

## "Black Prisoners"

How Capitalism Underdeveloped  
Black America (1983 + 2000)  
by Manning Marable

## II

Both during and immediately after slavery, whites seldom bothered to imprison Blacks for any real or imagined crimes. First, life in the South was for most Blacks *a kind of imprisonment*. No white, whether a drunkard, child-molester or criminal, was perceived to be beneath any Black person, no matter how upright and financially successful he/she happened to be. The strict racial code was an effective barrier to keep Blacks, with rare exceptions, outside positions of power and influence. A "salty" or "sassy" Black woman who objected to any of segregation's insanely strict restrictions could be raped by a white man with legal impunity. If her husband, lover, brother or son had anything to say about the matter, he might be castrated or lynched. Southerners established "Negro courts" which were separate from those dealing with whites by the eighteenth century. Such courts, according to historian Kenneth M. Stampp, "were usually less concerned about the formalities of traditional English justice than about speedy verdicts and certain punishments." Slaves charged with petty larceny usually did not appear in courts, but were simply lashed or punished by their owners or overseers. In misdemeanor or noncapital felony cases, Blacks were tried in courts that were, to say the least, highly prejudiced. In Mississippi, for instance, Blacks charged with noncapital felonies were tried before two justices and five slaveholders. Louisiana Blacks in noncapital felonies were judged by four slaveowners and only one justice. Some Southern whites recognized even then that their system of "Negro courts" was, in the words of one South Carolina judge, "the worst system that could be devised." Nevertheless, despite its obvious contradictions, the "Negro court system" became the basis for allocating "justice" in a biracial society.<sup>1</sup>

Except in those instances when Blacks were accused of assaulting whites or stealing property, the slaveowners themselves presided over the majority of cases involving Black infractions. Punishments varied

from the mundane to ingenious. For relatively minor offenses, field hands were forced to labor on Sundays or holidays. Black foremen were demoted to the status of field hand, and household servants were forced to leave the big house. One tobacco planter in Maryland ordered a slave "to eat the worms he failed to pick off the tobacco leaves." More serious infractions, such as failure to obey orders, meted out punishments of various kinds. Some large planters sentenced unruly slaves to spend days or even weeks in the local county jail. Others built jails ("nigger boxes") on their own plantations, small, windowless shacks in which Black workers were confined. Nearly every slave at some point in his/her life experienced the lash. Although castration was a legal and popular form of punishment in the eighteenth century, it declined in usage after 1800. A few planters resorted to the castration of a Black male, however, if they desired to take his slave wife. The greatest barrier to the imprisonment and/or execution of Black people was, ironically, slavery itself. It was not logical, in the view of most whites, for a man to "willingly destroy his own property." Racial atrocities existed in every state and on every plantation, but the loss of a prime fieldhand meant the loss of a capital investment of some importance. In rare cases, whites did not execute slaves who killed particularly brutal white foremen, especially when the white victims were from the "poor white" or lowest classes. The masters were racists, but as businessmen they also had to protect their investment. For these reasons, there were relatively few lynchings, public executions or imprisonment of Blacks prior to the Civil War. As a form of legal chattel, Blacks were the beneficiaries of a kind of perverse protection.<sup>2</sup>

With emancipation and Reconstruction came an inevitable reaction in Southern race relations. Technically freed from the shackles of bondage, the Black man/woman was now just another "competitor" in the labor market. White laws had to be altered to compensate for the changing status of Black agricultural workers and artisans, to ensure their continued inferior caste status. In the autumn months of 1865, a series of Black Codes were ratified to guarantee Black labor subservience. It is important to note, however, that the Jim Crow laws which imprisoned Blacks for violations were originally developed in the North, not South. Many Northern restaurants, hotels and taverns were off-limits to Blacks throughout the eighteenth and nineteenth centuries. In *North of Slavery*, histor-

ian Leon Litwack describes the general pattern of race relations in Northern states between 1790 and 1860:

In virtually every phase of existence, Negroes found themselves systematically separated from whites. They were either excluded from railway cars, omnibuses, stagecoaches, and steamboats or assigned to special "Jim Crow" sections; they sat, when permitted, in secluded and remote corners of theaters and lecture halls; they could not enter most hotels, restaurants, and resorts, except as servants; they prayed in "Negro pews" in the white churches, and if partaking of the sacrament of the Lord's Supper, they waited until the whites had been served the bread and wine. Moreover, they were often educated in segregated schools, punished in segregated prisons, nursed in segregated hospitals, and buried in segregated cemeteries. . . . Newspapers and public places prominently displayed cartoons and posters depicting (the Negro's) alleged physical deformities and poking fun at his manners and customs. Children often tormented (Negroes) in the streets and hurled insulting language and objects at them.<sup>3</sup>

Many Midwestern states legally excluded anyone with a "visible admixture" of Negro blood from voting. Almost every major white leader of the Republican Party declared his unconditional opposition to "Negro equality." White women were not immune from attacking Blacks. In Indiana, for instance, a large prewar political rally was led by a large cadre of young white females who carried a banner reading, "Fathers, save us from nigger husbands."<sup>4</sup> Thus the postbellum South after 1877 developed its public policies towards the punishment of Blacks primarily from the traditions and customs of the North.

During this period, the vast majority of Southern Blacks were legally imprisoned for three general offenses—any violation of segregation codes monitoring public behavior or activity; any violation of laws governing capitalist agricultural production; and any infraction (misdeamors and noncapital felonies) against whites. In the first category, the most heinous crime was interracial marriage. The Mississippi Black Code of December, 1865, was specific:

. . . it shall not be lawful for any freedman, free negro or mulatto to intermarry with any white person, nor for any white person to intermarry with any freedman, free negro or mulatto, and any person who shall so intermarry shall be deemed guilty of felony, and on conviction thereof shall be confined in the State Peniten-

tiary for life; free negroes and mulattoes are of pure negro blood, and those descended from a negro to the third generation inclusive, though one ancestor in each generation may have been a white person.

By the late 1870s, other Southern states ratified similar laws, calling marriages between the races "incestuous" and contrary to God's will. Other codes ordered Blacks off sidewalks to give way to white men, even segregating certain streets specifically for use by whites only. "Coons" were legally restricted "to keep their distance and mind their language in public gathering places," or they would find themselves behind bars.<sup>5</sup>

To maintain the inferior position of Blacks within agricultural production, Southern whites developed the peonage system and convict leasing. Peonage was a logical byproduct of the sharecropping system that replaced slavery immediately after the Civil War. In principle, sharecropping represented a real step forward for Black rural workers. An industrious farmer would borrow farm utensils and seeds, and would divide the proceeds from the sale of the produce at year's end. Some Black farmers used the system to accumulate small amounts of capital, eventually buying their own farms. Many bitterly discovered at the end of a harvest that they actually owed more to the white planter than their share of the crop could pay for. Since virtually all white merchants and planters inflated the cost of their supplies, and kept all business records, illiterate Black farmers were caught in a never-ending cycle of debt. "Peonage occurred only when the planter forbade the cropper to leave the plantation because of debt," writes historian Pete Daniel. "A laborer who signed a contract and then abandoned his job could be arrested for a criminal offense. Ultimately his choice was simple: he could either work out his contract or go to the chain gang."<sup>6</sup> Southern legislatures and courts always sided with owners in their disputes with Black sharecroppers. Once convicted of breaking their legal agreements with white planters, Black prisoners were sometimes bailed out of jail by other white businessmen, who in turn paid off the Blacks' fines and previous debts. But as convicts, these Blacks were now obliged to labor for their new "employer" in workgangs for long periods of years, often under the most brutal physical conditions.

The number of Black prisoners in Southern penitentiaries multiplied dramatically as the profitability of "convict leasing" became evident to white capitalists and politicians. In Mississippi the number of state prisoners grew from 272 in 1872 to 1,072 in 1877. Georgia's

convict total increased from 432 in 1872 to 1,441 in 1877. This explosion of the Black prison population reflected an abrupt alteration of Southern laws. In 1872 Mississippi "defined the theft of any property over ten dollars in value, or any cattle or swine of whatever value, as grand larceny, with a sentence up to five years." Laws like this provided the legal foundation for a prison system that made millions of dollars for a small number of white politicians.

Colonel Arthur S. Colyar, editor of the *Nashville American* and a prominent Tennessee Democrat, who also served as director and general counsel for the Tennessee Coal, Iron, and Railroad Company, was one prominent beneficiary of the leasing program. Under Colyar's direction, the Tennessee Coal, Iron and Railroad Co. leased Black and white convicts to work in their various enterprises for a \$101,000 annual fee, paid to the state. Arrangements like this were common and profitable for a number of reasons. Most states had no health or safety inspectors for the convicts, and sixteen-hour workdays were not uncommon. Leases to individual mining, railroad or other industrial companies varied from ten to thirty years. Companies often subleased their convicts to smaller white-owned firms at a profit. Prison wardens also became wealthy from the system, the beneficiaries of substantial "kickbacks" from politicians and company directors.

However, conditions for the prisoners became literally worse than under slavery. Black women who were chained together in straw bunks at night were often raped by white guards. Their children were also confined to the penitentiary with them. The annual death rates for Black convicts ranged from 11 percent in Mississippi to 25 percent in Arkansas in the 1880s. One 1887 grand jury study of a Mississippi prison hospital declared that all convicts bore "marks of the most inhuman and brutal treatments. Most of them have their backs cut in great wales, scars and blisters, some with the skin peeling off in pieces as the result of severe beatings. They were lying there dying, some of them on bare boards, so poor and emaciated that their bones almost came through their skin, many complaining for want of food. We actually saw live vermin crawling over their faces, and the little bedding and clothing they have is in tatters and stiff with filth."<sup>7</sup> Historian Fletcher M. Green described the South's dreaded convict-lease system in 1949 as a pattern of labor exploitation akin only to "the persecutions of the Middle Ages or in the prison camps of Nazi Germany."<sup>8</sup>

The general conditions in Southern penitentiaries were, of course, scandalous (or at least should have been). The major prison in Virginia in 1900 was actually designed by Thomas Jefferson in 1797. The decayed penitentiary was so overcrowded, according to one Richmond newspaper editor, that "the feet of inmates tended to stick out the windows."<sup>9</sup> Alabama's prisons in the 1880s were "packed with several times the number of convicts they could reasonably hold." Even that state's prison inspectors admitted that their penitentiaries "are filthy, as a rule . . . and both prisons and prisoners were infested with vermin. The convicts were excessively and sometimes cruelly punished . . . (and) were poorly clothed and fed."<sup>10</sup> After World War I, conditions for Black and white convicts improved somewhat, but the essential brutalities of the penal system remained. Thousands of Black peons were routinely ordered to work in county chain gangs on public roads, in work camps, or in turpentine mills and mines. In *Forced Labor in the United States*, written in 1939, Walter Wilson discovered that chain gangs were a chief means of punishing Black and white offenders. "Prison camps ranged from portable steel cages to the neat brick and wooden buildings found in the road camps of North Carolina and Virginia."<sup>11</sup>

Outside of imprisonment for debts owed to planters, or the "recruitment" of Blacks to replenish the numbers of convicts leased by counties or states, the frequency of arrests and imprisonment of Blacks was relatively low during the period of Jim Crow laws from 1890 to the 1930s. The reasons for this are rooted in the profoundly racist worldview most whites of all classes had adopted by this time. Writing in 1941, sociologists Allison Davis, Burligh and Mary Gardner noted in *Deep South* that "the police, like the whites in general, believe that fighting, drinking, and gambling among Negroes are not crimes so long as they are strictly limited to the Negro group and are kept somewhat under cover. It is only when this behavior is brought out into the open and thrust upon the attention of the whites that it becomes a crime for which arrests are made." One white Southern woman of "upper middle class" origins explained to the researchers that "we have very little crime. Of course, Negroes knife each other occasionally, but there is little *real* crime. I mean Negroes against whites or whites against each other." The legal system was designed essentially for whites only, as was the rest of society. White policemen were encouraged to "pick up any Negro whose actions appear suspicious," viciously beating

him/her, and then releasing the person without charges. Convinced that "formal punishments by fine or jail sentence fail to act as deterrents to Negro criminals," law-enforcement officials simply kept Blacks out of the court system entirely by "administer(ing) punishment themselves." Most Southern white police patrolmen lived in working class neighborhoods with Blacks as neighbors, and "a number of them have kept Negro women, usually on a more or less temporary arrangement, and are on a friendly footing with Negro proprietors of illegal establishments."<sup>12</sup> Whites were also absolutely convinced that they could judge a "bad nigger" simply by his/her appearance. Blacks were thought to be inherently so stupid that they would readily admit to any infraction they had committed when confronted by white authority.<sup>13</sup>

If Blacks were arrested by police for any minor or major crimes against whites, however, their eventual conviction and imprisonment were forgone conclusions. As *Deep South* explains:

The Negro is, from the very beginning, in a position subordinate to both the police and the court. His testimony will not be accepted if contradictory to that of the police. His witnesses carry little weight with the court, and he can wield no political influence. The Negro is less apt to have legal assistance in the police court or to appeal his case to the higher courts. . . . Negroes seldom prefer charges against whites. The police usually discourage such actions; and in trying such cases, the court protects the whites by technicalities and by attacking the truth of the Negro testimony. . . . There are no Negro officers, judges, lawyers, or jurymen. The only role a Negro can take is that of defendant or witness, except in a few types of civil cases. Furthermore, the Negro has no part in making the laws which the court system enforces. As a defendant, he faces the white man's court; he is tried not only on the evidence but also on the basis of the white man's concept of how a Negro would or should act. If he is found guilty, his sentence and punishment are determined by the same factors. The law is white.<sup>14</sup>

Behind the peonage and convict-leasing system, behind the racist and undemocratic white court system, and behind all the powers of the brutal white police, rested what could be termed the Great Deterrent to Black crime: *lynching*. The segregationist South was steeped in violence. C. Vann Woodward documents that Alabama whites actually spent more money for rifles and pistols than they did for the state's entire supply of farming implements and tools. Into the twentieth

century, white men often wore loaded revolvers "in banks, courtrooms and schoolhouses as well as in bars and ginhouses." Whites shot each other over the most "absurdly trivial" reasons.<sup>15</sup> In 1923, 13 of the 15 cities with the highest homicide rates were Southern or border cities. The national homicide rate of 1926, 10.1 per hundred thousand, favorably contrasts with Jacksonville, Florida's 75.9, Birmingham's 58.8, Memphis' 42.4 and Nashville's 29.2 that same year.<sup>16</sup> If whites in the South had few reservations about resorting to violence against each other, then the courts and police did little to protect Blacks from the wrath of that same violence. Blacks and whites alike understood that there were three crimes which would swiftly spark the flames of racist coercion: the killing or wounding of any white man; the real or suspected sexual assault against any white female; and perhaps the most serious offense of all, any overt political activity which challenged Jim Crow segregation and the basic system of caste/class rule upon which the entire economy and social order was based. Upon these acts, the massive weight of white vigilante "justice" would fall heavily upon any Black man/woman. No real trial would be held; no jail or state penitentiary would be secure enough to keep the Black man/woman from his/her certain fate. Lynching was the ultimate weapon used by whites to "keep the nigger in his place."

### III

Lynching is a peculiarly American tradition. From the nineteenth to the late twentieth century, the modern *auto-da-fé* parallels the development and maturation of capitalism in an oppressive, biracial society. Technically, the term is often used to describe the hanging of a person outside the legal sanction of the police and criminal justice system. Historically, and in actual practice, it is the ultimate use of coercion against Blacks to insure white supremacy. The form it assumes—hanging by the neck, shooting, castration, burning at the stake, or other spontaneous and random forms of violence—is secondary to the actual terror it evokes among the Black masses, and the perverse satisfaction that it derives for white racists. Lynching is neither irrational nor illegal, in the sense that the white power elites tolerate and encourage its continued existence. Lynching in a racist society becomes a legitimate means to check the activities of the entire Black population in economics, culture and politics.