance of gaining Catholic support. The inclusion of Catholics in the greater movement, to Wolfe Tone, was a necessity as they were the “entire peasantry of three provinces,” making up the majority of the population.¹⁰ He believed that the support of the Catholics was essentially guaranteed to the UI, and thus directed his efforts towards arguing for the inclusion of the Catholics to the Protestant dissenters.¹¹ The Irishmen allied themselves with the Defenders, thus opening the door to greater access to the Catholic population, enabling them to spread their message through popular means.

Satires, songs, and newspapers were important tools for popularizing opposition, and were used to great effectiveness by the UI. Their stated goal was to “make every man a politician,” and these methods helped to spread their message broadly. Satires were useful in showing injustices perpetuated by the British government, and found a wide readership. Often, they would be inspired by recent events, as in the case of *The Porciad*, in which an Irish hog wins a race against an English gentleman.¹² Others presented biting fictional criticisms of British institutions, such as William Sampson’s *The King versus Hurdy Gurdy*, which parodied trials of Irish rebels or agitators. Sampson was exiled without trial for this satire.¹³ Satires were to fall out of fashion as the situation intensified in the later 1790s, and were largely replaced by less subtle publications.

Songs and ballads were poignant methods to widely disseminate rebel sentiment.

8. Nancy J. Curtin, *The United Irishmen: Popular Politics in Ulster and Dublin, 1791-1798* (New York: Oxford University Press, 1994), 13.

9. *Ibid.*, 33-4.

Marianne Elliot, *Partners in Revolution* (London: Yale University Press, 1989), 30.

10. Wolfe Tone, *Ireland and Britain 1798-1922: An Anthology of Sources*, ed. Dennis Dworkin (Indianapolis: Hackett Publishing Company, Inc., 2012), 12.

11. *Ibid.*, 14.

The dissenters were Protestants not aligned with the official Church of England/Ireland.

12. Mary Helen Thuente, “‘The Belfast laugh’: the context and significance of United Irish satires” in *Revolution, Counter-Revolution, and Union: Ireland in the 1790s*, ed. Jim Smyth (Cambridge: Cambridge University Press, 2000), 70.

13. *wWwIbid.*, 82.

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These were often printed in newspapers, or published by the UI in chapbooks, such as *Paddy's Resource* (1795).¹⁴ These songs were usually set to popular airs, and only the lyrics would change, often being updated to include recent events. One such significant event was the execution of William Orr in 1797. Drennan wrote a ballad entitled "The Wake of Willam Orr," which appeared in an expanded reprint of *Paddy's Resource* in 1798.¹⁵ His ballad, like many of the others that appeared as British punitive actions intensified, juxtaposed sadness and mourning with solidarity and hope: "Here we watch our brother's sleep: / Watch with us, but do not weep: / Watch with us thro' dead of night / But expect the morning light."¹⁶ Here, Drennan actively draws the listener into the group mourning the death of William Orr, making the death more personal than an analysis one would expect to see in a newspaper.

Songs also helped to codify interpretations of events, as can also be seen in the case of Orr. Immediately after Orr was found guilty, various allegations surfaced that the British government had bribed the jury with alcohol, that witnesses had perjured themselves, or that the jurors had been threatened, thus rendering the verdict invalid.¹⁷ These allegations have endured, as seen in a mid-19th century ballad entitled *By Memory Inspired*: "In October, '97—may his soul find rest in heaven— / William Orr to execution was led on; / The jury, drunk, agreed that Irish was his creed, / For perjury and threats drove them on, boys on".¹⁸ Popular repetition of grievances, combined with the speed and distance with which ballads could travel, made songs one of the UI's most powerful means of spreading propaganda.

The republican press was the most significant of the UI tools. A developed press already existed in Ireland prior to the founding of the UI, as seen in the spread of French Enlightenment texts, that created a network spanning from Galway to Dublin, Belfast to Waterford.¹⁹ Throughout the 1790s, radical newspapers continually appeared across Ireland, mainly in Belfast and Dublin. The most successful of these newspapers was likely *The*

14. O'Farrell, '98 Reader, I.

15. *Ibid.*, 24.

16. *Ibid.*, 25.

Similar ballads were "Edward" and "The Sean-Bhean Bhocht", both published anonymously.

17. Curtin, *United Irishmen*, 223.

18. O'Farrell, '98 Reader, 187.

19. Geraldine Sheridan, "Irish periodicals and the dissemination of French Enlightenment writings in the eighteenth century" in Bartlett, 29.

Northern Star, which reached 4,000-5,000 subscribers, and influenced many more through readings in pubs or on street corners.²⁰ Dublin Castle and the British government, employing a network of informers, sought to suppress many of these papers.²¹ They were often successful, but new newspapers quickly replaced the now-illegal ones. Despite the wide readership and impact of many papers, the best outcome that many could actually achieve was to force the government to betray its liberal principles and demonstrate its reactionary tendencies, exposing it as tyrannical.²² However, even if their influence was limited, newspapers helped to spread the UI message across Ireland, with varying degrees of success.

The British crackdown against potential leaders of a rebellion left the UI/Defender alliance essentially headless, forcing some unlikely people to become leaders. One such unlikely leader was Father John Murphy of Boolavogue, popularly remembered as perhaps the greatest of the leaders of the Wexford rising. The ballad “Boolavogue” commemorates his involvement, telling the story of how Murphy rose up to lead the rebels. Unsurprisingly, the ballad greatly dramatizes his role: “Then Father Murphy, from old Kilmormack, / Spurred up the rocks with a warning cry; / ‘Arm! Arm!’ he cried, ‘For I’ve come to lead you, / For Ireland’s freedom we fight or die.’” The ballad goes on to describe Murphy’s leadership of the rebels, presenting him as a force of nature: “For Father Murphy, from the County Wexford / Sweeps over the land like a mighty wave.” The ballad brings his story to conclusion in the defeat at Vinegar Hill, where “Our heroes bravely fought back to back.” Following his defeat, the ballad claims that the British captured him, and “burnt his body upon the rack.”²³ In reality, Murphy, although an impressive military leader largely responsible for the rebel victory at Oulart Hill,²⁴ was one leader among many at Wexford. His disagreements with other leaders imply that he was not even among the top brass.²⁵ Following the rebel defeat at Hacketstown, Murphy disappeared with a bodyguard into the

20. Curtin, *United Irishmen*, 204.

21. One radical paper that appeared was entitled *The Union Star*, less a newspaper and more handbills in the style of Marat’s “*L’Ami du peuple*.” They were intended to rile up the mob and identify “enemies of the people” in the hope that they would be assassinated. An informant brought forward a man named Walter Cox, who had been known to distribute the paper. Cox asked for, and was granted, a blanket pardon in return for disclosing the author of the *Star*. After being granted the pardon, Cox revealed himself to be the sole author, printer, and publisher.

Ibid., 224-6.

22. *Ibid.*, 222.

23. P. J. McCall, “Boolavogue” in O’Farrell, 86-7.

24. Daniel Gahan, *The People’s Rising: Wexford, 1798* (Dublin: Gill & Macmillan, 1995), 40-1.

25. *Ibid.*, 150.

mountains, likely with the hope of surviving the inevitable rebel defeat.²⁶ He was captured by British forces, and executed.

The apotheosis of Murphy is significant for understanding the role of martyrs. “Boo-lavogue” was published in 1898 to mark the centenary of the Wexford rebellion. A century after his death, this man had come to symbolize more than can actually be credited to him. The attribution of heroic deeds and status to leaders such as Murphy, Henry Joy McCracken, and Wolfe Tone, among many others, allowed the legacy of 1798 to become personalized. One could hang a portrait of Wolfe Tone on their wall, but hanging the abstract idea of freedom from British oppression was more difficult.²⁷ The rebellion of 1690 does not have a similar tradition of remembrance among republicans, despite arguably being as politically important.²⁸ In stark contrast, 1798 seems to mark the creation of a tradition in popular memory that emphasizes remembrance not only of the events but of the participants as well. The Young Ireland movement of the 1840s helped to popularize this emphasis on emotional recollection of the leaders and heroes, but it already existed in the popular memory of the peasantry. As Maura Cronin argues, “code-words” served to evoke images of what she describes as a “vividly remembered rebellion.” These code-words were unmistakable to those who had lived through the rebellions, or had been told of them by their elders: references to “‘pitchcaps’, ‘triangle’, ‘yeoman’, [and] ‘croppy’.”²⁹

The punitive aftermath of the rebellions served to create martyrs who could become symbols of the rebellions and British injustice. The initial reaction to the botched Bantry Bay landing was a crackdown and the institution of a full system of repression. English authorities rounded up and imprisoned the leaders, declared martial law, and brought the full force of the law against would-be subversive elements in Ireland. This policy had the unintended effect of triggering rebellions, as these discontents became full-fledged rebels amidst fears for their safety and liberty if the British government continued unchecked.

26. *Ibid.*, 248.

27. Padraic O’Farrell, an Irish historian from Co. Kildare, describes how children, inspired by the ballads of 1798, would play: “Fertile young imaginations grasped the imagery of each stanza with fervour. Young arms plucked ash-plants from hedges and fashioned make-believe pikes. Every stream was the Slaney, every high rise was Vinegar Hill. Kelly the Boy from Killane and Father Murphy, each scarcely four feet tall, fought their way across bracken and heather. That was because Wexford had the most stirring selection of ballads.” O’Farrell, ‘98 Reader, ix.

28. The only song that comes to mind is the popular reel “The Siege of Ennis”. To my knowledge, no lyrics are associated with this song.

29. Maura Cronin, “Memory, story and balladry: 1798 and its plan in popular memory in pre-Famine Ireland” in *Rebellion and Remembrance in Modern Ireland* ed. Laurence M. Geary (Cornwall: Four Courts Press Ltd., 2001), 117.

Following the collapse of rebel resistance, Marquess Cornwallis, the Lord-Lieutenant of Ireland appointed to deal with the aftermath of the rebellions, enacted a vastly different policy. Initial repression occurred, with military tribunals issuing death sentences against rebels and some leaders, who were summarily executed. In an attempt to break the back of the rebellion, Cornwallis commuted the death sentences and corporal punishment orders for hundreds of rebels, preferring instead to exile the leaders.³⁰ In total, about 3,450 rebel prisoners were sent abroad between 1798 and 1802, the majority drafted into the British or Prussian armies, the rest transported to Botany Bay, Australia, or banished.³¹ This policy achieved the intended goal of diluting the revolutionary spirit in Ireland, but had the unintended effect of spreading the idea of revolution and anti-British sentiment far beyond the Irish Sea. One such place was New South Wales.

Between 1800 and 1806, over 600 political prisoners (the majority of whom were likely UI/Defenders and those associated with them) were transported as prisoners to New South Wales.³² These prisoners were not willing to simply start a new life in Australia, as can be seen in the cases of mutiny. Colonial authorities found some success in forcing the rebels to submit, but conflict was to erupt in 1804 with the Castle Hill Revolt. This revolt was largely a reaction to the news of Emmett's rebellion in Dublin, and would mark the last distinctly UI revolt. Much like Emmett's uprising, the Castle Hill Revolt was quickly contained. However, it showed "that four years of flogging, executing and dispersing recalcitrant Irish rebels had not secured the colony from the determination of hundreds to take arms when the opportunity arose."³³ The remnants of the UI were deemed dangerous enough in the conflict with the French that, on the Pacific outpost of Norfolk Island, prisoners were placed over scaffolding covered with brushwood. The Chief Constable ordered the prisoners to be immolated should French ships be sighted.³⁴

As the example of New South Wales demonstrates, popular resistance did not

30. Thomas Bartlett, "Clemency and compensation: the treatment of defeated rebels and suffering loyalists after the 1798 rebellion" in Smyth, 107.

31. Michael Durey, "Marquess Cornwallis and the fate of Irish rebel prisoners in the aftermath of the 1798 rebellion" in Smyth, 129.

Cornwallis did not personally commute the sentences of all conscripted or exiled rebels, but the precedent he set in his chosen interventions into various court martial decisions led to a preference for exile or conscription over capital/corporal punishment.

32. Ruán O'Donnell, "Foreign enemies and internal rebels: the French War and the United Irishmen in New South Wales" in Geary, 44.

33. *Ibid.*, 49.

34. *Ibid.*, 49.

end with the defeat of the rebels in Ireland and the passing of the Act of Union. The United Irish diaspora helped to spread their message and enshrine continuing resistance abroad, while in Ireland popular opinion remained firmly against Union. This opinion was pervasive and aggressive enough that pro-Union politicians were forced to take it into consideration. The Bishop of Meath even suggested that the government should take a page out of the UI playbook and commission popular ballads to mobilize support.³⁵ Union was passed against massive public opposition from both Catholics and Protestants, and many remained steadfastly opposed to it.³⁶

While Marquess Cornwallis commuted the death sentences of many of the rank-and-file rebels, the leaders were sent to the gallows. Wolfe Tone, Father Murphy, Henry Joy, and Henry Munro were some of the leaders who met their deaths in the immediate aftermath of the failed rebellions. Each of them feature in popular songs, often closely tied to later martyrs, such as Robert Emmett and Michael Dwyer.³⁷ This creation of a pantheon of heroes ensured a greater emotional effect. In addition, it served to create a precedent for leaders to incite a population to revolt and die for their cause. This legacy would inspire many later revolutionaries, including Pearse, who was heavily influenced by Wolfe Tone.³⁸ The martyred leaders appeared side-by-side in ballads, fighting and dying together to defend their nation from oppression. In reality, however, their lives were largely unconnected.

These ballads emphasize continuity of rebellion and connections between leaders. This idea of continuity provides evidence for historians Joep Leerssen and Tom Dunne, who argue for a conceptualization of Irish history that stresses the role of the conquest and occupation as central to forming a uniquely Irish sense of identity. A colonial experience is at the center of this identity.³⁹ This sense of identity and community comes less from “having achieved great things together” than “having endured great suffering together.”⁴⁰ The shared cultural experience that emanated from this feeling was largely transmitted through what Dunne calls “subaltern voices”: *amhráin na ndaoine*, or songs of the peo-

35. Jim Smyth, “The Act of Union and ‘public opinion’ ” in Smyth, 158.

36. *Ibid.*, 160.

37. A brief list of some songs associated with the mentioned leaders: Wolfe Tone; Tone’s Grave; Three Flowers; Boolavogue; Father Murphy; Henry Joy; General Munro; By Memory Inspired.

38. Tom Dunne, *Theobald Wolfe Tone: Colonial Outsider* (Cork: Tower Books, 1984), 12-3.

39. Neither Leerssen nor Dunne reference a specific phase of conquest and colonization of Ireland, instead discussing it as a single extended process.

40. Joep Leerssen, “1798: The Recurrence of Violence and Two Conceptualizations of History,” *The Irish Review*, no. 22 (Summer 1998): 37-45, accessed 6 February 2017, <http://www.jstor.org/stable/29735887>, 43.

ple.⁴¹ Through this lens of cultural suffering the shape of the legacy of 1798 becomes clear. The high and lofty goals of the UI, with their emphasis on reform and the Whig tradition, gives way among the peasantry to a feeling of collective pain stemming from a foreign occupation. Consent was not the standard by which the country was governed, as became clear in the passage of the Act of Union in the face of massive public opposition, which mainly took the form of print debate and out-of-door protests.⁴² The experience of rebellion and repression served to create key ideas and phrases that would carry cultural significance and conjure up images and ideas of the failed rebellions and the subsequent repression. Discussion of the rebellions themselves remained concealed for a few decades afterwards. This began to change with the emergence of the Young Ireland movement in the 1840s, which would reclaim the memory of the rebellions, turning them into a symbol of cultural pride. The Young Ireland movement is most responsible for the tradition of Irish rebellion and republican resistance, since they were the first to consciously embed politics into cultural tradition, making possible the apotheosis of the leaders and the glorification of revolt.

In 1843, the Young Irelander John Kells Ingram published a poem entitled “The Memory of the Dead.” This poem highlights the change that was occurring during the Young Ireland movement. Ingram nods towards the cultural suffering that had colored the memory of the rebellions, but attempts to take back the legacy and transform it into a symbol of national pride. Beginning with a sharp challenge (“Who fears to speak of '98? / Who blushes at the name?”), he transitions towards directly addressing the reader to claim the mantle of rebellion and publicly honor the memory.⁴³ He concludes the poem by declaring the rebellions to be the guiding principle of the Irish resistance to England: “Then here’s their memory, let it be / To us a guiding light / To cheer our fight for liberty / And teach us to unite!” The poem’s transition from taboo to pride mirrors the change in cultural memory and legacy from a rebellion in which thousands died to defend their liberties and lives, to one in which thousands gave themselves freely to defend the ideal of Ireland, inspired by the memory of those who came before, and the untold multitudes who would follow them.

41. Tom Dunne, “‘Tá Gaedhil bhocht cráidhte’: memory, tradition and the politics of the poor in Gaelic poetry and song” in Geary, 94.

42. Smyth, “Act of Union” in Smyth, 155.

43. John Kells Ingram, “The Memory of the Dead” in O’Farrell, 155-6.

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The actual rebellions of 1798 were the product of a tradition of reform that gradually radicalized in the face of English intransigence. Drennan, Wolfe Tone, Murphy, and the other rebel leaders did not see themselves as the last hope of Ireland, as selfless martyrs dying so that Ireland might be free. Drennan slowly backed out of the UI as they radicalized before 1798, and died in 1820. Wolfe Tone spent much of his time in France, believing that the only hope for a successful rebellion was a French invasion, not a romantic last stand of the Gaels against the English. Murphy sought to survive by hiding in the mountains. All of these men are men worthy of admiration, but their lives are at odds with later generations' perceptions of them. They were men of their time whom later movements distorted to legitimize republican rebellion, turning their deeds into dogma, their coffins into catechism. Pearse claimed in his stirring graveside panegyric for O'Donovan Rossa that the Fenian forefathers envisioned an Ireland "not free merely, but Gaelic as well; not Gaelic merely, but free as well."⁴⁴ This claim, made by the son of a bricklayer from Birmingham, would likely have surprised Drennan, the descendant of English settlers in Belfast, and Wolfe Tone, the descendant of French Huguenots. If we are to be inspired by the memory of the heroes that are gone, we must first learn their history, not their legends.

44. Patrick Pearse, "Graveside Panegyric for O'Donovan Rossa" (speech, Glasnevin Cemetery, Dublin, 1 August 1915), Easter Rising 1916, <http://www.easter1916.net/oration.htm>.



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WAR, MIGRATION, AND HOUSING: PRELUDES TO THE 1919 CHICAGO RIOT

Alexander Votta

On July 27, 1919, Eugene Williams, a seventeen-year-old African American Chicagoan, was swimming in Lake Michigan off the coast of an unofficial, segregated beach, when he made the fatal error of floating across the imaginary boundary that separated black and white waters. On the shore, an unrelated quarrel between black and white beachgoers devolved into violence, marked by stone-throwing on each side. Black and white citizens had clashed previously due to increasingly strained racial tensions in the city, but this fight proved infinitely more critical than previous ones. During the ensuing melee, Williams drowned. Although the cause of Williams's death remains unclear, the immediate rumor among those involved in the fight was that a white man stoned him and that the police refused to arrest the perpetrator. The coroner's jury concluded that fear of assault kept Williams from swimming to shore, but controversy remains.¹ While the cause of Williams' death remains unclear, its effects are well documented. The incident immediately touched off violence across the city: mobs of both races began to roam the streets, destroying property and robbing, assaulting, and murdering people; the 1919 Chicago Riot had begun. By the time it came to an end on August 2, 1919, gangs of Chicagoans had destroyed a quarter million dollars worth of property, and rioters as well as police had killed 38 and injured over 500 people.² Although Williams' death sparked this wave of violence, the increasingly antagonistic relationship between white and black Chicagoans truly caused the riot.

From 1910 to 1920, the North experienced an influx of African Americans from the South. This was one wave of the ongoing Great Migration, in which over a million black Southerners moved north searching for greater prosperity and racial tolerance. Chicago, due to its status as a railroad hub, saw a vast expansion of its black population as a result. This expansion worsened an existing housing shortage that originated with earlier waves of migration. African American migrants packed into the traditionally black neighborhoods on the south side of the city, in an area known as the "Black Belt." Many of the homes in the area were run-down, with boarded-up windows and holes in the walls and roofs. Despite the abysmal conditions, rents skyrocketed as demand for housing rose with the population, outpacing supply. As a result, many who could afford to move out of the Black Belt did so, to the chagrin of many white Chicagoans who viewed African Americans as a blight on white neighborhoods. World War I only exacerbated the migration and housing crisis, because it freed up industrial jobs and drew more Southern migrants to the North while all

1. Chicago Commission on Race Relations, *The Negro in Chicago: A Study of Race Relations and a Race Riot* (Chicago: The University of Chicago Press, 1923), 4. Hereafter: CRR, *The Negro in Chicago*.

2. St. Clair Drake and Horace R. Clayton, *Black Metropolis: A Study of Negro Life in a Northern City* (New York: Harcourt, Brace and Company, 1945), 65.

but halting residential construction. The acceleration of Southern migration and expansion of African Americans into previously racially homogeneous white neighborhoods fomented racial tensions throughout the city. By war's end, African American migration to Chicago and movement within the city resulted in violent white resistance, and the inflamed racial tensions culminated in the outbreak of the 1919 riot.

Chicago experienced a significant amount of Southern migration prior to World War I. From 1880 to 1910, the city's African American population increased from approximately 6,500 to nearly 44,000, with a substantial portion of this growth coming as a result of migration from the South.³ In his history of Chicago and the Great Migration, historian James Grossman describes how the "pull of ethnocentrism" and "push of discrimination" affected black settlement patterns within the city.⁴ This paper borrows these two concepts and applies them to the Great Migration to explain why African Americans left the South and why so many chose to move to Chicago. Factors that both pushed people from the South and pulled people towards the North influenced one's decision to migrate. One of the most important phenomena that pushed African Americans northward was violence. White mobs lynched African Americans regularly throughout the South. In 1918, historian Carter Woodson noted that there had been 4,000 lynchings in the South since the end of the Civil War and that while "these crimes of white men were first kept secret," they had become a form of public entertainment throughout the late nineteenth century.⁵ Worse still, some politicians lauded the murderers as heroes and condemned the victims as criminals. Moreover, law enforcement officers were often complicit in these killings, ensuring the absence of legal redress. If a white citizen merely accused an African American of committing a crime against them, white mobs would use it as justification for the extrajudicial murder of the accused. Many thus sought to escape the injustices of the South by moving to the perceived refuge of the North.

Apart from the scourge of violence, limited economic opportunities played a critical role in motivating participants of the Great Migration. For example, the Chicago Commission on Race Relations, established following the 1919 riot to assess the underlying causes of the incident, noted that low wages had been one of the of the most important factors that led African Americans to leave the South.⁶ Many Southern African American laborers were unhappy with the low wages

3. James R. Grossman, *Land of Hope: Chicago, Black Southerners, and the Great Migration* (Chicago, University of Chicago Press, 1989), 127. Hereafter: Grossman, *Land of Hope*.

4. *Ibid.*

5. Carter G. Woodson, *A Century of Negro Migration* (New York: Association for the Study of Negro Life and History, 1918), 156.

6. CCR, *The Negro in Chicago*, 80-81.

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they received and struggled to earn a living. Contacting an unknown Northerner to inquire about obtaining work, a black man from Collins, Mississippi wrote of his pay, “I am a hardworking man but I can’t make above a living here and hardly that”.⁷ Another man wrote to a Northern employer who had placed a newspaper advertisement for Southern workers, claiming that he “decided to take advantage of this opportunity as I desire better wages to meet the present high cost of living.”⁸ The willingness of these two men to head north in search of economic prosperity illustrates the points made by the Commission. Black Southerners desired higher wages, but could not find them in the South—as such, African Americans left the region in ever-increasing numbers.

Limited economic advancement and violence often overlapped with tragic consequences for Southern African Americans. Their economic progress could make them a target for white violence because they both threatened the existing racial hierarchy and cut into white profits. The murders of Thomas Moss, Calvin McDowell, and William Stewart in Memphis, Tennessee, on March 9, 1892, illustrate this intersection of white supremacy and economic competition. Moss, well respected in the city’s black community, owned a grocery store. Because of his social status, many African Americans chose to shop at Moss’s store rather than a nearby white-owned store. Unwilling to accept Moss’s success, the white owner hired a handful of off-duty deputies to attack Moss’s store. Moss, along with his friends McDowell, and Stewart, fought back against the attackers, unaware they were law enforcement; during the shootout, the three men injured several deputies. Following this confrontation, a mob stormed the store and arrested Moss and his defenders. Four days later, a second mob dragged Moss, McDowell, and Stewart from the jail to a nearby train yard and shot them to death.⁹ Their story demonstrates the unique lack of economic mobility available to African Americans in the South. White Southerners were dedicated to maintaining their racial and economic dominance and defended the social order with violence. As a result, many African Americans believed that they could not have a successful in the South and chose to migrate north.

Violence and the lack of economic mobility did not simply push African Americans out of the South; the allure of a better life also pulled them north. Some of these factors complemented those that pushed them from their home. In October 1919, two months after the riot, Walter F. White, future executive secretary of the National Association for the Advancement of Colored People, wrote in an article for the NAACP’s *Crisis* magazine, “Prior to 1915, Chicago had been famous for

7. Emmett J. Scott, “More Letters of Negro Migrants of 1916 - 1918,” *The Journal of Negro History* 4, no. 4 (1919): 418 and 421.

8. *Ibid.*

9. “Ida B. Wells Forced Out of Memphis,” pbs.org, accessed March 28, 2017, http://www.pbs.org/wnet/jimcrow/stories_events_wells.html

its remarkably fair attitude towards colored citizens.”¹⁰ Northern cities offered greater employment opportunities, higher wages, and more housing, although African Americans often still lived in the worst homes available. And while white Northerners also victimized African Americans, they did so less frequently and with less organization.

Still, these advantages would have been meaningless if those in the South were unaware of them, and newspapers played a crucial role in disseminating information about the North. One of the most prominent newspapers among African Americans at the time was the *Chicago Defender*. In his history of Chicago and the Great Migration, Grossman notes that by 1917, “an information network had developed through which prospective migrants could learn what jobs were available... how much could be earned, what life was like... and virtually anything else that they wanted to know before leaving.” Of the *Defender* specifically, Grossman writes, “To those who believe what is in print, northern black newspapers—especially the *Chicago Defender*—provided glowing images of the North alongside lurid pictures of southern oppression.”¹¹ Such glowing images served to inform those in the South of the possibilities available to them in the North, hyperbolic though they were. The accounts of newspapers helped to mitigate the anxieties of the migrants, who could head north with a sense of what to expect and where to go once they arrived; many papers ran classifieds featuring advertisements from Northern employers. As a result of the more economic opportunities available, tens of thousands of black Southerners moved to the North during the latter half of the nineteenth century, and they established Chicago as one of their primary destinations. But with an ever-expanding black population, the question arose: where would they live?

By 1910, the answer to that question would most frequently be the Black Belt. Located on the city’s South Side, the Black Belt stretched thirty blocks from north to south and only a few blocks in width at any given point. Seventy-eight percent of the city’s black population would live within its borders by the end of 1910.¹² As with migration to the North, African Americans pushed into and pulled towards specific neighborhoods in Chicago. One such factor was white resistance to the “invasion” of their neighborhoods by African Americans. Though Chicago was not legally segregated, whites often perceived African Americans with disdain and distrust when they moved into white neighborhoods. White property owners often established associations designed to keep African Americans out of their neighborhoods—such as one formed by property owners in the

10. Walter F. White, “Chicago and its Eight Reasons,” *The Crisis*, October 1919, 293.

11. Grossman, *Land of Hope*, 68.

12. Grossman, *Land of Hope*, 123.

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Woodlawn neighborhood in 1897 which “declared war” on the neighborhood’s black population and denounced those landlords who rented to African Americans. Historian William Tuttle notes, “Intimidated by threats of violence, blacks often chose to move.”¹³ As the migration progressed, resistance continued to grow. Grossman summarizes the relationship between the increasing migrant presence and the frequency of organized white resistance to the integration of neighborhoods in the following passage:

“Few white neighborhoods had ever accepted with equanimity the purchase of property by even a “respectable” black family, even before migration reached a level that might have remotely threatened whites with the spectre of “invasion.” As the black population began to increase, whites became still less likely to tolerate a black neighbor and more likely to actively resist black settlement in their neighborhoods.¹⁴”

The Black Belt’s status as a racial enclave also pulled African Americans to the area. African Americans congregated in their own neighborhoods because of a shared culture, similar to what European immigrants had experienced around the turn of the century. Here they established social institutions and used public spaces without suffering racial antagonism. These institutions not only helped immigrants adjust to Chicago, they also informed them of job opportunities. The rise of a small professional and business class also drew African Americans into the Black Belt, with these individuals becoming community leaders and role models for migrants. These factors illustrate the “pull of ethnocentrism” that complemented the “push of discrimination” that kept most African Americans from moving into white neighborhoods before World War I and led to the emergence of the Black Belt in Chicago.¹⁵

Although Chicago was already a prime destination in the Great Migration before 1914, the scale of African American migration following the outbreak of war in Europe dwarfed that of the previous decades. Between 1880 and 1910, the city’s African American population rose by 37,500 individuals; between 1910 and 1920, by contrast, 65,000 African American Southerners came to Chicago—with the majority arriving between 1916 and 1918.¹⁶ African Americans were drawn to

13. William M. Tuttle, Jr., “Contested Neighborhoods and Racial Violence: Prelude to the Chicago Riot of 1919,” *The Journal of Negro History* 55, no. 4 (1970): 269, accessed March 30, 2017, <http://www.jstor.org/stable/2716173>. Hereafter: Tuttle, Jr., “Contested Neighborhoods and Racial Violence.”

14. Grossman, *Land of Hope*, 127.

15. *Ibid.*

16. CCRR, *The Negro in Chicago*, 79.

the North by factors similar to those of the previous decades: racial violence, low wages, and terrible housing. However, these factors alone fail to explain the sudden spike in migration from the South. Instead, it was the outbreak of war, accompanied by increasing demand for industrial labor and the cessation of immigration from Europe, that allowed for such a rapid expansion of Chicago's black population.

World War I required a massive workforce to manufacture the tools of war, like tanks, artillery, and guns. Chicago, already heavily industrialized, proved to be one of the leading manufacturing centers during the war, and with the rising demand for labor outpacing the available supply of workers, companies needed new sources of employees. With immigration from other nations all but non-existent and millions of American citizens joining the military following the United States' entrance into the war in 1917, manufacturers turned to Southern African Americans as a source for labor. Before the war, most African American Chicagoans worked in some form of domestic labor—60% in 1910 compared to 15% in manufacturing. By 1920, however, 67% of employed African Americans in Chicago worked in some form of industrial production.¹⁷ To entice African American workers to go north, employers sent labor agents to the South, many times offering to pay the travel expenses of laborers who chose to move. This loss of labor dismayed Southern manufacturers and farmers, and many Southern cities passed laws criminalizing Northern labor agents' activities. In 1916, for example, the city council of Montgomery, Alabama, made it an offense "punishable by a fine of \$100 and 60 days imprisonment to induce any laborer to leave the city."¹⁸ Nevertheless, the North's desire for labor and African Americans desire to leave the South meant agents were successful in bringing tens of thousands of migrants north in spite of these laws. Although some manufacturing jobs had been available to African Americans before the war, the expansion of industry and shallowing of the labor pool dramatically increased the rate of migration by providing well-paying, industrial jobs to many of the new arrivals. But the question of housing remained a central problem for the African American community, and it continued to increase in urgency as people arrived in the city.

World War I also put a temporary halt to domestic construction, further exacerbating the housing shortage. To offset the increase in rent, families took in lodgers, providing some migrants

17. Ibid. 358 and 362.

18. "To Check Labor Agents," *Boston Daily Globe* (1872-1922), September, 20, 1916, Retrieved from <http://proxy.lib.umich.edu/login?url=http://search.proquest.com/docview/503019526?accountid=14667>

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with a place to stay during this period. While an increase in the number of occupants sharing a dwelling may not have been an issue if African Americans enjoyed large, spacious, and comfortable homes, the vast majority of the population did not, and those who did were less likely to take in lodgers. In its investigation into the causes of the 1919 riot, the Chicago Commission on Race Relations studied the quality of African American housing by dividing houses into four categories: A, B, C, and D. “Type A” described homes which although suffering from “the usual deterioration... still afford a fairly high standard of comfort and convenience;” of “Type D,” the Commission wrote, “most of these dwellings were frail, flimsy, tottering unkempt, and some of them literally falling apart;” types B and C filled in the gaps. At the time the Commission compiled its report, approximately 85% of black Chicagoans lived in either “Type C” or “Type D” houses. Within the Black Belt, half of the dwellings owned by African Americans were classified as “Type C,” and approximately two-fifths were classified as “Type D.”¹⁹

Given the deteriorated conditions that surrounded them, many African Americans wished to leave the South Side during this period. Tuttle wrote of African Americans’ desire to move from the Black Belt:

Numerous blacks naturally wanted to escape these surroundings. Not only was the Black Belt dilapidated, decaying, and overcrowded, with landlords who overcharged and were obdurate in their refusal to make needed repairs; it was also a breeder of disease and the city’s officially sanctioned receptacle for vice.²⁰

However, this desire on the part of African Americans placed them in direct competition with whites for housing. Wealthier African Americans first began to move to the outskirts of the Black Belt, where homes were less dilapidated, during the 1890s and early 1900s. Then, as housing grew more scarce during the war, more middle-class African Americans moved into white neighborhoods. As the Black Belt slowly expanded south and into previously white-exclusive neighborhoods, white resistance grew. Homeowners associations had formed in the 1890s to oppose African Americans who moved into white spaces, and as war broke out and more African American settled in white neighborhoods, these associations adopted increasingly hostile tactics. They published articles denouncing African Americans who moved into white-neighborhoods, rallied against realtors who rented or sold housing to blacks, and even petitioned the city council for legislation segregating the

19. CCRR, *The Negro in Chicago*, 186 - 192.

20. Tuttle, Jr., “Contested Neighborhoods and Racial Violence,” 271.

city. A 1917 article in the Chicago Tribune documented such a request by the Chicago Real Estate Board, which charged “Negro real estate dealers... with ‘ruining’ white residence by obtaining leaseholds on one building in every block and then renting the property to Negro tenants,” which they claimed caused immediate “depreciation in adjoining property values” and motivated whites to move out.²¹ Still, none of these tactics proved successful in stopping the expansion of African Americans into white neighborhoods; when all else failed, some were willing to resort to violence.

The growing militancy that African Americans faced from white Chicagoans paralleled the resistance that blacks faced in the South when they began to progress economically. As the African Americans became financially successful, they competed with whites for jobs and housing, threatening the existing racial hierarchy. Whites turned to violence to combat this threat, attempting to intimidate those who threatened the status quo, be they white realtors or successful African Americans who moved into traditionally white neighborhoods. In the South, racial violence took the form of lynchings; in World War I Chicago, it took the form of bombings. These attacks would prove to be a prelude to the violence of the 1919 riot. Between July 1917 and August 1919, white property owners committed twelve racially motivated bombings directed against the spread of African Americans.²² If Chicago indeed had been “famous for its remarkably fair attitude towards colored citizens” before 1915, as Walter White claimed, this fame quickly dissipated over the course of four years, and by 1919 racial relations had become defined by antagonism.

The Chicago Riot of 1919 was a tragic moment in the city’s history. It shattered any notion that the racial animosity associated with the South was an aberration isolated to that region. The causes behind the riots were numerous, and this paper is by no means an exhaustive list. The Great Migration of African Americans from the South to the North brought tens of thousands of new citizens to the city. The influx of migrants, in turn, led to the expansion and consolidation of the Black Belt on Chicago’s South Side—an area marked by dilapidated housing. Here, the majority of African Americans were sequestered from the white population due to white resistance and African Americans’ desires to live within a familiar cultural setting. The outbreak of World War I and the United States’ eventual entrance into the conflict further exacerbated these problems—doubling the black population of the city in less than a decade and throwing white and black citizens into direct competition within the housing market. Such competition threatened the existing racial hierarchy

21. “Segregation of Negroes Sought by Realty Men,” Chicago Daily Tribune (1872-1922), April 5, 1917, Retrieved from <http://proxy.lib.umich.edu/login?url=http://search.proquest.com/docview/174179049?accountid=14667>

22. CRRR, *The Negro in Chicago*, 123.

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in the city and led to increased white resistance against black expansion, culminating in a series of bombings. Such violence reflected the volatile racial situation in Chicago on the eve of the riots.



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