

A Historical Analysis of African Americans in the Trenton State Prison System, New Jersey: Before, During and After the Civil War, 1850-1890

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Abstract

Race and racism have long been entrenched in America's criminal justice system, particularly where incarceration is concerned. The period under review (1850 to 1890) includes significant events to include the Emancipation Proclamation, the Civil War, and convict leasing, i.e. a tool to maintain involuntary servitude and the institution of slavery. Specifically, it was hypothesized that the African American prison population would increase following the Civil War, consistent with patterns of incarceration in the south; thus, the periods of interest were 1850 – 1860 (Pre-Civil War), 1861 – 1865 (during the Civil War), and 1866 – 1890 (after the Civil War). Incarceration trends in the Trenton State Prison, a northern state, were examined to determine whether there was a significant increase in the African American prison population after the Civil War and consistent with the practice of convict leasing. African Americans comprised five percent of the state population yet averaged 21.22% of the prison population. The hypothesis was not affirmed as the percent of African Americans in the Trenton State Prison declined after the Civil War. Nevertheless, the disproportionate incarceration of African Americans coupled with the inhumanity of treatment, their incarceration is blight on America's system of justice and its prison industry, which has found expression in the mass incarceration of African Americans, particularly males. Indeed, this period was a forerunner to the mass incarceration of people of African descent.

The entanglement of African Americans in United States' prisons and jails is not without its historical precedent, i.e. the institution of slavery. The Emancipation Proclamation served to free African Americans in territories of the Southern states, reading, "That on the first day of January...one thousand eight hundred and sixty-three...slaves within any State or designated part of a State...in rebellion against the United States, shall be...forever free."¹ However, it did not end the institution of slavery in the United States and in the coming years the structure was perpetuated through the "convict leasing" system.² Convict leasing was a medium to provide cheap and involuntary labor through America's prison industry. As such, slavery, primarily a southern institution used to promote the economic interests of the status quoas well as to devalue the humanity of African Americans, was transformed in the aftermath of the Civil War.

¹ Abraham Lincoln, Emancipation Proclamation, January 1, 1863; Presidential Proclamations, 1791-1991; Record Group 11; General Records of the United States Government; National Archives.

² J. Thorsten Sellin, *Slavery and the Penal System*, (New York: Elsevier Publishing Co., 1976).

Although the Emancipation Proclamation did not bring an end to the baneful institution of slavery across the entirety of the southern states, the Thirteenth Amendment (ratified December 6, 1865), was to end slavery in the totality of the United States.

In reality this act only allowed for the furtherance of slavery via the previously mentioned institution of convict leasing as it states in Section One of the Thirteenth Amendment, “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.”³

Therefore, incarcerating African Americans without cause, by and large, was used routinely throughout the southern states as a means of maintaining slavery and involuntary servitude, both prior to and also in those years which immediately followed the Civil War.⁴ This pattern of incarceration of African Americans as a means of obtaining cheap and free labor was practiced across several Mid-Atlantic States, which includes New Jersey.

This research denotes three periods of interest concerning convict leasing and slavery in America, i.e. pre-Civil War period (1850-1860), during the Civil War (1861-1865) and after the Civil War (1866-1890). This article exams trends in the Mid-Atlantic state of New Jersey, namely those in the Trenton State Prison System to ascertain whether there were significant shifts in the incarceration of African Americans during the above-mentioned periods, i.e. prior to, during, and after the Civil War.

Studies involving American population changes during the aforementioned period suggest that the number of African American prisoners held in prison throughout the south increased tremendously after the Civil War.⁵ More recently published studies suggests “convict leasing” was strategically established and used to maintain the institution of slavery in a quasi-legal manner after the passage of the Thirteenth Amendment. Thus, people of color were arrested under the guise of Jim Crow and leased throughout the various states in both the south and north as a cheap form of labor.⁶ Moreover, the Thirteenth Amendment produced a structure which placed thousands of African American men, women and youth within a production-driven system to serve as free labor.⁷ Nevertheless, in the aftermath of the Civil War, only a few short years after the final shots were heard ringing from the guns of soldiers, black and white, the United States began the process of rebuilding itself, by readmitting Southern states into the Union, in an era formally known as the Reconstruction (1868-1877). Many states in this reconstructed Union, now without the practice of slavery officially over, turned to imprisonment as a tactic of securing forms of inexpensive labor. Throughout the south, this tactic became especially efficient, not only as means of attaining labor, but also as a mechanism of maintaining control of a population which consisted largely of former slaves. Moreover, while this practice was regularly instituted in the south, in Northern states, the use of African Americans as cheap labor was especially prevalent among private enterprises.

The devaluation of persons of African descent was rationalized in a number of ways to include the Curse of Ham located in Genesis 9:20-27 to justify enslaving people of African descent in the United States. Verse twenty five of this chapter reads, “And he said, Cursed by Canaan; a servant of servants shall be unto his brethren.”⁸ Once the institution of slavery was abolished, as a means of increasing and justifying this growing prison population, many within the United States became enthralled in the works of Charles Darwin and his theories on human evolution. Scholars and scientists soon began to reinterpret Darwin’s theories when using his research as a justification for their arguments of white superiority and black inferiority. His monumental work, *On the Origin of Species by Means of Natural Selection*, uses the term “favoured species,” which was often misquoted as a justification for scientific racism.⁹ Therefore, individuals had long relied on religious texts and the by the mid-nineteenth century scientific racism to explain the “Negro Problem” in America.

³ United States Constitution, Thirteenth Amendment, Article One, December 6, 1865.

⁴ L. Wacquant, “From Slavery to Mass Incarceration: Rethinking the ‘Race Question’ in the US,” *New Left Review*, Vol. 13, January-February, (2002).

⁵ G.W. Cable, *The Negro Question*, (New York: Charles Scriber’s Sons, 1890).

⁶ L. Wacquant, “From Slavery to Mass Incarceration: Rethinking the ‘Race Question’ in the US,” *New Left Review*, Vol. 13, January-February, (2002).

⁷ Talitha L. LeFlouria, *Chained in Silence: Black Women and Convict Labor in the New South*, (Chapel Hill, NC: University of North Carolina Press, 2015), p. 8.

⁸ Genesis 9: 20-27 [New International Version]

⁹ P. G. Asante, *The Truth About Racism: Its Origins, Legacy, and How God Wants Us to Deal With It*, (Bloomington, IN: Westbow Press, 2014).

Nevertheless, as American cities and business interests were growing in the latter stages of the nineteenth century so too did the need to acquire labor increase in the aftermath of slavery. With the ratification of Thirteenth Amendment in 1865, this theory was also applied to African Americans in the prison system suggesting they could only work under the threat of being punished with the whip.¹⁰ Nevertheless, it is appropriate to acknowledge the tendency of geographical distinctions between the north and south, which often impacted the need or use of an expanding prison population. There were distinct differences between the overall treatment African Americans between the two regions; there were similarities as well. Southern states, characteristically known as slave states during the Antebellum Era, were more apt to lynch and torture as well as exert a variety of human cruelties upon African Americans.

Southern states at the time never accepted belonging to the Union, and whatever developments were being made within their penitentiaries were disrupted by the Civil War and later the Reconstruction Era. This created numerous social and economic problems leaving long years of hard labor and brutal physical torture as the norm of the emerging prison system.¹¹ B. McKelvey, argues in his work on American prisons, that the accounts of prison inmates lacked the candor of the next century, and that they were chiefly concerned with injustice they witnessed during their trials, including the corruption and brutality by their keepers. He went on to note, "...evidence that Reconstruction helped to aggravate the race conflicts was geographical presented by the rapid increase in the number of Negroes in the criminal population."¹² African Americans who were brought into court were tried by whites and more likely to be sent to prison with longer sentences than their white counterparts.¹³

W. E. B. DuBois in his monumental work *Black Reconstruction in America: 1860-1880* describes the very issue many African Americans faced across the south during this period. Similar to the study conducted by G. W. Cable in 1890, DuBois in *Black Reconstruction* wrote:

"In no part of the modern world has there been so open and...deliberate social degradation and private profit as in the South since slavery. The Negro...is no natural criminal...Since 1876 Negroes have been arrested on the slightest provocation and given long sentences...which they were compelled to work out...the resulting peonage of criminals extended into every Southern state..."¹⁴

This left many African Americans, newly freed forced into the convict labor system that became a common scene across the south. Moreover, the convict labor stretched from areas of the south to the north and resulted in African Americans being used in the construction of private enterprises, as well as road and railroad construction.

As many regions and states across the north and Mid-Atlantic States began to use convict labor in numerous ways a number of areas passed several laws which limited the competition between privately owned businesses for the use of prisoners. States across the north and mid-Atlantic also became some of the largest contributors to the use of convict labor and road construction in the country. S. Wilmot 1914 noted, "...New Jersey...enacted laws provided for working her prisoners on the public roads...becoming the pioneer among eastern states in using convict labor..."¹⁵ Although convict labor expanded following the Civil War, its roots and use as a discriminatory tool can be traced to the years prior to the war itself.

Method

Primary data for this research were collected from a number of sources to discern trends regarding the incarceration of African Americans in the Trenton State Prison, for the period 1850 to 1890. A number of archival sites were identified throughout New Jersey and Washington, D.C. Specifically, research activities sought to answer the following question: Did the African American prison population at the Trenton State Prison (New Jersey) substantively increase following the Emancipation Proclamation and the Thirteenth Amendment to the United States Constitution?

¹⁰ D. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, (New York: Random House, 2008), p. 53.

¹¹ B. McKelvey, *American Prisons: A Study in American Social History Prior to 1915*, (Chicago, Ill: University of Chicago Press, 1936).

¹² Ibid,

¹³ G. W. Cable, *The Negro Question*, (New York: Charles Scribner's Sons, 1890).

¹⁴ W.E.B. DuBois, *Black Reconstruction in America, 1860-1880*, 4th Ed., (New York: The Free Press, 1998), p. 698.

¹⁵ S. Wilmot, "Use of Convict Labor for Highway Construction in the North," *Proceedings of the Academy of Political Science in the City of New York*, Good Roads and Convict Labor, Vol. 4, No. 2, (1914), p. 276.

As was the case in south, it was hypothesized that there would be a heightened level of incarcerating people of color as a means to maintain the institution of slavery through “convict leasing.” Nearly all sites targeted for the study housed official government documents.

Specifically, data were collected from the following sites: United States Library of Congress (Washington, D.C.); New Jersey State Library (Trenton, N. J.); Trenton Free Public Library (Trenton, N.J.); Trenton State Prison (Trenton, N.J.); Newark Free Public Library (Newark, N.J.); Rutgers University-Law Library, b) Dana Library; and the New Jersey Historical Society (Newark, N.J.).

Data were analyzed through the use of content analysis. Having exhausted the above resources, there was a dearth of materials on African Americans in the Trenton State Prison. The Yardville Correctional facility, which houses prisoner archives for the Trenton State Prison, only had prison records after 1911. The inmates’ newspaper, *The Sentinel*, mostly contained religious and social matters and nothing critical to the prison authority or relating specifically to the African American inmate population. In reviewing the collection (#659 at the N.J. Historical Society) of the noted prison reformer, Isaac S. Mulford (1799-1873), there appeared to be no specific mention of African Americans.

Consequently, there is the possibility of undocumented prisoners and the disparate treatment of people of color. While the treatment of African Americans was more abrupt in the south, the north recognized African Americans as free by nature but inferior as was demonstrated by discriminatory practices (e.g., transportation, education, employment, and the like). Many of the Northern Militia during the Civil War was concerned to abolish slavery, its cause was preeminently for National Unity and “the emancipation of Negroes was not what the north fought for, but only what it fought with.”¹⁶

Dred Scott, Justice and Industry

A watershed date in the history of African Americans in the judicial system occurred with the Dred Scott decision. Born April 12, 1809, Dred Scott petitioned the Circuit Court of St. Louis for his freedom on April 6, 1846. After a series of events, Scott was legally freed between Jan. 23- Feb. 14, 1850. On the latter date, the Supreme Court of Missouri reversed the decision of the Circuit Court, thus Scott and family were returned to the ownership of John Sanford. Sanford brutally assaulted Scott and his family, which led to charges being filed with the Federal District Court of Missouri and a subsequent trial on May 4, 1854. Sanford was found not guilty in that Scott and family were slaves and the property, which gave him the right to inflict any punishment short of death. Trial Judge Robert Wells issued a writ of error against his court allowing Scott to proceed to the U. S. Supreme Court.

In this monumental moment before the court, Chief Justice Roger B. Taney, in March, 1857, delivered the opinion of highest court in America, in the simplest but one of most damaging moments in the African American fight for freedom only years prior to the start of the American Civil War. One of the more well-known lines from Justice Taney’s rendering reads, “They had for more than a century before been regarded as beings of an inferior race...and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect.”¹⁷ With no rights to respect, Taney dealt a significant blow to African Americans who were fighting for justice in a country that viewed them as an inferior race.

Albeit, this early quote from Taney began a series of points made by the Supreme Court Justice, emphasizing the two races in the United States were intended to be viewed as unequal’s in the eyes of the Constitution. Among many of the points emphasized by Justice Taney in his decision presented to the court first asked the question:

“Can a Negro whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution...and as such become entitled to all the rights and privileges and immunities guaranteed to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.”¹⁸

¹⁶ Cable, *The Negro Question*, 1890.

¹⁷ Dred Scott v. John F. A. Sanford, Vol. 11 United States Supreme Court, 1857.

¹⁸ Ibid.

To conclude his decision on this monumental case Justice Taney stated, "...the plaintiff goes into the Circuit Court of the United States, upon the same case...the same evidence, and against the same party, and...then brings here the same case from the Circuit Court, which the law would not have permitted...And if this court takes jurisdiction in this form, the result, so far as the rights of the respective parties are concerned, is in every respect substantially the same as if it had in open violation of law entertained jurisdiction over the judgment of the State court upon a writ of error, and revised and reversed its judgment upon the ground that its opinion upon the question of law was erroneous. It would ill become this court to sanction such an attempt to evade the law, or to exercise an appellate power in this circuitous way, which it is forbidden to exercise in the direct and regular and invariable forms of judicial proceedings. Upon the whole...it is the judgment of this court that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court...had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction."¹⁹

Justice Taney made the following points: a) a person of African descent could not be a citizen in the sense used in the Constitution, therefore Scott could not sue in any court in the United States; b) the African race who came to the U.S., free or slave, were not intended to enjoy personal rights and benefits under the Constitution and were subject to provision which treat them as property; and c) the act of congress (i.e., the Missouri Compromise) prohibiting citizens from owning slaves north of a certain line (i.e., latitude 36-30 N) was not warranted by the Constitution, and therefore void.²⁰

Upset with the Taney decision, members of the Pennsylvania Legislature stated that, "The Supreme Court has become little than the willing tool of Pro-Slavery politicians..."²¹ Such was the fate of Dred Scott after eleven years of petitioning the American system of justice. Furthermore, added to the Justice Taney decision was the 1856 election of Democrat James Buchanan, who was himself seen a pro-slavery advocate. In his Inaugural Address to the country, Buchanan spoke that in accordance with whatever decision the court delivers, in common with all good citizens, he would cheerfully submit.²² Unbeknownst to many prior to President-Elect James Buchanan officially taking office he was well aware of the outcome of the case as he had been in constant contact with Justices Taney, Catron and Grier.²³

Although the national stance against slavery was largely outlined by individuals such as Frederick Douglass, William Lloyd Garrison and John Brown, this decision made this issue become one several Republicans began to fight against. As more took a stance against the issue of slavery, Republicans directly challenged the US Supreme Court and the President, the institution of slavery became a leading issue across the country at the local, state and federal level.²⁴ This stance became more evident after the election of Abraham Lincoln in 1860. Moreover, the courts' decision was also felt across the Mid-Atlantic state's including within the prisons in New Jersey. Ultimately, slavery and convict leasing provided the requisite labor to accommodate the industrial movement, at all cost.

By 1870, the population of African Americans in the south had decreased substantially, in part due to migration and the search for family members. Nevertheless, as many of these former slaves migrated across the south many also began to settle in the Northeastern corner of the United States. According to many historians, the south lost between 130,000 to 250,000 newly minted African American citizens.

¹⁹ Ibid.

²⁰ "The Dred Scott Case, Slavery Alone National: Judgment of Chief Justice Taney," *New York Daily Tribune*, Vol. XVI, No. 4, 956, (March 9, 1857).

²¹ "Governor Geary's Position-Prospects of Kansas," *New York Daily Tribune*, Vol. XVI No. 4972, (March 27, 1857).

²² J. B. Moore, ed., *The Works of James Buchanan: Comprising His Speeches, State Papers and Private Correspondence*, (Philadelphia: J. B. Lippincott Company, 1911).

²³ J. H. Baker, *James Buchanan: The American President Series, The 15th President, 1857-1861*, (New York: Henry, Holt and Company, 2004).

²⁴ K. E. Whittington, "The Road Not Taken: Dred Scott, Judicial Authority, and Political Questions," *The Journal of Politics*, Vol. 63, No. 2, (2001).

Moreover, these newly freed African Americans entered the Northeast during a time of tremendous growth and foreign immigration from Western Europe. Many considered the 1870-1940 as the second Industrial Revolution, a period when the US was transformed by urbanization and territorial expansion. This increase in population in the Northeast suggested the need for cheap labor.²⁵ African American labor was used prior to slavery according to Cindy Hahamovitch, in her classic book, *The Fruits of Our Labor: The Atlantic Coast Farm Working and the Making of Migrant Poverty 1870-1945*. "Europeans [...] subjugate[ing] newly freed Africans to solve the labor supply, [coupled with] the inability to bargain with white laborers who wanted more pay led to the increased use of Africans and African American laborers during this time period."²⁶ Thus, major growers in the Mid-Atlantic States and the Northeast, first used African American slaves who were in indentured servitude and thereafter, commonly turned low-wage African American, labor acquired through the penal system.

The nation's first farming regions were established in the Northeast after 1870, primarily in areas of Newark, NJ, Philadelphia, PA and New York, NY. These major companies along with the expansion of the railroads throughout the region, coupled with growth of numerous factories in the north, and continued reconstruction in the south, created an environment where there was a heightened demand for cheap labor. Therefore, Hahamovitch indicates that east coast farm units with a limited number of paid employees struggled with the increased demands they faced in years following the Civil War through the turn of the century with this small labor force at their disposal. She further suggests that east coast farm employees along with their employers implemented a number of strategies, such as rounding up men and women, "...using loosely defined vagrancy statutes and threatening some farm workers with the draft. They used prisoners of war and labor...all in the name of stabilizing farm wages."²⁷ They also used prisoners of war and labor importation schemes to stabilize farm wages. Given the increase in population, demands for more produce, the use of incarcerated populations were certainly not uncommon.

African Americans, New Jersey and the Trenton State Prison

In the years prior to and after the Civil War, a number of state operated prisons were constructed. As a result of the construction of these prisons, the rate of incarceration of African Americans in New Jersey steadily increased. Many of these prisoners were convicted on small crimes and ultimately turned into a source of labor for the state. This practice although initiated in the south found its way to northern states replacing slavery which had just been abolished, New Jersey was no exception.

Jonathan Doan was commissioned by the New Jersey State Legislature to purchase 6-1/2 acres from Peter Hunt in the town of Lambertton, today Trenton, New Jersey, on March 1, 1797 to build a state prison.²⁸ Prior to its completion in 1798, alleged criminals were placed in county jails and scattered amongst the many workhouses: "In them, were herded promiscuously those convicted of crime and those awaiting trial, those of all ages and both sexes; those convicted of all varieties of crimes punishable by imprisonment; those of all mental states-normal, feeble-minded, neurotic, insane, epileptic..."²⁹ The construction of this prison was the first attempt for differentiated treatment as persons were categorized by offense type; however, not by age, sex, or mental state. The prison failed due to the evils inherent in promiscuous activity of the congregate system and expense due to the partial failure of the industrial system.

Per Table 1, the number of African slaves decreased substantively in New Jersey from 1800 to 1860. The total slave population of New Jersey since 1800 as shown in Table 1 gradually began to decline. Albeit, in 1804, an act was passed to gradually abolish slavery, which was never popular in New Jersey.³⁰ During the 19th century, a far greater number of African Americans were located in the south. Furthermore, over thirty years later, slavery was officially abolished in the state of New Jersey in the year 1846 by the New Jersey State General Assembly.³¹

²⁵ D. Ward, "The Industrial Revolution and the Emergence of Boston's Central Business District," *Economic Geography*, Vol. 42, No. 2, (April, 1966).

²⁶ Cindy Hahamovitch, *The Fruits of Their Labor: Atlantic Coast Farmworkers and the Making of Migrant Poverty, 1870-1945*, (Chapel Hill, NC: University of North Carolina Press, 1997), p. 4.

²⁷ Ibid, 6

²⁸ Acts of 21st General Assembly, pp. 189-190.

²⁹ New Jersey State and General Assembly, 1918.

³⁰ J. O. Raum, *The History of New Jersey*, Vols. 1 and 2, (Philadelphia: John E. Potter and Co., 1977).

³¹ Henry s. Cooley, "A Study of Slavery in New Jersey," *Historical and Political Science*, Vol.14, (1896) pp. 9-10.

The African American population of New Jersey, between the years 1850-90, is shown in Table 2. From 1850 to 1890 the number of African Americans increased in New Jersey; by 1890 23,592 more people of African descent resided in New Jersey. Comparatively, African Americans between 1850-90 averaged 15.4 percent of the total U.S population with a high of 18.6 percent in 1850 and a low of 13.2 percent in 1870.³²

As can be seen from the tables below the number of African slaves decreased substantively in New Jersey from 1800 to 1860 (See Table 1).

Table 1: New Jersey Slave Population

Year	# Slaves
1800	12,422
1810	10,851
1820	2,254
1860	18

Source: 1st Annual Report (1887) in J. O. Raum, (1977). *The History of New Jersey (Vols. 1 & 2)*. Philadelphia: John E. Potter and Co. State Charities Aid Association. (1977)

Nonetheless, from 1850 to 1890 covering the same period as mentioned in Table 1 and those which followed the American Civil War, the number of African Americans increased in New Jersey. By 1890, 23,592 more people of African descent resided in New Jersey (See Table 2).

Table 2: New Jersey African American Population

Year	#African Americans	%	Total Population
1850	24,046	5	465,509
1860	25,336	4	646,699
1870	30,568	3.5	875,407
1880	38,385	3.5	1,092,017
1890	47,638	4.3	1,107,596

Source: United States Department of Commerce. Bureau of the Census. *Negro Population 1790-1910*. Washington. D.C.: Government Printing Office, 1918.

On January 11, 1833, Governor Samuel Southard recommended the old state prison be turned into a state arsenal, and thus the second state prison was built. Unlike the first, the second prison was based on the solitary confinement model of the Eastern Penitentiary of Pennsylvania. Overcrowding made the solitary confinement approach more theoretical than practical. This system, too, failed, in part, because of the mental and nervous effects of isolation. A combination of the first and second prison ideology were combined in 1860 and modeled after the Auburn system, whereas inmates worked together by day and were placed in solitary confinement at night.³³

Before and up to the Civil War, statues were passed to fix the position of free persons of color by border and northern states and were known as "Black Laws."³⁴ During 1862 and 1863, petitions against the immigration of Negroes into New Jersey were submitted, one of which provided that those who stayed over a ten-day period would be guilty of a misdemeanor and, upon conviction, shipped to Liberia or the West Indies. Another bill proposed a fine and a prison sentence for anyone enlisting Negroes in the army of New Jersey. Other conflicts for the African Americans in New Jersey included ratification of constitutional amendments, segregated schools and cemeteries, civil rights, employment, etc.³⁵ During the nineteenth century African Americans were not recognized as citizens of the United States and looked upon as inferior to whites. The ideology of the latter appeared to have prevailed throughout the north as well as the south. One might postulate that such mental oppression permeated the prison system and resulted in adverse treatment and conditions for African Americans as compared to White Americans. Further, one must put into perspective the criminal justice system in the context of the police, courts, trails, and workhouses relative to the African American population.

³²United States Department of Commerce. Bureau of the Census. *Negro Population 1790-1910*, (Washington. D.C.: Government Printing Office, 1918).

³³New Jersey State and General Assembly, 1918

³⁴G. T. Stephenson, *Race Distinctions in American Law*, (New York: D. Appleton and Co., 1910), p.

³⁵Marion Thompson Wright, "New Jersey Laws and the Negro," *Journal of Negro History*, Vol. 28, No. 2, (1943)

They were more likely to be tried by whites, both judge and jury, and were disproportionately brought into the system. They were also more likely to be lynched and beaten without recourse. Findings from a study in Philadelphia indicate that many un-sustained charges were made against African Americans. In addition, factors such as unemployment, poor housing, discrimination, and inadequate education impacted crime in African American communities.³⁶ Not only were people of color victims of the free society but also of the criminal justice system, to state the obvious.

Finally, one might accept the thesis that, as society becomes more just, it would, too, become more orderly. Following is an excerpt of Scoville's 1862 work entitled, *What Shall Be Done With The Confiscated Negroes?*:

"God is Love and Wisdom, and man his creature. His love desires, and his wisdom secures our happiness, when we do not use the power of choice, with which he has endowed us, to depart from him. Individuals and races have used this power, and so shut out from themselves the light of God's countenance, and thus become benighted and degraded, the children of obedience and disorder; and they are to be redeemed from that darkness, degradation and disorder, it has to be through the ages of conflicts between the lower and grosser material or natural element of life in man, and the higher active, or spiritual element, between the degradation tendencies with stronger or lighter bonds, and the regenerating forces of life involving the necessity of restraining these degenerating tendencies with stronger or lighter bonds. In the lower grades of social life with stronger bonds, and step by step as man becomes redeemed from the power of these tendencies, the bond becomes lighter and lighter, until man's redemption is complete. Then he is free, because restored to order."³⁷

In general, prison and jail commitments were less frequent, relative to population, in the south than in the north for both African Americans and Whites. Comparatively, the ratio for the south was 3.4; north, 5.6; and the west, 4.5. During this time period, nine-tenths of the African American population was located in the south.³⁸ However, in reality, slavery was equal to or worse than prison; therefore, one might find the above statistics of less significance. In neighboring Pennsylvania, the rich and persons of social position and connection received disproportional pardons and lighter sentences.³⁹

Before Civil War: 1850-60. As aforementioned, the plight of African Americans in the context of slavery and involuntary servitude resulted in a political economy that challenged the core of their humanity. Although slavery was permanently abolished in New Jersey in 1846, strong property rights resulted in continued involuntary servitude in New Jersey moreso than other Northern states (Harper, 2003).⁴⁰ Black codes, which differed among states, had the expressed intent of limiting basic human rights and serve as a mean of social control. In its apology for its role in the institution of slavery, New Jersey via Assembly Concurrent Resolution No. 270 (Jan. 8, 2008) noted, in part, the following: "WHEREAS, New Jersey had one of the severest slave codes in the northern colonies and was one of the few northern states to sanction the Fugitive Slave Act of 1850, which permitted authorities in free states to return runaway slaves to their owners, with the result that Underground Railroad passengers had to proceed with utmost caution in this State..."⁴¹ It concludes by stating, "This concurrent resolution issues a formal apology on behalf of the State of New Jersey for its role in slavery and discusses the history of racism and inhumane treatment toward African-Americans in the United States from the arrival of its first settlers to the present day. It calls upon the citizens of this State to remember that slavery continues to exist and encourages them to teach about the history and legacy of slavery and Jim Crow laws."⁴² The New Jersey Prison Reform Association was founded in 1849 and its annual report in 1850, brought to light issues concerning the lack of reformation and crowdedness. This report as well as others made no specific mention of the African American population. Until the coming of convict labor in 1860, chair-making was the chief source of revenue for the prison.

³⁶ W.E.B. DuBois, *The Philadelphia Negro*, (Philadelphia: The University of Philadelphia Press, 1899).

³⁷ Scoville, *What Shall Be Done*, 1862

³⁸ United States Department of Commerce. Bureau of the Census. *Negro Population 1790-1910*, (Washington. D.C.: Government Printing Office, 1918).

³⁹ DuBois, *The Philadelphia Negro*, 1899.

⁴⁰ NO HARPER, 2003 in Bibliography.

⁴¹ New Jersey via Assembly Concurrent Resolution No. 270 (Jan. 8, 2008)

⁴² Assembly Concurrent Resolution No. 270, State of New Jersey, 212th Legislature, 2007.

On page 34 of its 1855 Annual Report, it was noted that, “The youth criminal soon becomes learned in all crimes and wicked arts of his associate adept, and when returned to liberty leaves the prison often, more at heart a criminal than when entering.” Whites had a higher recidivism rate than African Americans. Pardons during this period averaged nearly 55 per year. Totalling 2,546 inmates committed during this eleven-year period, there was an average of 231 prisoners per year. Overall, African Americans averaged 24.27% of the prison population as compared to nearly five percent of the state population. Data from Table 3 below indicate that although the total number of African American prisoners fluctuated from 1850 to 1860, 51 were incarcerated in 1850 as compared to 83 African American prisoners in 1859 and 1860.

Table 3: African American Prison Population, 1850-60

Year	Total	AA%	Male	Female
1850	51	28	51	-
1851	63	30	59	4
1852	58	28	51	7
1853	41	19	38	3
1854	24	17	20	4
1855	45	21	34	11
1856	47	24	43	4
1857	56	24	53	3
1858	79	29	74	5
1859	83	26	67	16
1860	83	21	77	6

Source: New Jersey. *Report of the Commission on Prison Labor*.
Trenton, NJ: State Government, 1879.

During the Civil War: 1861- 65. African Americans were active participants in the Civil War, “Of the 88,000 New Jerseyans who participated in the Civil War, African Americans numbered 2,872 and represented 469 of New Jersey’s 6,300 fatalities. Since the state did not organize any “colored” regiments, African American troops were assigned to the regiments of other states and credited to New Jersey. For example, New Jerseyans served in the famous Fifty-fourth Massachusetts Regiment, Black New Jerseyans also saw duty as sailors” (http://www.njstatelib.org/research_library/new_jersey_resources/-digital_collection/unit_6_war_african_americans/). The Civil War had more to do with preventing the Southern states from succeeding from the Union, than it did to abolish slavery, an eventual outcome.

As the Northern economy was in the midst of the American Civil War, this also caused a shift in the needs of the various areas to fit war time needs. According to Alex Lichtenstein, the Civil War caused numerous changes in the role of the prison industry, which was altered to find the many labor shortages of the region. Ultimately, the Civil War caused Northern states to reinforce their need for labor during the era and increased the construction of prison-factories in its aftermath.⁴³

During the same era across the state of New Jersey, the average prison population increased to 391 per facility over the five-year period, which appeared to have been attributed to increased convictions for breaking and entering. Pardons increased to approximately 65 per year. The principle revenue was the leasing of convicts to industries, especially shoemaking, at the price of 50 cents per day. This practice drew protest from free labor advocates. Fourteen persons died in 1861 of consumption, which was attributed to the crowded cells and lack of medical facilities. A new dispensary was built in 1863, and in 1864, there were continued requests for a chapel and the separation of men and women. While the overall prison population increased, African Americans averaged 21%, a disproportionate number relative to percent of state population but a decrease in percent of prison population, i.e. from 24.27% to 21%. Table 4 reflects fluctuations in prison population from 1861 to 1865.

⁴³ Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*, (London: Verso Book, 1996), p. 25.

Table 4: African American Prison Population: 1861-65

Year	Total	AA%	Male	Female
1861	83	21	75	8
1862	85	21	78	7
1863	104	25	84	18
1864	68	20	60	8
1865	75	18	64	11

Source: New Jersey. *Report of the Commission on Prison Labor*.
Trenton, NJ: State Government, 1879.

After the Civil War: 1866-90. There was a significant increase in pardons from 61 in 1865 to 103 in 1866, followed by a record 195 in 1867. A new prison was built in 1873 and the daily wage increased to 75 cents. Of the prison conditions in 1868, it was noted that, “they are not only crowded, but herded together in an enforced idleness. . .” and that “...the courts are often in dilemma hesitating to sentence persons to the State Prison for a comparatively venial offense, but in the absence of other provision they must pursue this course or suffer the offender to escape imprisonment.”⁴⁴ The supervisor’s report of 1877 objected to leasing of convict labor because there was little attempt at reformation and that the inmates were being subjected to, “needless and cruel punishment.”⁴⁵

In 1878, it was charged that, “great wrongs are practiced, and cruelties inflicted by officials of the New Jersey State Prison on the convicts under their charge” (New Jersey State Legislature, 1878). The alleged cruelties included gagging, paddling, burning by throwing alcohol and, subsequently fire, and stretching. An increase in deaths was explained as follows: “A large number of these cases were literally worn out before their incarceration and were fit to be sent to a hospital than serve a term of years in prison (Prison Annual Report, 1879). Such deaths increased to 31 in 1880 and averaged 20 per year between 1880 and 1886. There appeared not to have been any imbalance in deaths when controlling for race.

In 1882, the prison capacity was 629, and during the year, 831 prisoners were confined. This trend increased to 900 prisoners in 1885; thus, indications of overcrowding. The prison capacity was increased to 700 in 1889; however, the total number of prisoners confined at one point during the year was 1,000.

By legislation in 1884, the convict-lease system was abolished for the Piece-Price Plan, which proved to be less profitable (Prison Annual Report, 1885). The State Charities Aid Association was founded March 24, 1886, “To promote the improvement of the mental, moral, and physical condition of the inmates of all charities and penal institutions in the State. . . (State Charities Aid Association, 1887).”⁴⁶

During this 25-year span, the prison inmate population averaged 690 of which African Americans averaged 18.4%, a decline over the two previous periods. In the *Report of the Commissioners to Examine Prison Discipline* (New Jersey, 1869), the following was noted:

“There having been heretofore no separated cells for females, they had to be confined in the same range with the males and communications through the pipes and windows were maintained between them of the most corrupt and corrupting character. The want of good morals was exhibited in the person of a mulatto child eight months old, born of a colored woman who had been in the prison for several years. This is hoped and believed to be an exceptional case. But the commissioner could learn of no investigation of the matter, or of the punishment of any prisoner, or removal of officer on account of it; showing a want of vigilance to detect, or an absence of a sense of the iniquity of the offence.”⁴⁷

A 34 year assessment of the African American prison population in New Jersey indicates that there was more than 50% increase in the number of African American incarcerated in New Jersey from 1866 to 1890. These numbers peaked in 1889; where 178 African Americans were incarcerated as compared to 97 in 1866 (See Table 5). The specific breakdown of the African American prison population during 1866-90 is shown in the table below.

⁴⁴T. F. Randolph, *Enlargement of State Prison and Establishment of House of Correction*, (Trenton, NJ: State Government, 1868).

⁴⁵ Prison Annual Report, 1877

⁴⁶State Charities Aid Association. *1st Annual Report*. Trenton, New Jersey, 1887.

⁴⁷ New Jersey, *Report of the Commissioners to Examine Prison Discipline*, (Trenton, NJ: State Government, 1869).

Table 5: African American Prison Population, 1866-90

Year	Total	AA%	Male	Female
1866	97	18	80	17
1867	75	14	67	8
1868	90	16	73	17
1869	102	20	89	13
1870	97	20	92	5
1871	93	22	87	6
1872	99	21	87	12
1873	110	25	98	12
1874	114	21	102	12
1875	96	16	86	10
1876	108	15	97	11
1877	116	17	104	12
1878	140	19	127	13
1879	116	16	107	9
1880	121	17	115	6
1881	108	16	102	6
1882	108	16	97	11
1883	94	13	86	8
1884	114	16	102	12
1885	122	16	118	4
1886	141	18	132	9
1887	156	22	146	10
1888	172	24	156	16
1889	178	22	168	10
1890	155	20	143	12

Source: New Jersey. *Report of the Commissioners to Examine Prison Discipline*.
Trenton, NJ: State Government, 1869.

Summary

The dehumanization of African Americans coupled with a system of injustice is a blight on America's system of justice and its prison industry, which has found expression in the mass incarceration of African Americans, particularly males. The New Jersey Prison Reform Association, founded in 1849, complained of the prison's lack of reformation and crowdedness. However, its first annual report made no mention of African Americans. In 1859, the African American female population tripled from the previous year for unknown reasons. This is consistent with sparse mention of African Americans during the review of prison records for this study. No record existed of the pregnancy of an African American woman or any punishment. One can only imagine the rape and inhumanity reaped upon women in prison, particularly when viewed the lens of property and ownership. Prior to the Civil War (1850 – 1860) African Americans made up five percent of New Jersey's population, yet averaged 24.27% of inmates at the Trenton State Prison.

The second period (1861 – 1865) was marked by the Civil War, convict-lease system, and the Emancipation Proclamation. Although the overall prison population increased for both African Americans and whites, the average percent of African Americans at the prison decreased from 24.27% to 21%. This decrease could have been attributed to the active participation of African American men in the Civil War. During this period, the African American prison population peaked at 25% in 1863, the year of the Emancipation Proclamation, which might have increased as a result of the so-called "Black Laws" enacted by the New Jersey Legislature during 1862-1863.⁴⁸ This year also brought about an increase in the African American female population.

⁴⁸G. T. Stephenson *Race Distinctions in American Law*, (New York: D. Appleton and Co., 1910).

Overall, between the years 1861-65, females accounted for 12 percent of the African American inmate population, up from three percent in the previous period (i.e., 1850-60). The end of the Civil War marked the low for African American imprisonment during this period at 18%.

The third and final period under review was for the years 1866 to 1890. At the beginning of Reconstruction (1867), the African American inmate population was at a near low of 14%, with 13% being the record low in 1883. This record low coincides with the end of “convict leasing” in 1884. Thus, this period witnessed a decrease in the percent of African American prisoners from 24.27% (1850 – 1860), 21% (1861 – 1865), and 18.4% (1866 – 1890). Each of the three periods witnessed an increase in the average number of African Americans at the Trenton State Prison, i.e. 57.3, 83 and 116.9, respectively.

None of the investigative committees on prison activities and treatment of inmates made mention of African Americans. Known reports that mentioned prison conditions were written by those within or associated with the prison establishment. Unfortunately, records of the New Jersey Court of Pardons for the period 1850-90 were not found, if they ever existed, during this research. This would have provided insight as to the type of pardons awarded as well as information on the recipients of same. Accepting the premise that persons of social status and connection were more apt to be pardoned, it is assumed that most persons pardoned were not of color.

Conclusion

This research hypothesized that the African American inmate population at the Trenton State Prison would increase during the period following the Civil War. Findings indicate that there was a disproportionate number of African American incarcerated at the Trenton State Prison, i.e. 5 percent of the population and an average of 21.22% of the prison population. However, the number of African American inmates decreased after the Civil War and did not increase as hypothesized, according to prison records. The fact that prison records were sparse relative to African Americans, continuing research is needed to better understand their arrest rates and judicial processes.

With overcrowded prisons and little effort to rehabilitate inmates, it is reasonable to conclude that prisoners served the economic interest of the business community to increase its profit margins. As was the case with the Emancipation Proclamation, the Thirteenth Amendment was a basis for law and not necessarily the basis for a change in race-based attitudes and behaviors.

New Jersey became one of the first Northern states to abolish slavery in 1800, yet nearly a quarter of the prison population was African American in 1860. Notably, in Trenton, NJ, among African Americans, the prison population increased among both the males and females. Subjugated to vicious punishment, African American prisoners became just one component to the ever expanding “convict leasing” system which swept across the United States. In New Jersey this resulted in an overcrowded prison system from which prisoners were commonly used by the state in numerous labor projects and leased to private enterprises for various services where they received no pay.

In conclusion, the prison system is but one of many indicators of the quality of justice. Data does confirm that African Americans were disproportionately represented within the Trenton State Prison. However, there was not a substantive increase in their numbers following the Civil War. While the aforementioned might appear to be incongruent, there is little doubt that they both served as a forerunner to the mass incarceration of African Americans.

References

- Asante, P.G. *The Truth About Racism: Its Origins, Legacy, and How God Wants us to Deal With It*. Bloomington, IN: West Bow Press, 2014.
- Baker, J. H. *James Buchanan: The American President Series, The 15th President, 1857-1861*. New York: Henry Holt and Company, 2004.
- Barnes, H.E. *Report of the Prison Inquiry Commission, Vol. II*. Trenton, New Jersey: MacCrellish and Quigley Co., 1917
- Blackmon, David. *Slavery by another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*. New York: Random House, 2008.
- Bonczar, T. *Prevalence of Imprisonment in the US Population, 1974-2001*. Washington, DC: Bureau of Justice Statistics 2003.

- Cable, G.W. *The Negro Question*. New York: Charles Scribner's Sons, 1890.
- Cooley, Henry S. A Study of Slavery in New Jersey. *Historical and Political Science*, Vol.14, (1896) pp. 9-10.
- Drake, B. (2013). *Incarceration gap widens between whites and blacks*. Pew Research Center. Washington, D.C.
- DuBois, W. E. B. *The Philadelphia Negro*. Philadelphia: The University of Philadelphia Press, 1899.
- DuBois, W. E. B. *Black Reconstruction in America, 1860-1880*, 4thed. New York: Simon & Schuster, 1998.
- Dred Scott v. John F. A. Sanford, 11 (United States Supreme Court, 1857)
- Garland, D. Penal Excess and Surplus Meaning: Public Torture Lynching in Twentieth-Century America. *Law and Society Review*, Vol. 39, No. 4, (2005). pp. 793-833.
- Genesis 9: 20-27 [New International Version]
- Governor Geary's Position-Prospects of Kansas, *New York Daily Tribune*, March 27, 1857.
- Hahamovitch, Cindy. *The Fruits of Their Labor: Atlantic Coast Farmworkers and the Making of Migrant Poverty, 1870-1945*. Chapel Hill, NC: University of North Carolina Press, 1997.
- Huebner, Timothy S. "Roger B. Taney and the Slavery Issue: Looking Beyond—and Before—Dred Scott." *The Journal of American History*, Vol. 97, No. 1, (2010), pp. 17-38.
- McKelvey, B. *American Prisons: A Study in American Social History Prior to 1915*. Chicago, Ill.: Chicago Press, 1936.
- Moore, J. B., ed. *The works of James Buchanan: Comprising his Speeches, State Papers and Private Correspondence*. Philadelphia: J.B. Lippincott Company, 1911.
- New Jersey. *Report of the Commissioners to Examine Prison Discipline*. Trenton, NJ: State Government, 1869.
- New Jersey. *Charges Against the Officials of the New Jersey State Prison*. Trenton, NJ: State Legislature, 1878.
- New Jersey. *Report of the Commission on Prison Labor*. Trenton, NJ: State Government, 1879.
- New Jersey State and General Assembly. *Report of the Prison Inquiry Commission*. Trenton, NJ: State Government, 1918.
- Randolph, T. F. *Enlargement of State Prison and Establishment of House of Correction*. Trenton, NJ: State Government, 1868.
- Raum, J.O. (1977). *The History of New Jersey (Vols. 1&2)*. Philadelphia: John E. Potter and Co.
- State Charities Aid Association.(1887). *1st Annual Report*. Trenton.
- Scoville, J. A. *What shall be done with the confiscated Negroes?* New York: Cornell University Press, 1862.
- State Charities Aid Association.(1887). *1st Annual Report*. Trenton, New Jersey. Stephenson, G.T. *Race Distinctions in American Law*. New York: D. Appleton and Co., 1910.
- United States Department of Commerce.Bureau of the Census.*Negro Population 1790-1910*. Washington. D.C.: Government Printing Office, 1918.
- The Dred Scott Case, Slavery Alone National: Judgment of Chief Justice Taney, *New York Daily Tribune*, March 9, 1857.
- The Sentencing Project News - Racial Disparity.The Sentencing Project News - Racial Disparity.Accessed March 11, 2015.<http://www.sentencingproject.org/template/page.cfm?id=122>
- Wacquant, Lois. From Slavery to Mass Incarceration: Rethinking the 'Race Question' in the US. *New Left Review*, Vol. 13, January-February, (2002), pp. 197-220.
- Ward, David. The Industrial Revolution and the Emergence of Boston's Central Business District.*Economic Geography*, Vol. 42, No. 2, (April, 1966), pp. 152-171.
- Wright, Marion Thompson. New Jersey Laws and the Negro.*Journal of Negro History*, Vol.28, No. 2, (1943), pp. 156-199.
- Whittington, K. E. The Road Not Taken: Dred Scott, Judicial Authority, and Political Questions. *The Journal of Politics*. Vol. 63, No. 2, (2001), pp. 365-391.
- Wilmot, Sydney.Use of Convict Labor for Highway Construction in the North.*Proceedings of the Academy of Political Science in the City of New York*. (Good Roads and Convict Labor), Vol. 4, No. 2, (January 1914), pp. 6-68.