

## CHAPTER FIVE

# *Scandal and Reform*

### PRISON CAMPS

THE intensified sectional conflict over slavery of the 1850s dominated the presidential campaign of 1860. The platform of the new Republican Party appealed for harmony, emphasizing the importance of the Union and carefully avoiding any condemnation of Negro slavery. Nevertheless, Abraham Lincoln's election prompted the secession of the slaveholding states—South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, Tennessee, and North Carolina, plus factional governments in Missouri and Kentucky—which saw him as not serving their interests. The Confederate States of America was declared, with Jefferson Davis as president.

Shortly before dawn on April 12, 1861, Edmund Ruffin of Virginia fired the first cannon shot at Fort Sumter in Charleston harbor, beginning the Civil War. Thirty-four hours later, the garrison surrendered and federal troops were taken prisoner. Full-scale battlefield fighting began a few months later and resulted in significant deaths, woundings, and captures. After only a few months, each side held thousands of prisoners of war.

Many Northerners considered the conflict an illegal rebellion and wanted the Confederates prosecuted for levying war against the United States. (As it would turn out, that did not happen.) Southerners, on the other hand, considered their actions valid, legal, and consistent with their American heritage, regarding the Yankees as foreign invaders and oppressors. Neither side took a kind view of captured enemy troops.

Early on, many prisoners of war were exchanged under a traditional gentlemen's agreement based on rank. Privates were worth less than corpo-

rals, a sergeant was equal to so many corporals, and so on up the ranks, so that a single general from one army might be exchanged for hundreds of enlisted men from the other.

Conscription was instituted on both sides. Draftees were allowed to purchase substitutes to serve in their place. When the North finally fielded Negro regiments, the South refused to regard black soldiers as regular personnel, viewing them as rebellious runaway slaves who deserved only to be killed or reenslaved if they were caught. In retaliation, the North charged that many Confederate prisoners who had been exchanged had later returned to duty in violation of their parole. As a result, the new commander of the Union forces, General U. S. Grant, halted the prisoner exchanges. Consequently, captives' lives were devalued by both sides, and prison conditions, which had never been good, deteriorated.

Prisoners of war generally were kept separate from convicts and held in specially built compounds, but these places quickly overflowed. Even at their best, the prison camps of the Civil War were ill equipped for the kind of heavy use they received during massive, protracted campaigns. Additional makeshift prisons were hastily created away from the front, but they too became overcrowded.<sup>1</sup>

Like New York City during the first American Revolution, Richmond became a prison city, holding thousands of Union captives who were collected there before being shipped farther south. The capital's principal Confederate prisons were Libby, an old, rat-infested brick tobacco warehouse, and Belle Isle, a tent city on the James River; the holding pens included Castle Thunder, Crew's, Grant's Factory, Pemberton's, Scott's, and Smith's Factory.<sup>2</sup> Elsewhere in Virginia, captives were held at Danville, Lynchburg, and Petersburg.<sup>3</sup> In North Carolina, they were herded into a stockade at Salisbury, and congregated at Charlotte and Raleigh.<sup>4</sup> At Charleston, a stucco structure housed several hundred men, among them Negro soldiers, deserters from both sides, and military offenders. Also in South Carolina, there were detention sites at Florence and Columbia.<sup>5</sup> Important centers in Georgia included Millen, Camp Oglethorpe in Macon, Atlanta, Savannah, Camp Lawton, Augusta, Marietta, and Blackshear; Alabama had the old Cahaba warehouse called Castle Morgan, as well as Tuscaloosa, Mobile, and Montgomery.<sup>6</sup> Louisiana held prisoners in New Orleans and Shreveport. Texas utilized Camp Groce and Camp Ford.<sup>7</sup>

An inmate who survived to tell about the experience, T. H. Mann of the Army of the Potomac, later recounted being captured during the Wilderness Campaign and moved southward from prison to prison. En route from the front he was taken past General Robert E. Lee, who was sitting upon his horse, smoking a cigar. Mann recalled that Lee "appeared a

middle-sized man, with iron-gray hair and full gray beard, not very closely cut; as fine-looking a specimen of a man and soldier as I ever saw." As the Northern captives filed past, Lee remarked, "Am sorry to see you in this fix, boys, but you must make the best of it." According to Mann, "His tone was kind, and spoken as though he really sympathized with us, as I have no doubt he did."

Herded sixty to a boxcar, Mann and his fellow prisoners passed through the desolate North Carolina countryside, past long stretches of noble-looking pine, immense piles of resin, glum-faced Negroes in tattered rags, and shabby-looking poor whites. He came to observe that most soldiers who had seen battle tended to treat their captives well, whereas the dreaded home guard, which often was composed of young boys and old-timers unfit for duty, frequently robbed, abused, and mistreated its prisoners. "A brave man is always humane and generous, while a coward is cruel and vindictive," he wrote. "The brave men of the South were mostly at the front with their armies."

Mann and his companions were brought to Americus, Georgia, deep in the heart of Dixie. The prison nearby was Camp Sumpter, better known as Andersonville. At the time it held thirteen thousand men—"emaciated forms, half human and half spectral, black with filth and smoke, and swarming with vermin."

Inside the log stockade there stretched a slender railing, the "dead line." The sentries were ordered to shoot any person who crossed it. Within this border the stockade enclosed 16¾ acres of ground that included two side hills and a small, muddy brook that ran through the little valley in between. The stream, seldom more than a trickle, served as the camp's chief water supply and sewer. According to Mann,

No provision was made, until near the very close of our incarceration at Andersonville, towards carrying off the refuse and sewerage of our prison, and no sanitary regulations had been put in force. The filth that accumulated through those long summer months can neither be described nor imagined. Most of it collected in and about the three acres of swamp, and I have seen that three acres one animated mass of maggots from one to two feet deep, the whole swamp moving like the waves of the sea.<sup>8</sup>

There were no huts or barracks, and the level of overcrowding was incredible. By March 1864 there were 7,500 prisoners; by May, 15,000 in a space designed to hold only 10,000. As soon as the area was expanded by 10 acres, the population increased to more than 30,000. By August a

Confederate inspector reported that there were only about 6 square feet of ground for each prisoner, and the death toll exceeded 100 a day.<sup>9</sup> During only about four months, 13,000 men perished at Andersonville, and as many more lost their health. Of the 40,000 prisoners of war who entered its walls, fewer than one-third lived as much as 20 years afterward.<sup>10</sup>

Conditions in the North were not much better.<sup>11</sup> After filling all available prisons and penitentiaries, the Union Army improvised its own makeshift camps, such as Camp Douglas near Chicago, a confiscated medical college, and a deserted slave pen in St. Louis.<sup>12</sup>

The prison camp at Elmira was located on New York's prosperous southern tier, where the economy was booming and food and water were plentiful. Yet in the fall of 1864 the hospital surgeon there complained that during the last three months, with 8,347 prisoners in camp, 2,011 had been admitted to the prison hospital, of whom 775 had died. One of eight inmates was seriously sick. He added: "At this rate the entire command will be admitted to hospital in less than a year and 36 per cent, die."<sup>13</sup> It, too, contained a rivulet, which had formed a gummy pond, "green with putrescence, filling the air with its messengers of disease and death." Requests for life-saving medicines, fresh straw for hospital beds, and other supplies were ignored. At last a prisoner exchange was organized, and 1,200 men were pulled out of Elmira and put on trains for Baltimore and shipment south. Five of them died on the train, and 60 more had to be carried off and hospitalized.<sup>14</sup>

At the Union prison at Rock Island, Illinois, more than 1,800 Confederates died, many from smallpox.<sup>15</sup> Point Lookout, which had been set up in Maryland after the Battle of Gettysburg, held as many as 20,000 Confederate soldiers at a time; nearly 3,000 of them died there. Some Rebels were released to fight Indians out west.<sup>16</sup>

Typhoid raged at Fort Delaware, on marshy Sea Patch Island near the mouth of the Delaware River, killing nearly 2,500 Confederates.<sup>17</sup> A Louisianan who spent 16 months imprisoned at Johnson's Island in frigid Lake Erie, three miles north of Sandusky, Ohio, later described the horrors of temperatures of 25 degrees below zero upon coalless prisoners from the Deep South.<sup>18</sup>

Farther west, at the site of a former fairground in Indianapolis, Camp Morton was surrounded by a twenty-foot-high plank wall. The cold and crowding there were so bad that many Confederates dipped their blankets in water before going to bed in a vain effort to retain their body warmth, and slept spoon fashion to avoid freezing to death.<sup>19</sup>

These were not cozy local jails attached to the sheriff's house across the town square from the offender's home, or a fortress-factory state prison

located a few counties up the river. Otherwise free white Americans now experienced imprisonment that was hundreds or even thousands of miles from home, in distant places they had never heard of or known existed, in alien climates and cultures.

North and South, the notions of "prison" and "prisoner" assumed new meaning during the war. Suddenly, hideous captivity and even death could await "good" men who had "broken no law" and who had "served their country." One did not have to be black or criminal to be imprisoned. Law-abiding white Southerners found themselves guarded and controlled by armed invaders, including Negroes. Liberty-loving New Englanders might pass their days and nights under the despotic grip of slave-driving Rebs. This was not a penitentiary that sought to separate each inmate from contamination, or a factory-prison that would instill the habits of industry, or a plantation-prison that was founded on chattel slavery. This was a concentration camp, a death trap, founded on total war.

Yankees were not the only victims of atrocities. One former Confederate soldier complained:

The reputation of the South has suffered not only because the terrible trials of Northern prisoners in Southern prisons have been so fully exploited, but because the truth of the Confederates' prison experience has not been given to the world. My comrades died by the hundreds amid healthful surroundings, almost all of these from the effects of starvation, and this in the midst of plenty. The official records show that at Camp Morton 12,082 prisoners were confined, of which number 1,763, or 14.6 per cent, perished. Excepting the few shot by the guards, the deaths from wounds were rare. The conditions were not malarial, for Indianapolis was not unhealthy. There were no epidemics during my imprisonment of about fifteen months, and little cause for death had humane and reasonable care of the prisoners been exercised.<sup>20</sup>

Near the end of the war, a Rebel officer who had been held at Johnson's Island in Lake Erie crossed paths with returning soldiers who had just been released from Andersonville, Elmira, Point Lookout, Rock Island, Camp Morton, Camp Chase, and Camp Douglas. Victims from both sides stopped and compared notes. The officer later escaped and made his way through Georgia with remnants of the weary Confederate Army. While he was trudging along the ruined Southwestern Railroad, he met a man who asked him if it was true that the Yankees were in Macon. "I at once recog-

nized by his accent that he was a Northerner," the soldier recalled, "and upon my inquiry as to his command he became confused and evidently agitated. As Andersonville was only a few miles off, I was convinced that he was an escaped Union prisoner, and upon so expressing myself he broke down completely, saying, 'For God's sake don't take me back to that place.'" The Confederate concluded, "I had taken my life in my own hands two days before rather than go back to Camp Morton, and I could appreciate this poor fellow's agony."<sup>21</sup>

Prison camps on both sides were incredibly lethal. Indeed, the performance of the military in designing, operating, and supplying prisons during the Civil War proved to be worse than the record of civilian authorities, more horrific even than that of the slave traders and plantation owners, who, after all, had economic incentives to treat their prisoners better. According to War Department figures compiled in July 1866, the North had held a total of 220,000 Confederates and the South had held 126,000 Unionists. Of these, 26,436 Southerners and 22,576 Northerners died in prison camps in less than four years.<sup>22</sup> Revised estimates from the War Records Office placed the numbers at 30,212 dead (of 196,713 held) in Confederate prisons, for a mortality rate of 15.3 percent, and 26,774 dead (of 227,570 held) in Union prisons, for a mortality rate of 11.7 percent. Even those numbers were probably low.<sup>23</sup> To put the matter in perspective, roughly two and a half times as many soldiers were imprisoned as were involved in the great Battle of Gettysburg, yet the prison camps killed nearly ten times as many as did the battle.<sup>24</sup>

## THE THIRTEENTH AMENDMENT

EARLY in the war, the journalist Horace Greeley had publicly denounced President Lincoln for catering to the slavery interests and failing to define the war as a struggle to end slavery. He urged him to free the slaves and enlist them to help win the contest. Lincoln wrote back that his goal was to save the Union, not to free the slaves. But a few days later, after the North had finally won a major battle, he sent an ultimatum to the South, stating that as of January 1, 1863, all slaves in areas still in rebellion would be "then, thenceforward, and forever free." Slave states already under federal control, on the other hand, would be exempt from his order. Once the Union was restored, loyal citizens would be compensated for all losses inflicted by the United States, "including the loss of slaves."

When the South failed to capitulate, Lincoln, as promised, issued the

Emancipation Proclamation, freeing all the slaves throughout the states in rebellion. Frederick Douglass called it "a memorable day in the progress of American liberty and civilization," and he noted that the action "was framed with a view to the least harm and the most good possible in the circumstances, and with especial consideration of the latter."<sup>25</sup>

As the war slowly ground to a conclusion, pressure mounted to amend the Constitution of the United States for the first time in over sixty years and abolish slavery once and for all. On January 11, 1864, Senator John B. Henderson of Missouri (a progressive conservative and a former slaveholder himself) proposed a joint resolution, modeled on the Northwest Ordinance, declaring: "Slavery and involuntary servitude, except as a punishment for crime, shall not exist in the United States."<sup>26</sup>

Senator Charles Sumner of Massachusetts, an abolitionist, suggested several alternative versions that would have ended slavery without exception. "Too well I know the vitality of slavery with its infinite capacity of propagation," he said, "and how little slavery it takes to make a slave State with all the cruel pretensions of slavery."<sup>27</sup>

Over Sumner's objections, the Senate passed the following constitutional amendment: "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation."

On January 31, 1865, the House finally passed for submission to the states the Thirteenth Amendment. The vote was 119 to 56 with 8 abstaining, a number of Democrats having changed their earlier position.<sup>28</sup> It was not until December 18th—eight months after Lincoln's assassination—that the secretary of state certified that the Thirteenth Amendment had become part of the Constitution of the United States. (Other states eventually ratifying it would include Florida in 1865, Iowa and New Jersey in 1866, Delaware in 1901, and Mississippi never did until 135 years later.)<sup>29</sup>

The Confederacy's defeat ensured that Negroes were no longer doomed to be born and die in bondage. When one young slave girl, Fannie Berry, heard the news she ran to the kitchen and shouted in the window, "Mammy, don't you cook no more. You's free! You's free!"<sup>30</sup> Negroes in Williamsburg danced and sang all night in the cold, and at daybreak walked away with blankets and clothes and pots and pans and chickens on their backs.<sup>31</sup> Another former slave, Annie Mae Weathers, later spoke of "hearing my pa say that when somebody came and bellowed, 'You niggers is free at last,' say he just dropped his hoe and said in a queer voice, 'Thank

God for that.'"<sup>32</sup> And Booker T. Washington later described his emancipation in Franklin County, Virginia. "Finally the war closed, and the day of freedom came," he wrote.

It was a inomentous and eventful day to all upon our plantation. . . . My mother, who was standing by my side, leaned over and kissed her children, while tears of joy ran down her cheeks. She explained to us what this all meant, that this was the day for which she had been so long praying, but fearing that she would never live to see. . . . [Yet] within a few hours the wild rejoicing ceased and a feeling of deep gloom seemed to pervade the slave quarters.<sup>33</sup>

Much of the South was rubble. Roads, railroads, and factories were damaged or destroyed, crops ruined. Hundreds of thousands of Confederate soldiers and civilians killed. The remaining Rebels limping home on parole. Southern society was in shambles, and occupied by the conquering Union Army, complete with armed Negroes in blue uniforms and brass buttons. Official retribution by the North was remarkably mild. Only one Confederate officer was executed, and that was for war crimes, not treason. (Arrested and tried by a military commission on charges of conspiring to weaken and kill Union prisoners and of murder, "in violation of the laws and customs of war," Andersonville's commandant, Henry Wirz, was hanged in the Old Capitol Prison at Washington in November 1865.)<sup>34</sup> Vanquished rebels were not stripped of their remaining property, or disenfranchised, or tried for crimes committed against their former slaves, or forced to pay reparations. Extraordinarily few defeated rebels were imprisoned after the war; even Jefferson Davis, the gaunt former Confederate president, was released without even having been tried or even charged with a crime, after serving only two years' imprisonment in Fortress Monroe. By and large, the survivors were allowed to go home to rebuild their shattered lives.<sup>35</sup>

Meanwhile, in the upheaval, four million Negro men, women, and children throughout the South were suddenly and unceremoniously freed from slavery, ending centuries of bondage. Abruptly on their own for the first time in their lives, without housing or property or means of support, and having received no compensation for what they had endured, they found themselves adrift in a threatening, war-ravaged region that now was under military rule.

Hundreds of thousands of freed slaves quickly fled from their places of captivity, many of them changing their names to evade being traced. Most



wanted to escape from the rural plantations they associated with slavery, hoping to find more opportunities and better protection in population centers.<sup>36</sup>

White Southerners and even many Northerners and black leaders urged those who had been freed to avoid the South's devastated cities, which were gutted, depressed, demoralized, disinclined to shelter or support poor black refugees, and swarming with disease and vice. But many former slaves went there anyway, fearing that to remain near the fields might be to risk possible reenslavement if the Union whites reneged on their promise of freedom. Dusty roads were lined with refugees. Massive dislocation ensued. The military authorities struggled to prevent complete chaos and disorder. Many blacks perished from starvation or disease. In Macon, Georgia, during the first December after liberation, five hundred Negroes died, compared to an average loss of forty per month during slavery.<sup>37</sup>

Some blacks who could not find lawful employment were arrested for theft or curfew violations and convicted without counsel or trial. As a result, the first civil right that emancipated blacks sought was not the right to vote but the right to serve on juries.<sup>38</sup> After all, they feared that, according to the Thirteenth Amendment everyone was talking about, anyone convicted of a crime could now be legally enslaved, all over again. And they had good reason to worry. Hadn't the white man's law been used against them for centuries? Wasn't it used against them still? Despite efforts by former slaves and Northerners to help them gain equal-justice protection, blacks continued to be denied the right to serve on juries. In many parts of the South, even the right to testify in court against a white person was withheld.<sup>39</sup>

Lawmakers in several Southern states enacted new legal restrictions that put the Negro's status somewhere between slave and free.<sup>40</sup> These Black Codes provided that freedmen who were found without lawful employment could be arrested as common vagrants; those who failed to pay their fines might be jailed; or if jail space was not available—many slave pens, jails, and penitentiaries having been destroyed in the war—such blacks could be hired out to employers, who paid the fines and deducted the cost from the laborers' wages. Many freedmen found themselves held as prisoners and forced to work for private masters, like indentured servants if not like slaves, rebuilding the white society that had kept them and their families in bondage for generations.

Soon after the fighting stopped, black "vagrants" in Nashville and New Orleans were being fined and sent to the workhouse; in San Antonio and Montgomery they were put to work on the streets to pay for their own jail

keep, beginning a sort of penal slavery on the installment plan.<sup>41</sup> A Yankee journalist who entered war-ravaged Selma, Alabama, came upon a chain gang of black prisoners digging the bed for a street under the watchful eyes of Union soldiers. The reporter was told that no white man had ever been sentenced to the chain gang, for any crime, but that blacks were now being condemned to it for such things as "using abusive language towards a white man" or selling farm produce within the town limits.<sup>42</sup> Using this growing labor pool, Alabama's Reconstruction government leased the Wetumpka prison and began developing its state penal machinery.<sup>43</sup> And in North Carolina, the *Raleigh Daily Standard* of September 27, 1865, reported:

The military on yesterday picked up a large number of gentlemen of color, who were loitering about the street corners, apparently much depressed by ennui and general lassitude of the nervous system, and, having armed them with spades and shovels, set them to play at street cleaning for the benefit of their own health and the health of the town generally. This is certainly a "move in the right direction;" for the indolent, lazy, Sambo, who lies about in the sunshine and neglects to seek employment by which to make a living, is undoubtedly "the right man in the right place" when enrolled in the spade and shovel brigade.<sup>44</sup>

North Carolina's legislature authorized judges to sentence offenders to work on chain gangs on the county roads or on any railroad or other internal improvement in the state for a maximum of one year. Those who escaped would have to serve double the unexpired term.<sup>45</sup> The new state constitution provided for crimes to be punished by death, fine, or imprisonment with or without hard labor. The Reconstruction government decided to build a penitentiary on the Auburn model, but the commissioners disappeared with \$100,000. A second commission paid an Ohio architect to draft a different design. However, it was replaced by yet a third commission, which resorted to leasing convicts to the railroads until a suitable prison could be constructed.<sup>46</sup> By 1874, 384 of 455 prisoners were Negro, and in 1878 they accounted for 846 of 952.<sup>47</sup>

Mississippi's penitentiary had been devastated during the war, and the state's treasury was empty. In 1867 the military government began leasing convicts to rebuild wrecked railroads and levees. But the convicts and staff remained destitute. Supplies were short, unsanitary conditions bred disease. The penitentiary barely survived for the first several years following the war.<sup>48</sup> By 1872 convicts were being leased to Nathan Bedford Forrest, the Confederate war hero and first head of the Ku Klux Klan, for work on

his Selma, Marion and Memphis Railroad. Once again, Forrest was making money from the slave trade.<sup>49</sup>

Georgia's federal governor, General T. H. Ruger, rented Negro convicts to a railroad builder for one year in exchange for \$3,500. So did the next ("scalawag") governor, Rufus Bullock.<sup>50</sup>

During the fall of Richmond, 200 of 287 convicts vanished, but Yankees somehow rounded up the rest and—incredibly—returned them to prison, putting some to work repairing the institution.<sup>51</sup> The battered penitentiary remained under military command until March 1866, when General Turner relinquished control to civil authorities. The new superintendent, Burnham Wardwell, had himself been imprisoned during the war, for Yankee sympathies. He remained in charge until early 1870, when he fled to New Jersey to evade arrest for his role in the spreading scandals over corruption and mismanagement at the penitentiary.<sup>52</sup>

Virginia's penal system continued to undergo radical changes. Before the war, most inmates had been white; now they were predominantly black.<sup>53</sup> Overcrowding increased, producing even more unsanitary conditions. Prison authorities increasingly resorted to contracting out the convicts to private companies, who used them to work at reconstruction, toiling on roads, canals, and railroads. In late 1866 Governor Francis H. Pierpont reported the penitentiary was self-sustaining, pointing out that "a favorable opportunity [had] presented itself of employing a number of the colored convicts on the excavation of two short railroad tracts, where they were employed with mutual profit to the institution and the contractors, and doubtless to the welfare of the prisoners; they were not over-worked, and had the benefit of open air."<sup>54</sup> By 1871, 609 of 828 convicts (including all but 4 of 67 women) were black, and the death rate from scurvy, accidents, gunshots, and other causes was running high.<sup>55</sup>

Woody Ruffin was a convict of the Virginia penitentiary who had been hired out with other prisoners to work on the Chesapeake and Ohio Railroad. During an escape attempt, he allegedly killed Louis Swats, an employee of the contractor who had been hired to guard the leased convicts. Ruffin was subsequently captured; tried and convicted in Richmond's circuit court, he was sentenced to be hanged on May 25, 1871.

On appeal the Virginia court found that although Ruffin was not within the walls of the penitentiary, he was still a convict and as bound by its regulations as any other prisoner. Without explicitly citing the Thirteenth Amendment, Judge Christian also declared:

A convicted felon, whom the law in its humanity punishes by confinement in the penitentiary instead of with death, is subject

while undergoing that punishment, to all the laws which the Legislature in its wisdom may enact for the government of that institution and the control of its inmates. For the time being, during his term of service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the State. He is *civiliter mortuus*; and his estate, if he has any, is administered like that of a dead man.<sup>56</sup>

After the fall of slavery, Southern prisons increasingly contained black convicts, whom the states leased to favored contractors in exchange for fees and graft. After Mississippi enacted measures such as its infamous "pig law," setting a penalty of five years' imprisonment in the state penitentiary for the theft of any cattle or swine, its prison population swelled from 284 in 1874 to 1,072 at the close of 1877. By the end of radical Reconstruction, Georgia, Tennessee, North Carolina, Florida, Texas, Arkansas, Alabama, Mississippi, South Carolina, Louisiana, and Kentucky were all leasing convicts.<sup>57</sup>

The postwar depression in Texas was particularly acute, and the plummeting price of cotton and other woes contributed to increased crime and a prison population that soared from 146 to 264 persons within the first few months after the end of the war. Instead of adopting reforms to relieve overcrowding at the penitentiary, Texas legislators enacted tough new laws calling for forced labor within prison walls and at other works of public utility outside the institution. Convicts were leased out to build railroads, improve navigation and irrigation, and work mines of iron, lead, copper, and gold. In 1869 the Texas prison population had swelled to 489. In 1871 the institution itself was leased out to the highest bidder—Ward, Dewey and Company of Galveston—for a period of 15 years. By December 1872 there were 944 convicts. Following a series of prison scandals and political changes, however, the lease was terminated in 1877 and the institution passed into the hands of another Texas firm.<sup>58</sup>

Three companies agreed to pay the State of Georgia \$500,000 in twenty annual installments, starting April 1, 1879, to use convict labor. Those doing the leasing included several prominent one-time Confederates, among them General Joseph E. Brown, the state's former chief justice, and his son, Julius; General Joseph M. Brown; and General (and former U.S. senator) John B. Gordon. A number of other well-connected politicians also participated.<sup>59</sup>

Tennessee's entire convict population was leased to the Tennessee Coal,

Iron and Railroad Company in order to break a strike by coal miners. However, a thousand enraged white workers seized the mines, freed the five hundred convicts who had been brought in to replace them, and razed the prisoners' cages. A company official later admitted: "One of the chief reasons which first induced the company to take up the [convict lease] system was the great chance it offered for overcoming strikes. For some years after we began the lease system we found that we were right in calculating that the free miners would be loath to enter upon strikes, when they saw the company was amply provided with convicts."<sup>60</sup>

## INDIAN PRISONERS

MEANWHILE, farther west, prisons also figured in the fate of the American Indians. After their ill-fated uprising along the Minnesota River in 1862, as many as 303 Santee Sioux were condemned to be hanged and 16 received long prison terms.<sup>61</sup> President Lincoln reduced the number of condemned to 39.<sup>62</sup> The other leaders were taken down the Mississippi by steamer to the prison camp for Confederates at Rock Island, Illinois. One of them, Big Eagle, later said, "If I had known that I would be sent to the penitentiary, I would not have surrendered."<sup>63</sup>

Indians battled Union soldiers throughout the Southwest. Whenever possible, the army tried to capture and imprison their chiefs, and sometimes inflict a worse fate. One of those tortured to death in prison was Chief Mangas Colorado (Red Sleeves).<sup>64</sup> General William Tecumseh Sherman hated Indians even more than Confederates, saying of the former, "The more we can kill this year, the less will have to be killed the next war." Otherwise, they would "all have to be killed or be maintained as a species of paupers."<sup>65</sup> One of those Sherman captured in battle was Set-taiint-e (White Bear), a Kiowa chief also known as Satanta. After spending seven years in captivity, he plunged headfirst to his death from a second-story window of the Huntsville Penitentiary hospital, becoming yet another American Indian leader to die in captivity under suspicious circumstances.<sup>66</sup>

Crazy Horse was another. After helping to defeat Custer at the Greasy Grass River (Little Big Horn), he was taken prisoner and murdered by a white soldier, and an Indian policeman named Little Big Man.<sup>67</sup>

The other great Sioux chieftain who had defeated Custer—Sitting Bull—suffered a similar fate. After riding into Fort Buford under a promise that he would be released to the reservation at Standing Rock, he too was taken prisoner. After being interned for over two years, during the summer

of 1885 he was allowed to travel throughout the United States and Canada as part of Buffalo Bill's Wild West Show. The military later tried to use Buffalo Bill Cody to lure him to Chicago so he could be arrested again. But that plan failed. On December 15, 1890 (two weeks before the massacre at Wounded Knee), forty-three Indian police under the command of Lt. Bull Head surrounded Sitting Bull's cabin at Fort Yates and shot him to death. They bashed his face, scalped him, and stole his moccasins and other articles as relics, leaving the battered corpse to be taken away to a hospital and dissected.<sup>68</sup>

Indians all across the Plains were chased down until they were killed or imprisoned. The lucky ones were treated as vanquished enemies, regardless of whether they had ever been hostile to white Americans. John Elk had relinquished all ties to his tribe and become a resident of Nebraska, yet he was barred from registering to vote. In 1884 the Supreme Court upheld the finding that Elk, like Dred Scott, was not a United States citizen.<sup>69</sup> A few years later, in *United States v. Kagama*, the Court upheld Congress's power to regulate Native Americans directly and without their consent.<sup>70</sup> Under the Dawes Act of 1887, existing reservations were carved up, and eighty-six million acres of Indian land was given over to white settlement and homesteading.

When Geronimo, the last great Apache war chief, surrendered at Skeleton Canyon, the story was front-page news all over the country. He and his fellow captives were crammed into broiling boxcars and shipped across the desert to San Antonio. Many whites expected him to be hanged. Tourists and souvenir hunters flocked to the fort to see Apaches in cages, though according to one army officer it was "not possible for any human being, other than an Indian" to endure the stench.<sup>71</sup> From there Geronimo was deported with 103 children and 277 other adults to Fort Marion in Florida's humid lowlands, where many contracted tuberculosis.<sup>72</sup> By the time he finally died of pneumonia at Fort Sill, he had been held in captivity for twenty-three years.<sup>73</sup>

For many years to come, prison remained a common fate for Apaches. At Arizona's adobe territorial prison at Fort Yuma, the authorities deployed a Gatling gun to guard their convicts and hired neighboring Quechan Indians to track down any escapees. According to some routine log entries at the prison, on October 30, 1893, a new arrival, an Apache prisoner named Has Ral Te (No. 691), was put into the prison's "Snake Den" for refusing to work. He died of "consumption" the following April. Two others, Say-es and Hos-col-te, began serving life terms for taking part in a stagecoach robbery that had killed a driver. Three and a half years later, Say-es also was found dead in his cell.<sup>74</sup>

## ELMIRA REFORMATORY

THE Civil War had profoundly altered America's system of and rationale for imprisonment. Millions of slaves had been let loose, chattel slavery abolished, and penal servitude expanded. Thousands of inmates had perished in horrific prison camps kept by their own countrymen. Many more were badly scarred by what they had experienced.

When the fighting was over, and the traumatized veterans had returned home, some found themselves in trouble with the law. In 1866 at the Massachusetts State Prison, 171 of 247 entering convicts were war veterans, and only 6 percent of them had ever been in prison before. "It was a sad sight," the warden wrote, "and one to be regretted, that so many noble defenders of the 'old flag,' some of whom had participated in battles from the first Bull Run to the surrender of Lee, mutilated and covered with scars (one had upon his body the scars of eight wounds received in one battle), and whose record in the war, with few exceptions, was good, should terminate so glorious a career in the State Prison."<sup>75</sup>

Most state prisons were in sad shape. Even such model institutions as Auburn and Eastern had deteriorated since their glory days decades earlier—crumbled not just in their physical plant, but overall, as if they had lost sight of their original goals. The old enthusiasm was gone.

It was in this context that two prominent reformers and members of the New York Prison Association, Dr. Enoch Cobb Wines and Dr. Theodore Dwight, reviewed the conditions in New York's aging prisons. Based upon their study, they suggested some long-needed reforms. In place of a decades-old preoccupation with profit-making industrial institutions, they advocated making reformation of the offender the primary object of imprisonment, at least where young offenders were concerned.<sup>76</sup>

The legislature agreed and passed an act creating a new state reformatory. It was to be modeled on Sir Walter Crofton's Irish mark system, the object of which was to train each prisoner in such a manner that upon his discharge he would be "able to lead an upright life."<sup>77</sup>

Wines also organized the National Prison Congress, held in Cincinnati in October of 1870.<sup>78</sup> The meeting's host—General Rutherford B. Hayes, governor of Ohio and a future president of the United States—embraced the reformatory concept. "It may seem to be in advance of the present day," he said, "but it is, as we believe, but anticipating an event not far distant, to suggest that sentences for crime, instead of being for a definite period, especially in cases of repeated convictions, will, under proper restrictions, be made to depend on the reformation and established good character of the convict."<sup>79</sup>

The Cincinnati congress adopted a detailed and extraordinarily progressive "Declaration of Principles" which proclaimed that the "supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering." The delegates called for prison sanitary improvements and an end to political appointments of prison administrators; welcomed the participation of women in prison management; favored the progressive classification of prisoners, based on character, according to a mark system; urged rewards for good conduct, industry, and attention to learning; stressed the importance of prison education; and argued that a prisoner's will must be won over, not destroyed.

Here were reformers who claimed that the prison's regime should strive to cultivate a convict's self-respect, rather than trying to degrade him. Their manifesto favored "moral forces" over physical coercion or brutality, and it condemned the contract system of prison labor as "prejudicial alike to discipline, finance and the reformation of the prisoner, and sometimes injurious to the interest of the free laborer." Although acknowledging that the "proper duration of imprisonment . . . is one of the most perplexing questions in criminal jurisprudence," they advocated long, indeterminate prison sentences for reformatory purposes.<sup>80</sup>

Such views were a sign of the times. The new emphasis upon "reformation," after all, arose during a period of national reconstruction and attempted reconciliation, following the defeat of the Confederacy and the emancipation of blacks from slavery. As part of this movement, some traditional penological beliefs stressing guilt and vengeance now were being replaced by notions of reformation and a medical "disease" approach that was aimed at treatment, improvement, and cure. In both arenas, the reformers showed little understanding of or sensitivity to the condition or needs of free Negroes, in the South or anywhere else. A few years later, as president of the United States, Hayes would employ this same philosophy in ending Reconstruction, when one of his first official acts would be to order the withdrawal of the last federal troops in the South. In effect, as one historian later put it, "The South was 'redeemed.' This favorite euphemism of the white Democrats meant that the Federal government had renounced responsibility for reconstruction, abandoned the Negro, and, in effect, invited Southern white men to formulate their own program of political, social and economic readjustment."<sup>81</sup>

During the Civil War, Elmira had been the site of a large and notorious Union prison camp. Although conditions were not as bad as at Andersonville, thousands of Confederate soldiers had died there without any hindrance from the local citizenry. But now, only five years after the war's end,



the legislature selected none other than Elmira as the site of the model new state reformatory. New buildings were constructed and a board of managers appointed. Zebulon R. Brockway, a rising young prison warden who had managed reform-type institutions in Albany, Rochester, and Detroit, became the reformatory's first superintendent. Thirty inmates were received from Auburn on July 24, 1876.<sup>82</sup>

Brockway wrote to his friend, Enoch Wines: "I feel that there are very gross defects in the prison system of the land, and that, as a whole, it does not accomplish its design; and that the time has come for reconstruction."<sup>83</sup> In its place he wanted an institution that would be more like a college or hospital than an ordinary prison. Elmira Reformatory soon proved to be the most ambitious attempt to fulfill the lofty Declaration of Principles that Brockway and others had promulgated a few years earlier at Cincinnati.

The institution held first-time felons, aged sixteen to thirty. Judges sentenced offenders to the reformatory for an indeterminate period; Elmira's managers later decided the actual release date within certain statutory limits. Under this arrangement, convicts had to earn their way out through an elaborate system of grading, after being put through rigorous manual training that was intended to inculcate obedience, discipline, and marketable skills. Brockway's system employed marks, or grades, to rank each inmate's progress, with merits to reward and demerits to punish individual behavior. There were three grades of offenders, each dressed in a different colored uniform. Entering inmates belonged to the second class and were supposed to be advanced or demoted according to their behavior, with privileges being increased or decreased in corresponding fashion. At six months their conduct was examined by the board of managers, who decided whether to release them. If discharged, they remained on parole and were required to write regular letters to the superintendent.<sup>84</sup>

In 1879 Brockway added a "School of Letters." Selected inmates were trained in brush making and hollowware manufacture. He also bought a printing press and used it to produce an endless stream of slick institutional reports, as well as the nation's first inmate newspaper, *The Summary*. Brockway even established an innovative trade school for mentally impaired inmates.

His interest in such slow learners quickly developed into an obsession. By 1884 Brockway was stating that one-half of the prisoners were "incurable" due to heredity. A few years later he was reporting that his investigations and efforts had "served to strengthen the opinion that physical degeneracy, however originated, is a common subjective cause of criminal conduct; that the mental powers enfeebled, untrained, uninformed, characterize the mass of criminals on admission." Brockway also contended

that modern criminals "are to a considerable extent the product of our civilization and also of emigration to our shore from the degenerated populations of crowded European marts." It was these two sources, he said, that produced the great mass occupying the courts and filling the prisons. "Until the source of supply is stanch'd, there is no safety for society but in quarantining and curing, in well organized and managed reformatory prisons, the criminally infected individuals brought to our attention by their crimes."<sup>85</sup>

Brockway had managed to advance his reformatory despite mounting pressure by organized labor. The unions wanted to restrict convict labor, claiming that it posed unfair competition to law-abiding workers. He did so in part by packaging Elmira as an "industrial training school" that was free from the usual requirement of fiscal self-support. Nevertheless, in time, all New York prisons, including Elmira, were increasingly affected by a series of restrictive new laws. In 1881 the legislature abandoned convict leasing and all other prison labor arrangements in favor of contract labor; in 1884 contract labor was abolished; in 1888 the "Yates Law" was passed, prohibiting productive labor in prisons. Elmira's labor system was effectively ruled illegal. As a result, Brockway suddenly had to find both another means to occupy his young inmates and another philosophical foundation upon which to build his prison regime.<sup>86</sup> And he had to find it fast.

In the space of only two days, Brockway fixed upon an alternative organizing principle. It happened when a thirty-year-old former newspaper reporter who was serving time for forgery suggested that military training should be made the new core activity. Brockway appointed the inmate as colonel of the regiment and ordered him to select and train the first sixty inmates of the first grade (those closest to parole) for an "officer corps." Soon the group was spending several hours a day marching in formation and learning basic military tactics. The prison yard was renamed the parade ground. Elmira's convict officers were issued snappy uniforms and highly polished brass-hilted steel swords.<sup>87</sup>

By cultivating his relationships in the legislature, Brockway helped to gain the establishment of a state-supply system. It allowed prison industries only for purposes of inmate training, with the further provision that the goods produced were to be sold only to other state institutions or departments. Brockway praised the new state-use law, saying it "makes industrial education of the prisoners the supreme object, directs their classification, gradation and education, permits the conferring of pecuniary rewards, and authorizes the conditional release of such prisoners as properly qualify themselves for safe inhabitancy."<sup>88</sup>

Due in part to Brockway's tireless efforts at public relations, many regarded Elmira as a well-run, model institution. By 1893, however, the reformatory was becoming seriously overcrowded, and some of Brockway's views were becoming controversial. He contended, for example, that "physical degeneracy" was a leading cause of crime, and complained that persons with low intelligence could not learn how to become law-abiding or productive members of society.<sup>89</sup>

Some of his methods also came under fire. In 1894 allegations against him prompted the governor to order a special investigation. It found that he had reserved many of the worst whippings for those he considered most "immoral" and "defective"—boys who suffered from mental or physical disability. His reputation and Elmira's image were tarnished, and he eventually resigned as superintendent in 1900, as bruised as Eddy and Lynds had been before him.<sup>90</sup>

## CONVICT LABOR

THE convict lease system that was so prevalent in the post-bellum South had entailed renting out a convict to a private company for a specific term. The state abdicated responsibility for the prisoners' welfare, leaving it to private contractors whose primary or exclusive objective was making a profit. As one Southern convict manager put it, "the State turned over its charges body and soul, and thenceforth washed its hands of them."

Prisoners in the South often were kept in open-air cages and guarded by overseers with bloodhounds; there was no need for major construction and maintenance of the physical plant. Consequently, leasing offered profits to the state of up to three or four times its expense, and the lessee had to pay only a minimal price. Leasing was, however, extremely susceptible to graft and other abuses.<sup>91</sup>

Warden J. H. Bankhead of the Alabama penitentiary observed that "our system is a better training school for criminals than any of the dens of iniquity that exist in our large cities." The state cared nothing for criminals, nor for their well-being. "You may as well expect to instill decent habits into a hog as to reform a criminal whose habits and surroundings are as filthy as a pig's," he remarked. "To say there are any reformatory measures at our prison, or that any regard is had to similar subjects, is to state a falsehood."<sup>92</sup>

One of the few Southerners who spoke out against convict-leasing systems was George Washington Cable of Louisiana, a former Confederate soldier and a novelist.<sup>93</sup> In a major essay on the subject in 1883, Cable

exposed the system's sub-rosa nature, and pointed out that Mississippi, Arkansas, and Louisiana did not publish reports or release any statistics about their penal systems in order to conceal rampant abuses. He called convict leasing "a disgrace to civilization."

In response to his charges, a reform committee reported: "The leasing system under any form is wrong in principle and vicious. . . . The system of leasing convicts to individuals or corporations to be worked by them for profit simply restores a state of servitude worse than slavery; worse in that it is without any of the safeguards resulting from the ownership of the slave."<sup>94</sup> As one Louisiana prison official put it: "Before the Civil War we owned the Negroes. If a man had a good Negro, he could afford to take care of him; if he was sick, get him a doctor. He might even get gold plugs in his teeth. But these convicts, we don't own them. So, one dies, we get another."<sup>95</sup>

In fact, the known death rate in Southern prisons was at least three times higher than that in Northern prisons. Many speculated it was actually much greater. Disappearances were extremely common during the early years of the lease system. As late as 1882, a survey found that 1,100 prisoners had successfully "escaped" from Southern prisons during the past two years, compared to an annual rate of only 63 among 18,300 Northern convicts, giving rise to suspicions that some may have met with foul play or perished from wounds.<sup>96</sup>

Accommodations in some prison camps consisted of steel-reinforced railcars—usually about eighteen feet long and seven or eight feet high and wide, one side of which had been covered by iron bars—into which eighteen or so men were put for the night, like circus animals. These cages, which often had tin roofs, were broiling hot and filthy. A Florida prison official from the turpentine camps later described a crude little log house called "Padlock," consisting of open-air platforms on which the convicts slept with shackles binding their legs and waists while an armed guard patrolled in front.<sup>97</sup>

Instead of fortress walls or the silent system, the Southern prison farms and camps used chains, dogs, guns, and brutal punishments to control their convicts. In 1912 Dr. E. Stagg Whitin of the National Committee on Prison Labor observed that the status of the Southern convict was "the last surviving vestige of the slave system."<sup>98</sup>

Writing in the 1920s, more than fifty years after the Civil War, one Northerner described the Southern chain gang as a "peculiar institution." As soon as a new prisoner entered camp, he would be shackled by both ankles with heavy chains that were a foot or two long. "The chain riveted to both ankles tends to drag on the ground and interferes with the working

energy of the prisoner," he wrote. "There is therefore another—a longer chain—a kind of cross chain linked at the center of the one that is riveted to the ankles. That chain serves two main purposes. It is used to lift the chain off the ground when the men are working. This is done by sticking the loose end through the belt and raising the riveted chain off the ground. Its other use is to chain the men together at night. A dozen or so men will be chained to each other when they are asleep in their beds."<sup>99</sup>

Mississippi abolished the lease system by constitutional amendment in 1890, and then resorted to segregating the convicts on large state prison farms. And Kentucky assumed full responsibility for managing its penal system in the early 1890s.<sup>100</sup>

Georgia's leasing system was the object of recurring scandals. In 1908 a commission was appointed to obtain a new prison farm where old and sick convicts would be housed; other provisions were made for contractors to pay the state \$100 a year for the more "desirable" convicts. After he received a long letter from a former prisoner detailing specific instances of corruption, the muckraker Charles Edward Russell wrote an article for *Everybody's Magazine* exposing hideous conditions in Georgia's lease camps. Stirred by a newspaper crusade and pressure from the federal government, the state finally abolished its leasing system.<sup>101</sup>

Florida's infamous prison conditions—marked by fatal floggings and torture, unsanitary camp conditions, and a lack of basic medical care—ranked among the nation's worst. J. C. Powell, a veteran prison official in the state, wrote a chilling book in which he described an environment ravaged by disease, starvation, and exposure, and keepers who hanged a convict by his thumbs, allowing him to writhe in agony until he died. Powell reported seeing some prisoners' thumbs so stretched and deformed that "they resembled the paws of certain apes" and were extended to the length of their index fingers.<sup>102</sup> And Powell was not alone. After visiting a Florida turpentine camp in 1912, an inspector noted: "Seven convicts died in this camp in a single year from diseases connected with standing or working in water up to their waists at all seasons of the year." Prisoners were forced to work even when sick, upon pain of being beaten or shot to death.<sup>103</sup>

Such conditions in Florida lasted for decades. In 1923, after years of continuous scandals, that state finally ended its notorious convict-leasing system.<sup>104</sup> Alabama followed in 1928.<sup>105</sup>

Meanwhile, under the prison contract labor system that was favored in most of the North, a company contracted with the state for the labor of a specified number of convicts. The state continued to house, guard, feed, and otherwise care for them, but the contractor provided all of the raw

materials, machinery, trainers, and foremen necessary to carry on the contracted business. This system's proponents claimed that contractors were better businessmen than government employees. They said the arrangement could prove lucrative for the contractors and the state alike, maybe generating enough revenue to pay for up to two-thirds of the prison's expenses. They said it could free up prison officials from nagging business chores that distracted them from their real penal mission (whatever that was).

The workers in a contract prison labor business could not unionize or strike, and their keepers enjoyed almost complete power over their lives.<sup>106</sup> Convicts working under the contract system also suffered from treatment that was often designed to extract their last ounce of labor, regardless of the physical consequences, and any apparent idlers, malingerers, or troublemakers faced very harsh consequences. At New Jersey's Trenton prison in 1878, after Jacob Snook died while being "stretched," an investigating committee determined that the prison authorities had poured alcohol on epileptics and set them afire to detect possible faking. In Ohio's reformatory that year, unproductive convicts were made to sit naked in puddles of water and receive electric shocks from an induction coil.<sup>107</sup>

Public investigations of New York's prison contract labor system had become increasingly frequent (and lurid) during the 1840s, 1860s, and 1870s, but with little effect.<sup>108</sup> Reporting in 1883, the Committee on State Prisons exposed a catalog of horrors such as the lash, the paddle, the dark cell, and the cooler, among other instruments of torture. These had directly resulted in innumerable inmate deaths, and had driven others to suicide or insanity.

Officials acknowledged that some Sing Sing convicts had actually dived off the upper galleries and broken their legs in an effort to escape being paddled. Those less fortunate broke their necks. Eyewitnesses described how prisoners there had routinely received as many as 315 consecutive lashes with a three-foot-long heavy leather paddle, for relatively minor offenses. The blows were administered by the principal keeper and "sluggers," after the contractors' instructors or foremen complained that a convict was not working hard enough or not producing his quota of finished goods. The legislators were told that one rebellious inmate who had refused to perform, even after severe beatings, was ultimately poisoned to death for not working. Another uncooperative prisoner, Michael Lawless, was reported to have been kept chained down on the stone floor for ten months until he went stark, raving mad and had to be removed to the lunatic asylum. Inmates were found to have lost limbs or suffered other permanent injuries due to unsafe working conditions. Convicts assigned

to Sing Sing's infamous stove shop sometimes shrieked when the defective ladles they were using suddenly burst, spilling molten iron onto their shoes and burning their flesh to the bone. Some were later sent back to work with maggots on their wounds. Sing Sing's unusually high death statistics had been published for years, but now human beings with names were being attached to the numbers. Benjamin Myer, twenty-one years old, so dreaded the paddle he had committed suicide. Cornelius Lynch had been making stoves when he became entangled in some machinery and was disemboveled. Another stoveworker, William Anderson, died of overwork, as did James Mackinson, a colored man, and John Moore. Thomas Dolan and William Chambers had complained of work-related ailments shortly before they died; they had received no medical treatment. William McNally had ruptured himself in the stove foundry while putting in extra work to try to earn some extra pay . . .<sup>109</sup>

Sing Sing was not the only New York penal institution experiencing such abuses. Similar reports were delivered about Blackwell's Island, the Albany and Kings County penitentiaries, and Clinton State Prison.

Clinton, located in the Adirondacks near the Canadian border, had been established in 1844 at the site of an iron-ore mine, but mining had been abandoned by 1877 in favor of manufacturing.<sup>110</sup> Arthur Alexander Hessler, who had fought for the Union and who was in ill health from a maritime accident, was sentenced to Clinton for writing a bad check. Shortly after arriving on a frigid January day in 1881, Hessler was forced to wear an eighteen-pound iron yoke, with five sharp spikes garrishing his head, for twenty-four hours. After he collapsed, he was kicked, beaten, and tortured as sport by the guards. Hessler's extraordinarily detailed affidavit provided a rare glimpse into some of the brutality that attended contract prison labor up North.<sup>111</sup>

Similar abuses were publicized in other states. Pat Crowe, a train robber, was sent to the Missouri State Penitentiary at Jefferson City and assigned to work in the prison shoe factory. Under the contract system in effect there, the state was paid forty-five cents per day for each convict's labor. Crowe later claimed it was the most brutal system he had ever witnessed, saying, "I have known men to be whipped to death simply because it was a physical impossibility for them to do the tasks assigned to them under this outrageous contract labor system." First-time offenders were handcuffed to their work posts all night. If, after ten days, a convict failed to achieve his quota, he was taken to "Betsy's sister," a contraption in the punishment hall. He would be handcuffed to it and lifted until his toes barely touched the floor. Then his bare back would be lashed with a raw-hide whip and the wounds sponged with salt water. Crowe said he knew

several prisoners at the Missouri penitentiary who had died from such treatment. As if to thumb his nose at his former tormentors, Crowe later said that after his release from Jefferson City, he took "a diabolical delight in holding up trains and dynamiting the express safe. I was a real, hard-boiled outlaw and glad of it," he said, "because I felt that anything I did was mild compared with the wrongs that society was inflicting on the men in its prisons."<sup>112</sup>

In the Northeast, organized labor had opposed convict labor since the first workingmen's organizations had been formed and the first prison factories had been established. By the late 1800s, the increased power of labor unions had made them a more formidable force in several states. Labor intensified its long-standing struggle to eliminate "unfair" prison competition, which, its leaders said, threatened all law-abiding wage earners. Led by the Knights of Labor, the Federation of Organized Trades and Labor Unions, and the National Labor Party, union leaders focused their energies in major industrial states like New York and tried to convince key journalists and legislators to support their cause.<sup>113</sup>

New York's pro-union Committee on State Prisons, considering the "serious injury to free labor that is caused by this contract system in prisons," noted that "a number of the leading trades, and more particularly the hatters, stovemakers, hollow ware manufacturers, boot and shoemakers and brushmakers have all been materially damaged throughout the State, and more especially in the larger cities, by the ruinous competition against which they are compelled to struggle." To illustrate what it meant, the committee pointed out that a single penal institution could manufacture a million pairs of boots or shoes per year. It also observed that

no outside manufacturer can enter the market against the rival whose labor costs him from seventy to eighty per cent below that of the outside manufacturer. Among other advantages, the prison contractor has no rent, repairs, or taxation, to pay for his factory, and he can grind out of his enslaved workman the utmost task which human endurance and man's muscle are capable of performing, even until the victims of this forced exertion often drop down from sheer exhaustion. . . . There was never a more flagrant or unjust monopoly than the one which is enjoyed by the prison contractors.<sup>114</sup>

New York experienced a tremendous growth in its prisoner population during the 1880s. Existing cell space was no longer adequate. Sing Sing had eight or nine hundred inmates double-bunked in its minuscule cells.



Many convicts needed medical treatment for respiratory ailments, chancres, syphilis, and other illnesses; they contracted many of these from each other as a result of overcrowding. It was becoming more difficult to maintain order. Corruption flourished. Medicine money was used to buy whiskey and rum for the prison staff. Huge quantities of food and clothing were stolen. Prisoners bribed staff members to get choice assignments, offering as much as \$500 to work in the chaplain's office or land a porter's job.

Convict leasing and the contract labor system were only two of the most common arrangements. "Piece-price" agreements called for the state to receive payment for each piece or article that inmates produced in the prison workshops. The raw materials were furnished by a private contractor, who then received a profit on his investment.<sup>115</sup> Under the public-account or state-account system, a state went into business on its own, using the prisoners to manufacture goods that the state later sold on the open market.<sup>116</sup>

In 1885 a national survey reported that convict labor was being employed in 198 American penal institutions and involved 53,512 persons. New England had 7,451 inmates in 47 prisons, with 1,293 engaged in contract labor, 1,647 on public accounts, 607 on piece-price, and 445 leased out. The Middle Atlantic states showed 15,324 prisoners in 33 institutions, of whom 6,287 were contracted, 3,213 were on public account, 952 were on piece-price, and none were leased. The South listed 14,479 prisoners in only 20 institutions, with 2,110 on contract, 250 on public account, 160 on piece-price, and 9,594 leased out. In the West, 16,258 prisoners were held in 38 institutions, with 6,880 on contract, 2,982 on public account, 638 on piece-price, and 199 leased.<sup>117</sup> An estimated 45,277 American convicts were producing goods valued at about \$28.8 million, a relatively small portion of the \$5.4 billion that had been produced by the nation's 2.8 million free laborers five years before.<sup>118</sup>

Yet prison labor was big business. In 1885—the same year that the Statue of Liberty arrived in New York in hundreds of wooden crates—convicts accounted for 12.9 percent of America's workers employed in making whips, 21.5 percent of those employed in saddlery hardware, 3.1 percent of the known bootmakers and shoemakers, 3.2 percent of the broommakers and brushmakers, and 7.1 percent of the chairmakers.<sup>119</sup> Besides the tedium, monotony, long hours, and harsh working conditions experienced by other sweatshop workers, prisoners faced severe punishments—ranging from reduced privileges and shortened rations, to flogging, electric shocks, and even torture or death—not to mention their near total loss of civil liberties.

A convict entering Pennsylvania's Western Penitentiary in 1892 told of

starting out in Number Seven, the mat shop. It was a dark, low-ceilinged room with small, barred windows, in which the air was heavy with dust and the rattling of the looms was deafening, creating an atmosphere of "noisy gloom." He wrote that it "is beginning to affect my health: the dust has inflamed my throat, and my eyesight is weakening in the constant dusk." Alongside him, a consumptive convict suffered coughing attacks and gushed blood from his mouth. Transferred to the hosiery department, the newcomer spent day after day turning stockings, and observed inmates stealing each other's finished products in order to make their quota. He watched convicts fight to defend their wares.<sup>120</sup>

Writing about his experiences in California's San Quentin prison, Donald Lowrie quoted a former fellow convict named Smoky as questioning the economics of imprisonment. "What I can't get through my nut is why 2,000 able-bodied men cost the State \$100 a year apiece," Smoky observed.

If we had a little town of our own outside we'd have our families and children, an' good food an' decent clothes, an' theatres an' fire department and everything else, an' we'd all be comfortable, an' some of us would have money in th' bank, an' we'd send our kids to school, an' all that. By workin' ev'ry day we'd support five 'r six thousand people besides ourselves, an' yet in here, livin' like dogs in kennels, an' eatin' th' cheapest grub they can get, it costs th' State a quarter of a million dollars a year t' keep us. There's somethin' rotten somewhere. If they'll get us guys work an' pay us f'r it, an' make us pay f'r what we got, y'r'd see a big difference. Y'r wouldn't see men comin' back, an' y'r'd see lots of 'em go out an' take their proper place in th' world. They'd have th' work habit then, because they'd know that work brings a man all that makes life worth while.<sup>121</sup>

## PRISONS AS LABORATORIES

THE period from 1870 to 1920 was an age of great immigration, and the scale and variety of that influx had profound implications for American society and its prisons. Since colonial times, some residents had accused aliens of being more criminal and troublesome than native-born whites. Puritan colonists had ranted about dangerous Quakers and transported convicts, slaveholders had expressed wariness over Negro imports from the West Indies, native Anglo-Saxon-Protestant New Yorkers and

Bostonians had complained about "lawless" Irish immigrants. Following the Civil War, as the volume of foreign immigration increased, nativist feelings also grew, buttressed by pseudoscientific theories about crime-prone races and degenerate nationalities, and pseudoevolutionary notions of biological superiority and inherited inferiority. During the 1870s, as nearly three million foreigners immigrated here, many native-born Americans of old stock were alarmed by the masses of poor, perhaps unassimilable strangers who had flocked to the cities.

In western Europe, Great Britain, and the United States, bastion of capitalism's "survival of the fittest," many social scientists turned their attention to social structures, and particularly to the plight of the "lower class." Charles Loring Brace described the worsened slum environment in graphic detail in *The Dangerous Classes of New York*, which documented the poor's grim struggle for existence. Yet Brace was quick to warn that attempts to cure poverty through charity could backfire, since they might actually lessen the poor's chances of survival by destroying necessary habits of industry, self-reliance, and self-respect. Left uncorrected, he predicted, "a community of paupers, transmitting pauperism to children of like character, would soon become one of the most degraded and miserable on the face of the earth."<sup>122</sup>

In 1874 a civic-minded New York merchant named Robert L. Dugdale toured thirteen county jails as a volunteer inspector for the prestigious Prison Association of New York. While visiting rural Ulster County, Dugdale found in jail six persons—four male, two female—under four family names who appeared to be blood relatives. He set out to trace their family history for clues to explain such an apparently disproportionate involvement in crime. Consulting available official records from prisons, courts, and other sources, he later claimed to have been able to follow the family's roots back to a colonial frontiersman, whom he called "Max," who had been born between 1720 and 1740, descended from early Dutch settlers. In his book *The Jukes* Dugdale supposedly followed the clan over five generations as it produced 1,200 Jukes or persons married to Jukes.<sup>123</sup> Of that number, Dugdale said he had documented 280 pauperized adults, 60 habitual thieves and 140 other criminals, 7 murderers, and 50 common prostitutes. One particular branch of the family had showed distinctly criminal tendencies, according to Dugdale, so he labelled its apparent founder as "Margaret, Mother of Criminals." His genealogy of degeneracy, promiscuity, and crime made titillating reading.<sup>124</sup>

Pseudoscientific arguments like Dugdale's became enormously influential in a nation that increasingly was becoming a mosaic of different races and cultures. In his essay "Crime and Automatism," published in 1875, Dr.

Oliver Wendell Holmes, the Boston physician and intellectual, declared that "in most cases crime can be shown to run in the blood."<sup>125</sup>

In the 1880s, the immigrant influx rose to 5.2 million men, women, and children, many of them refugees from eastern and southern Europe, who had fled political persecution and economic deprivation in Russia, present-day Poland, the lands of the Austro-Hungarian Empire, and Italy; non-Anglo-Saxons who did not speak English and whose appearance, customs, and political beliefs often seemed different, strange. Most of them gravitated to tightly knit enclaves in Chicago, New York, Boston, and other big cities, where they labored in factories and sweatshops, struggling to make ends meet. The zenith in immigration would not occur until the years between 1905 and 1914, when a million or more each year came to start a new life. In 1914 nearly 75 percent of them were from southern and eastern Europe, with only 13.4 percent coming from northern and western Europe.<sup>126</sup>

Crime in the United States was becoming increasingly associated with immigration. Whether or not newcomers were actually any more criminal than native borns was doubtful, but American prisons, reformatories, mental asylums, and other social service institutions clearly were disproportionately populated by immigrants and Negroes. In 1880, 26.4 percent of the United States general population was foreign born or Negro, yet fully 50.4 percent of the nation's prisoners came from those groups (21.8 percent immigrants, 28.6 percent Negro). The rate of imprisonment of foreign born was twice that of native born, and for colored persons it was three times higher. Of the nation's 12,681 prisoners of foreign birth, the most numerous were Irish (5,309), Germans (2,270), English (1,453), British American (1,215), and Chinese (526). In 1892 a third of Sing Sing's convicts and a quarter of Clinton's were foreign born. Germans had begun to replace the Irish as the foreign-born group most prevalent in prison.<sup>127</sup> By 1917 the proportion of immigrants would rise to about one-half in both institutions.<sup>128</sup>

Notions that had been prevalent under slavery continued to remain in vogue through a growing and fashionable eugenics movement, which sought to "improve" the human race through controlled breeding and eliminate "poor" or "inferior" tendencies.<sup>129</sup> Belief in racial superiority imbued government policy during the period of the Indian wars. By the late 1890s, eugenics programs enjoyed a full-blown renaissance in American prisons and other institutions for the insane, feeble-minded, and wayward. Some of the leading eugenics adherents and experimenters were prison research directors, physicians, psychologists, and wardens.

The movement had begun rather modestly when a new coterie of physical anthropologists rushed to extend Franz Gall's phrenology—a field of study holding that the functions of the brain are localized in different regions and that their varying development could be observed from conformations, or “bumps,” of the skull. Some of these early phrenologists searched for telltale marks of criminality. One of them—Charles Caldwell at Kentucky's Transylvania University—introduced phrenology in the United States during the 1820s. The field had been further popularized by George Combe and other prison visitors, who had followed the fad of using their ever-present instruments to measure the skulls of executed criminals.<sup>130</sup> Thus the cranium of LeBlanc, a murderer in New Jersey, was described as having unusually large organs of “destructiveness,” “secretiveness,” and “acquisitiveness,” whereas the centers of “veneration” and “conscientiousness” in Tardy, a pirate, were found to be small.<sup>131</sup>

One American who was especially fascinated by Combe's phrenological studies of convicts' heads was E. W. Farnham, the matron of Sing Sing prison. In an encyclopedic work, Farnham applied some of the latest phrenological principles to the specialized study and treatment of criminals.<sup>132</sup> Officials at Philadelphia's Eastern Penitentiary also incorporated phrenological data as a regular feature of their prison publications.<sup>133</sup> Paul Broca, the Paris anthropologist, wrote with seeming authority about the peculiar shape and structure of criminals' skulls and brains.<sup>134</sup>

However, it was an Italian physician, Cesare Lombroso, who took this approach to a new level. Lombroso focused the new science of “modern” criminology upon the individual criminal as an animal or physical organism.<sup>135</sup> His book, *L'uomo delinquente* (Criminal Man), inspired by his autopsy of a notorious criminal, posited that there was a criminal type, an atavistic throwback to a more primitive and savage human.<sup>136</sup>

Using the latest methods of physical anthropology (and perhaps some zeal from medieval witch hunting), Lombroso made extensive measurements of thousands of convicts, both living and dead, and compiled a list of positive physical abnormalities, or “stigmata,” which he associated with “the criminal type.” By 1887 he had cataloged numerous suspicious traits, including an asymmetrical face, prognathism (an excessive jaw), eye defects, peculiarities of the palate, a receding forehead, scant beard, woolly hair, long arms, fleshy or swollen lips, abnormal dentition, a twisted nose, precocious wrinkles, darker skin, inversion of sex organs, a lack of moral sense, vanity, cruelty, a passion for gambling, the use of criminal argot, and cynicism.

In addition to broaching the idea of the born criminal, Lombroso postulated the existence of a “criminaloid,” who ranked slightly above the crimi-

nal type but below normal man on the evolutionary scale. He had an innate criminal tendency, but could, like a chameleon, be affected by his surroundings. Lombroso ranked noncriminal men highest on the evolutionary scale, followed by criminal men and noncriminal women. Criminal women were said to be the least evolved, with physical traits that resembled those of criminal men. Lombroso classified all "primitive" women as prostitutes.<sup>137</sup> Based on such thinking, he concluded: "We are governed by silent laws which never cease to operate and which rule society with more authority than the laws inscribed on our statute books."<sup>138</sup>

Lombroso's theories were widely accepted in the United States. To some they implied that born criminals were not responsible for their criminality and that perhaps even criminaloids could not be fully blamed for having gone wrong. The impact of Lombroso's views was immediate in the study of the social sciences, especially criminology, which was then being introduced into the sociology curriculum at some American colleges and universities.<sup>139</sup>

The first place that scholars turned to test Lombrosian theories was prison, in part because it was assumed that this was where known criminals or criminaloids could most easily be found. Experiments were quickly conducted at Joliet Penitentiary, the Ohio State Penitentiary, and Blackwell's Island Workhouse and Penitentiary in New York City, to name a few.<sup>140</sup>

Beginning in 1880, the field of physical anthropology began to gain favor in American scientific journals.<sup>141</sup> It focused upon criminals, deviants, and abnormals, viewing the individual criminal offender as both a victim of heredity and a perpetuator of inherited criminality. As the spotlight shifted to one of society's most dangerous groups, the criminal class, much of the evidence that scientists presented had been secretly obtained from meticulously documented experiments, conducted in the controlled social laboratories of prisons, reformatories, jails, and other penal institutions. Prisons, after all, provided a captive population of subjects for study, who were available free of charge; they were also an ideal setting in which to conduct scientific research, to be used at a critical moment in scientific development.

This emerging use of prisons as a social laboratory, complete with inmates as human guinea pigs, confined to tiny cages, would prove to have enormous ramifications for the study of eugenics, psychology, intelligence testing, medicine, drug treatment, genetics, and birth control. Scientists gravitated toward prisons to test their theories of heredity, intelligence, fertility, and physical anthropology. In all of them, efforts at classification assumed greater and greater importance. Criminologists, for example,

used their prison-based research studies to classify criminals. August Drähms, a resident chaplain at San Quentin prison in California, published a Lombrosian study in which he used statistics gathered from inmates to support a classification scheme that identified three categories of criminals: "instinctive criminals," whom he said were predisposed to commit crime; "habitual criminals," who resembled the instinctive offenders except that their inspiration was drawn more from their environment than from "parental fountains"; and "single offenders," who committed an isolated violation of the law that was generally out of character and situational in nature. Drähms considered all criminals as being morally, mentally, and physically inferior, but some were just more inferior than others.<sup>142</sup>

Rufus Bernhard von Kleinsmid, a researcher at Indiana Reformatory, reported that his study of fifty-six hundred inmates had convinced him that "these men are physically inferior to the average young man not in prison and presumably normal."<sup>143</sup> A chorus of others produced similar studies.

New methods of positive identification and classification sprang up as a product of this prison-based research. After Darwin's cousin, Francis Galton, photographed the facial features of known criminals, Lombroso quickly adapted photographic composites into his own presentations.<sup>144</sup> Building upon this new technology, France's Alphonse Bertillon developed another, more advanced system of identification that was widely adopted in American prisons during the late 1880s. The Bertillon method consisted of a uniform framework for recording precise measurements of an individual's height, weight, and various body dimensions, as well as other general information, including frontal and profile photographs of each subject.<sup>145</sup> In 1896 New York State required that all persons sentenced to a penal institution for thirty days or more must be measured and photographed according to this system, and the records carefully maintained and cataloged.<sup>146</sup>

Even these criminal identification techniques could not always guarantee that an individual would be positively identified. As Mark Twain disclosed in his popular 1894 novel *Pudd'nhead Wilson*, there was another method available. Called fingermarking or fingerprinting, it supposedly could positively identify every individual based upon the unique patterns on his or her fingertips.<sup>147</sup> Fingerprinting prisoners and criminals was somewhat slow to catch on, but its value was dramatically demonstrated by a number of highly publicized cases of mistaken identity and miscarriage of justice that were exposed with fingerprint evidence. One of them occurred in 1909 when a Negro convict was received at Leavenworth Federal Penitentiary. Prison officials believed they had held him there before under

the name of William West. His denials seemed to be refuted by Bertillon measurements and photographs. But it turned out that he was telling the truth, and, to add to official embarrassment, the real William West was found to be still in Leavenworth. A year later, Sergeant John K. Ferrier of Scotland Yard visited the United States and agreed to fingerprint all of Leavenworth's convicts, thus inaugurating a new means of criminal identification.<sup>148</sup> Pretty soon virtually all prisoners could expect to have their fingers inked and rolled over paper.

In the United States, many prison research studies were spearheaded by several key organizations that saw themselves as leading the search for the cause of crime—groups such as the Prison Reform Congress, National Conference of Charities and Corrections, National Prison Congress, Prison Association of New York, and Society for Alleviating the Miseries of Public Prisons.

Zebulon Brockway's Elmira Reformatory carried the latest penological advances as far as possible, working them into the standard prison procedures that had been developed at Auburn and Sing Sing.<sup>149</sup> As described in the institution's *Yearbook* for 1892:

The morning after arrival, an interview with the General Superintendent takes place. The main object of this private audience is to ascertain the special causes of each individual's crime, for the purpose of determining the treatment to be pursued, experimentally at first, in order to effect a cure. The points gathered in this interview are the names and addresses of parents and relatives, the prisoner's antecedents including the condition of his ancestors, whether criminal, insane, epileptic, intemperate or illiterate, their means and manner of living, and his relation toward them; his own history, comprising an account of previous wrongdoings, the character of his associations, the nature of his home life, his religion, mental attainments, trade relations, and physical type and condition, also the trade he would like to follow and for which he thinks himself more especially adapted. Then other questions are put and answers sought, upon which the General Superintendent usually relies as fair indicators of character, and a certain standard, more or less approximate, is determined upon the quantities of sensitiveness and moral susceptibility. A treatment is then prescribed, subject to any variations that may be found advisable as the treatment progresses.<sup>150</sup>



Each year, Elmira proudly published skillfully prepared reports containing realistic sketches or photographs of actual inmates, identified by face and convict number.

By the 1880s, physicians and social scientists had replaced the chaplains of the 1830s as the most enthusiastic proponents of prison as a vital social laboratory. Elmira's physician, Dr. Hamilton D. Wey, was particularly influential in urging the laboratory study of criminals.<sup>151</sup> Scores of physicians and social scientists answered his call. In 1900 Charles R. Henderson, a sociologist at the University of Chicago, urged in a report endorsed by the National Prison Association that prison laboratories should be substantially expanded and strengthened.<sup>152</sup> Arthur MacDonald, a specialist on the "abnormal classes" for the Bureau of Education, pressed Congress to establish a national laboratory for studying the criminal, pauper, and defective classes.<sup>153</sup> Dr. J. B. Ransom, a physician at Clinton prison, conducted human experiments with convicts which demonstrated that an environment with high altitude and pure air was well suited for the care and treatment of tuberculosis.<sup>154</sup> Just when prison labor was becoming more politically problematic, convicts' bodies were proving to have other uses.

Eugenics researchers found prisons a perfect place to conduct secret studies. Victorian attitudes and criminal anthropology alike encouraged the regulation of sexual conduct and procreation. Mental defectives, inebriates, epileptics, and criminals were thought to be transmitting their tendencies through sexual intercourse. Until the late 1890s, castration (testiectomy) or removal of the ovaries (ovariotomy) remained the only established means of preventing reproduction. Dr. F. Hoyt Pilcher had performed mass castrations in the mid-1890s at the Kansas State Home for the Feeble-Minded.<sup>155</sup> But castration had some distasteful physical and psychological effects.

A more acceptable form of male sterilization was developed near the end of the nineteenth century. Called "vasectomy," it entailed severing the *vas deferens*, the tube connecting the male testes with the urinary canal, thus preventing the sperm from entering the urinary canal into seminal fluid. Dr. Harry C. Sharp, a physician at Indiana Reformatory in Jeffersonville, introduced vasectomy in the case of a nineteen-year-old inmate who had masturbated—excessively, in his expert view. By the end of his first year, Dr. Sharp had sterilized 76 young prisoners. (From 1899 to 1907 he would vasectomize at least 465 men, mostly involuntary patients, all of them by illegal operations.)<sup>156</sup>

Sharp led a campaign in favor of sterilization laws, long after he had

already begun secretly performing mass sterilizations of "feeble-minded" inmates. "Shall we permit idiots, imbeciles, and degenerate criminals to continue the pollution of the race simply because certain religionists teach that 'marriages are made in heaven' and that the 'function of procreation is divine'?" he asked.<sup>157</sup>

Michigan defeated a proposed sterilization bill in 1897, out of religious fervor, and Pennsylvania's governor vetoed a similar act in 1905. Indiana's statute, enacted in 1907, was the first in the nation authorizing compulsory sterilization, and model sterilization legislation was drafted a few years later by the American Breeders' Association.<sup>158</sup>

Studies involving prisoners were also instrumental in the development of intelligence testing. Henry H. Goddard, a Princeton psychologist who directed the research laboratory at the Vineland Training School for Feeble-minded Girls and Boys, in New Jersey, popularized the use of Alfred Binet's intelligence scale in the United States. Yet, although Binet's IQ tests were age graded, they still had not been adjusted to avoid age-related distortion of intellectual capacity; consequently, unbeknownst to Goddard, the scales tended to grossly exaggerate the extent of mental retardation. Thus, when Goddard examined the results of his IQ testing of juvenile delinquents, he found more feeble-mindedness than expected.<sup>159</sup>

Goddard identified feeble-mindedness as the major cause of criminality, proclaiming that "25% to 50% of the people in our prisons are mentally defective and incapable of managing their affairs with ordinary prudence." He spent the next several years spreading the alarm through such books as *Feeble-Mindedness* and *The Criminal Imbecile*. Goddard eventually claimed that as many as 89 percent of all delinquents were mentally defective and held that "[e]very feeble-minded person is a potential criminal."<sup>160</sup>

Prison and reformatory officials had long been concerned about the number of mental defectives within their institutions, in part because such inmates were difficult to discipline and often victimized by others. With the availability of new diagnostic methods and intelligence testing, there arose within the prison system a sudden demand for measurement specialists, testing experts, psychologists, and eugenicists. At the same time, intergenerational findings such as Dugdale's "Margaret, Mother of Criminals," and Goddard's "Deborah Kallikak" seemed to validate Victorian beliefs that immoral women were responsible for producing generations of criminals, imbeciles, paupers, and the insane. After all, they drank alcohol in excess, wantonly engaged in fornication and perversion, acquired and spread venereal disease, and gave birth to batches of illegitimate and feeble-minded children who would never amount to anything.

Consequently, eugenic restraints seemed to be society's only hope for

averting extinction. Prominent citizens encouraged the state to combat sexual promiscuity, prostitution, vice, and "white slavery." Venereal disease came to be monitored more carefully, and those who spread it faced quarantine and even imprisonment. Women's reformatories and prisons swelled with young prostitutes and became identified with the care and treatment of venereal disease. Incoming prisoners were administered Wassermann and other tests to detect social disease.<sup>161</sup>

Starting with a pilot grant that Superintendent Katherine Bement Davis obtained in 1910, extensive psychological testing was conducted at New York's Bedford Hills State Reformatory for Women. Initial testing by Dr. Eleanor Rowland of Reed College found one-third of the inmates to have subnormal scores, but Davis arranged for further work by Dr. Jean Weidensall, a psychologist who had been trained by Goddard and William Healy of Chicago, who had pioneered the new science of criminal diagnosis.<sup>162</sup>

None other than John D. Rockefeller, Jr., was deeply involved in the project. The Rockefellers were no strangers to social Darwinism, but Junior's particular loathing of the evils of prostitution displayed during the "white slavery" craze in New York City had apparently increased his enthusiastic, behind-the-scenes support for the eugenics movement and criminal reform.

Rockefeller quietly created the Laboratory of Social Hygiene on eighty-one acres of farmland adjoining the Bedford prison in Westchester County. He bought the land for \$75,000 and leased it and its buildings to the reformatory managers for a nominal rent. Female inmates were taken there and stripped, measured, examined, and probed. A trained research staff tested their intelligence, recorded and analyzed their family history for eugenic clues, and compiled detailed psychiatric profiles of them all. Each inmate's intelligence, mechanical abilities, eyesight, and other characteristics were compared to those of working women and schoolgirls. Female prisoners generally scored lower in most tests.

Although these activities were conducted by a private corporation upon state prisoners, New York's attorney general issued an opinion that formally authorized the laboratory to utilize women prisoners in its research, provided that the state continued to "bear the mere cost of maintenance of the inmates just as if they remained within the present boundaries of the institution grounds." The testing would help to weed out "defective and criminally inclined persons," who could then be sent to custodial asylums for life rather than being set free after serving a relatively brief time in jail.<sup>163</sup>

This arrangement continued until 1920, when, at Rockefeller's urging, New York purchased the facility for use as a clearinghouse for identifying any woman in the state-supported penal system who was older than sixteen

and found to be mentally defective to the extent that she required supervision, control, or care. Weidensall served as director of the laboratory and superintendent of Bedford Hills prison. She eventually joined with other researchers, including Dr. Edith R. Spaulding (Bedford's resident physician) and William Healy, on studies which concluded that low intelligence did not "cause" crime and that criminality was not inherited. Instead, they attributed criminal behavior to a variety of social, physical, and mental causes that are interrelated and interactive.<sup>164</sup>

Mabel Ruth Fernald, another Chicago-trained psychologist who conducted studies at the laboratory, rejected the notion of a female criminal type and concluded that extensive data "fail absolutely to justify the view expressed recently by certain propagandists that delinquency and defective intelligence are practically synonymous."<sup>165</sup>

Using inmates as human subjects, one of Rockefeller's philanthropies, the Bureau of Social Hygiene, also carried out pioneering research into narcotic drugs, helping to formulate the basis for a new federal policy of criminalization and treatment that would loom even larger in the coming decades.<sup>166</sup>

Meanwhile, the eugenics movement continued to spread throughout the country. According to a report to the governor of Kansas in 1919:

All the feeble-minded lack self-control. . . . Their immoral tendencies and lack of self-control make the birth rate among them unusually high. . . . We know that the social evil is fed from the ranks of feeble-minded women, and that feeble-minded men and women spread venereal disease. . . . Their tendencies to pauperism and crime would seem to be sufficient grounds to justify the claim that the feeble-minded are a menace to society.<sup>167</sup>

Before World War I, no widespread intelligence testing of the American public had been conducted. Hence, it was not until large numbers of army conscripts were tested and the results compared to those for convicts that an empirically based picture began to emerge. One researcher compared the intelligence rating of inmates at the Indiana reformatory with men in the army draft from Indiana and reached the startling conclusion that the prisoners were much more intelligent than the draftees.<sup>168</sup> Research involving 10,413 prisoners in three Illinois penal institutions conducted from 1920 to 1927 resulted in similar findings.<sup>169</sup> Later study of 13,454 men in Illinois penal institutions found prisoners and nonprisoners to be of equal intelligence.<sup>170</sup>

But some of this research also had deleterious consequences for prison-

ers. Carl Murchinson, for example, concluded that since criminals were not of inferior intelligence they were responsible for their actions. He used this rationale to advocate harsher criminal penalties, including mandatory capital punishment, for anyone convicted of a third felony. Regardless of what the empirically derived data showed, many prison researchers continued to insist that low criminal intelligence was a leading cause of crime.<sup>171</sup>

Frank L. Christian, a psychiatrist specializing in defective delinquents, who served as Elmira's superintendent from 1917 to 1939, blamed the reformatory's high recidivism rates on the inmates themselves, not the institution. He claimed that it was attracting too many defective delinquents.<sup>172</sup>

Not everyone in the prison business subscribed to Lombroso's theories, however. Reverend Frederick H. Wines, the son of Enoch and an indefatigable cataloger of criminal statistics, who was secretary of the Illinois Board of Public Charities and a prominent criminal law reformer, told the National Prison Association in 1898, "I do not believe in inherited crime any more than I believe in the imaginary criminal type."<sup>173</sup> For many years Wines helped to lead the opposition to the connection of criminal anthropology and eugenics with American prisons, writing in one of his books:

It needs no apparatus for minute and accurate measurements, with rules, scales, calipers, and goniometers—no chemical analysis of blood, tissues, and excretions—no careful experiments to test the degree of nervous susceptibility of different sensory organs—no specially devised psychical tests—to enable a common man, familiar with criminals through his relation to them as an officer of the police or of a court or prison, to describe their most obvious and striking characteristics.<sup>174</sup>

Wines criticized the reigning positivist notions about "the criminal brain," which were based upon studies by Moriz Benedikt and others.<sup>175</sup> He observed that the list of physiological peculiarities attributed to criminals encompassed an extraordinarily wide and diverse area, including "disordered nervous action, insensibility to pain, quick and easy recovery from wounds, defective taste and smell, strength and restlessness of the eye, mobility of the face and hands, left-handedness, excessive temperature, perverted secretions, abnormal sexual appetites, precocity and so forth."<sup>176</sup> Some medical writers had claimed that criminals possessed defective hearing, others had said it was preternaturally acute. Some reported they were color-blind, others said that was rare. Criminals were labelled as being hypersensitive to climatic and meteorological influences. Some said criminals did not blush.

Wines accused criminal anthropologists of committing serious methodological errors, including a common failure to compare their data about "criminals" with corresponding numbers for an equal population of "non-criminals" (a controlled study). He was not the only one to question such methods. Jacob Riis, the muckraker and photographer, had spent years stalking through the ghettos with camera and notepad, studying "how the other half lived." He later observed: "We have heard friends here talk about heredity. The word has run in my ears until I am sick of it."<sup>176</sup>

Some other Americans rejected criminal anthropology on political grounds. Years before his famous defense in the Scopes Monkey Trial, the attorney Clarence Darrow told prisoners at the Cook County Penitentiary: "There is no such thing as crime as the word is generally understood. If every man, woman and child in the world had a chance to make a decent, fair, honest living, there would be no jails and no lawyers and no courts."<sup>177</sup> And after his own incarceration, one prominent labor leader simply said: "I have heard people refer to the 'criminal countenance.' I never saw one. Any man or woman looks like a criminal behind bars."<sup>178</sup>

More members of the scientific community ultimately joined the assault upon criminal anthropology. One of the most important evaluations involved Dr. Charles Goring, a British prison physician, who had taken over a massive prisoner study started by another scholar who had been attempting to test some of Lombroso's theories. Using standard techniques of physical anthropology, as well as data gathered about age, education, family background, occupation, intelligence, and other factors, Goring enlisted the aid of Dr. Karl Pearson, an eminent statistician and eugenicist, to conduct a rigorous quantitative study of three thousand male convicts who had been sent to English prisons between 1902 and 1908. All of the men studied were recidivists, which meant they were precisely the persons who might most presumably be of the "criminal type."<sup>179</sup> Yet Goring's book, *The English Convict*, strongly refuted Lombroso's claims, the study having found no appreciable anatomical differences between the prisoners and various control groups, including Oxford undergraduates. "The preliminary conclusion reached by our inquiry is that this anthropological monster has no existence in fact," he declared. "The physical and mental constitution of both criminal and law-abiding persons, of the same age, stature, class, and intelligence, are identical."<sup>180</sup>

## WEEDING OUT

**I**N the United States, one of the most astounding examples of scientific experimentation involving prisoners occurred in 1890—the year of the murder of Sitting Bull, and of the Army's massacre of the Sioux at Wounded Knee—when the electric chair was introduced at Auburn prison. At the time, death by electricity was of intense interest to the captains of industry, who were concerned about possible safety problems and resulting civil damages stemming from accidents caused by their new source of power. Scientists were encouraged to discover precisely how electricity killed human beings, in part because punitive awards from the courts might depend on the amount of "pain and suffering" involved in electrocutions. Aided by Thomas Edison, a cadre of state-supported researchers set up electrical appliances in New York's old police headquarters. With still more help from the Society for the Prevention of Cruelty to Animals, they began conducting experiments. Edison's goal was to have the State of New York electrocute its condemned prisoners by alternating current—the type of commercial electricity favored by his rival, George Westinghouse—in order to help define it as lethal in the public mind.

New York became the first state to adopt sweeping new execution provisions. The legislation called for condemned convicts to be transported to the state prison and kept in solitary confinement until it was time to put them to death. The law denied them access to any person except officers of the prison, their counsel, physician, priest or minister (if they should desire one), and members of their family, except by court order. A death warrant would command the prison warden to execute the convict within four to six weeks after the sentence was pronounced and upon some day within a week it appointed. Only specified persons invited by the warden could witness the event. Electrocution was declared the new method of execution. An immediate postmortem examination was to be made by the attending physicians, who would certify the nature of their autopsy. The act was to take effect the following year, in order to give the superintendent of state prisons time to install the necessary electrical apparatus and appliances.<sup>181</sup>

The first convict to be legally electrocuted—William Kemmler—fit neatly into the Victorian criminal profile. Besides having committed desertion, adultery, bigamy, and murder, he was classified as an illiterate of low intelligence (perhaps attributable to a head injury) who also had a chronic drinking problem.

In response to a constitutional challenge to the new method, the United

States Supreme Court found that criminal punishments are cruel only when they involve torture or lingering death, whereas electrocution had been proven to produce "instantaneous and painless death"; although electrical execution might be a new and different way to inflict punishment, it was not constitutionally unusual.<sup>182</sup>

After the sentence was carried out, a physician who had helped to ensure the adoption of electrocution announced to the crowd at the prison gate: "This is the grandest success of the age . . . I tell you this is a grand thing, and is destined to become the system of legal death throughout the world."<sup>183</sup>

Three years later, Henry M. Boies, a penologist for the Pennsylvania Board of Public Charities, the Commission on Lunacy, and the National Prison Association, published a book in which he said that it was "established beyond controversy that criminals and paupers, both, are degenerate; the imperfect, knotty, knurly, worm-eaten, half-rotten fruit of the race." He divided the problem of pauperism and crime into three "elementary phases": prevention, reformation, and extinction. "Preventive measures are like a net which must be dragged through the entire social stream," Boies wrote. "Reformatory treatment is confined to those only who are enveloped in it. The 'unfit,' the abnormals, the sharks, the devil-fish, and other monsters, ought not to be liberated to destroy, and multiply, but must be confined and secluded until they are exterminated."<sup>184</sup>

In 1921 the frontier state of Nevada (population less than eighty thousand) enacted a Humane Death Bill of its own. Not content with shooting or hanging or even electrocuting the lawmakers provided that a condemned man should be approached in his cell when he was asleep and executed by a dose of lethal gas. Nevada's Democratic governor, Emmet Boyle, opposed capital punishment, yet he signed the unusual legislation in the apparent belief that it would be found unconstitutional as "cruel and unusual." But after a convicted long-war murderer, Gee Jon, was sentenced to death, the Nevada Supreme Court surprised Boyle by upholding the new act. Technicians scrambled to construct a suitable gas chamber.

On February 8, 1924, at the Carson City prison, Jon became the first person to be legally executed by lethal gas. The executioners used cyanide crystals. Within the next two years, Arizona, Colorado, Wyoming, North Carolina, and California also switched to using gas chambers.<sup>185</sup>

Also in 1924, in Landsberg prison near Munich, an Austrian right-wing radical wrote a book entitled *Mein Kampf*. In it, he began to spell out his own notions of "positive" and "negative" eugenics. Within a decade, Adolf Hitler had risen to power and begun putting his ideas into practice.



Assisted by his physician, Karl Brandt, and an old party bureaucrat named Philipp Bouhler, Hitler developed a euthanasia program, starting with "sick" persons. A few years later, Nazi Germany installed its first gas chambers, using Zyklon B, the German trade name for cyanide. The government went on to refine the technique that had been invented in U.S. prisons.<sup>186</sup>