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## NOTES

### THE HISTORICAL BACKGROUND AND PRESENT STATUS OF THE COUNTY CHAIN GANG IN SOUTH CAROLINA

*And so it would be possible to quote indefinitely from men all over the country in every station of life, from judges, governors of States, prison experts, and private citizens, whose testimony without a single exception proves conclusively that the convict lease system in particular, and the chain gang on general principles, are an insult to the intelligence and humanity of an enlightened community.\**

#### I. INTRODUCTION

Today most of society agrees that prisoners need help. South Carolinians who have heard of this State's work release or vocational training programs, or have seen the Central Correctional Institution in Columbia or our various pre-release centers, presume that South Carolina is riding the tide of progress in the field of penology.

They are wrong. The truth is that the average able-bodied prisoner in South Carolina never enters the Central Correctional Institution or any branch thereof.<sup>1</sup> He is not classified when his sentence begins; he learns little or nothing while it endures; he receives no pre-release training at its termination.<sup>2</sup> He serves his time laboring on one of South Carolina's county chain gangs—the only exclusively county-operated gangs still in existence in this country.<sup>3</sup>

How did he get there? What is the significance of his being there? Must he stay there? In seeking the answers to these questions, it will be helpful to examine the origins and background of convict labor in general and of the chain gang.

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\* Terrell, *Peonage in the U.S.*, 62 THE NINETEENTH CENTURY AND AFTER 306, 309 (1907).

1. Interview with G.S. Friday, Supervisor, Jail & Prison Inspection Division, South Carolina Department of Corrections, in Richland County, Oct. 27, 1968 [hereinafter cited as G.S. Friday, Oct. 27]; Interview with W.D. Leeke, Director, South Carolina Department of Corrections, in Richland County, Nov. 15, 1968 [hereinafter cited as W.D. Leeke, Nov. 15].

2. G.S. Friday, Oct. 27.

3. F. HAYNES, *THE AMERICAN PRISON SYSTEM* 201 (1939). This study revealed that Georgia and South Carolina were the last states which still had the county rule system. In Georgia, however, the State Department of Corrections has the power to supervise and to close an unsatisfactory camp. GA. CODE ANN. § 77-312 (1964).

## II. THE THEORY AND HISTORY OF CONVICT LABOR

It is a well accepted principle that prisoners should work. Idleness tends to have a demoralizing effect<sup>4</sup> that destroys discipline and so wrecks the intellectual and physical well being<sup>5</sup> of the convict as to "nullify any possible good the incarceration of the individual might bring about."<sup>6</sup>

Only recently though, have the disciplinary and reformatory aspects of prison labor gained recognition.<sup>7</sup> Formerly, labor was considered to be the convict's legal obligation to society.<sup>8</sup> It was part of his punishment,<sup>9</sup> "accompanied in its imposition by all the hatreds and prejudices that color and characterize the attitude of retaliation."<sup>10</sup> As this punitive labor was imposed under differing historical circumstances, the systems of convict labor took form. Of these, the public works system, which originated in ancient Athens,<sup>11</sup> was destined to give rise to the chain gangs of the post civil war South.

Men in bondage had little occasion to commit crime. Prior to the War Between the States, society had not had to contend with the Negro criminal in the South. After the war, when the former slaves entered society, southern jails and prisons proved inadequate to house the swollen criminal population.<sup>12</sup> During the ensuing years of Reconstruction, this problem remained unattended, since the South was more concerned with its ravaged homes and communities than with its prisons.<sup>13</sup>

This sudden inadequacy in the Southern penal system, coupled with a favorable climate<sup>14</sup> gave rise to a short-lived experiment

4. For a discussion of the psychological effects of idleness on prisoners see L. ROBINSON, *SHOULD PRISONERS WORK?* 1 (1931).

5. *Id.* at 2, quoting from PRISON ASS'N OF N. Y., 83D ANNUAL REPORT, PRISON LABOR 82 (1927).

6. Keeler, *The Chain Gang*, 26 COMMONWEAL 568 (1937).

7. Mohler, *Convict Labor Policies*, 15 J. CRIM. L.C. & P.S. 530, 535, (1924-1925).

8. Lopez-Rey, *Some Considerations on the Character and Organization of Prison Labour*, 49 J. CRIM. L.C. & P.S. 10, 13 (1958-1959). This article traces the changing attitude of society toward convict labor.

9. Lopez-Rey, *supra* note 8, at 10-11; see *State v. Mincher*, 172 N. C. 895, 90 S.E. 429 (1916); L. ROBINSON, *supra* note 4, at 1.

10. Mohler, *supra* note 7, at 532.

11. Mohler, *supra* note 7, at 534.

12. Terrell, *Peonage in the United States*, 62 THE NINETEENTH CENTURY AND AFTER 306, 308 (1907).

13. F. HAYNES, *supra* note 3, at 205.

14. Natural factors combined with the social exigencies of the era to produce a system which could not have flourished under less hospitable circumstances. L. ROBINSON, *supra* note 4, at 119.

known as the lease. Under this system, convict-laborers were assigned to private contractors for a set price per prisoner; thus, the contractors were left to their own designs in exacting as much labor as possible for their money.<sup>15</sup> The scheme and effect of this system was to establish "a reservoir of quasi-slaves,"<sup>16</sup> and in fact, this system was even more cruel than slavery. The slave-owner had a permanent economic interest in his slaves. It was in his favor, therefore, to provide the care necessary to preserve their health and welfare. The lessee, on the other hand, had no such permanent investment: should a convict fail to endure the term of the lease, the contractor's loss was minimal.<sup>17</sup>

It is not surprising, then, that the lease system "admitted of the grossest outrages by the lessee upon the unprotected felon . . . ."<sup>18</sup> As these atrocities came to light, the states responded by demanding more and more control over the leased convict.<sup>19</sup> In the early 1900's, the lease system virtually collapsed.<sup>20</sup>

The passing of the lease, however, left unattended the problem that had borne it. Determined to sever the convict labor supply from private interests, the southern states turned to the public works system and established chain gangs.<sup>21</sup>

During this period the chain gang seemed a favorable alternative to the lease system in the South. It represented "the best means . . . of using the negro criminal to the economic benefit at least of both himself and society."<sup>22</sup> Allowing full assumption of state control, the public works system minimized the convicts' competition with free labor.<sup>23</sup> The gangs primarily performed roadwork, which was uniformly attractive to men, provided a great demand for unskilled labor, and allowed for outdoor activity essential to the health and well-being of the prisoners.<sup>24</sup>

While it surpassed the lease from the standpoint of prisoner welfare, the chain gang admitted of so many built-in weaknesses

15. See Jackson, *Prison Labor*, 18 J. CRIM. L.C. & P.S. 218, 230 (1927).

16. Wilson, *Twilight of the Chain Gang*, 150 THE NATION 44 (1940).

17. Terrell, *supra* note 12. Apparently the lessee was not liable for the death of a convict.

18. Hiller, *Development of the Systems of Control of Convict Labor in the United States*, 5 J. CRIM. L.C. & P.S. 241, 254 (1914).

19. Mohler, *supra* note 7, at 575-78.

20. A. OLIPHANT, THE EVOLUTION OF THE PENAL SYSTEM OF SOUTH CAROLINA 12 (1916).

21. See Mohler, *supra* note 7, at 580-81. The chain gang is a variation of the public works system.

22. Clarke, *Georgia and the Chain Gang*, 82 THE OUTLOOK 73, 78 (1906).

23. Jackson, *supra* note 15, at 241.

24. Hiller, *supra* note 18, at 266; Jackson, *supra* note 15, at 240; Mohler, *supra* note 7, at 580. Virtually all the writers have stressed the health aspect.

and impracticalities that it was doomed to eventual failure. Serious administration problems arose, as did difficulties involving sanitation, discipline, and medical care.<sup>25</sup> Temporary lodging precluded participation by the convicts in educational and treatment programs.<sup>26</sup> The spectacle of striped and shackled prisoners working under guard on public thoroughfares was both humiliating to the prisoners and offensive to the public.

Economic factors also influenced the eventual downfall of the chain gang system. Organized labor offered some opposition,<sup>27</sup> although the competition that this public works program presented was relatively slight.<sup>28</sup> Experts eventually came to doubt the intrinsic economic value of the system.<sup>29</sup>

The aforementioned defects in the chain gang program contributed to its decline. But the single most important factor was the same one that had aroused public outrage in the day of the lease: the chain gang admitted of abuses that a humane society could not tolerate.

It will be remembered that the lease and chain gang programs originated with the emergence of a free Negro society. In operation, the chain gang became an instrument of vicious discrimination. The "Black Codes," adopted in the Southern States after the Civil War, included vagrancy ordinances and other arbitrary laws which were administered with "the conscious intention of securing forced labor under another name than that of chattel slavery."<sup>30</sup> As another writer put it: "Petty offenders are picked up among the colored folks to keep the chain gang full."<sup>31</sup> Although this racial discrimination characterized the chain gang system in its very early stages, it was not long before "white people in increasingly large numbers [were] doomed to the same fate."<sup>32</sup>

When assigned to the chain gang, white and Negro alike faced the same miserable conditions. As late as 1931 the following description was recorded:

25. L. ROBINSON, *supra* note 4, at 121.

26. Jackson, *supra* note 15, at 241.

27. Mohler, *supra* note 7, at 568.

28. Jackson, *supra* note 15, at 241.

29. See *North Carolina's Chain Gang Problem*, 146 THE OUTLOOK 427 (1927) (article based on findings of a survey taken by the Institute for Research in Social Science of the University of North Carolina).

30. Wilson, *Chain Gangs and Profit*, 166 HARPER'S MAGAZINE 532, 541 (1933).

31. *North Carolina's Chain Gang Problem*, *supra* note 29.

32. Terrell, *supra* note 12, at 310.

Quarters are often unsanitary, there is little or no medical care, and no attempt is made to give the prisoners even a taste of educational influences that might prove beneficial on their return to free life. The chains, stripes, and armed guards that generally go with the system in the South are not a sight very edifying to the public . . . .<sup>33</sup>

Beyond having to live under such conditions, the convicts suffered severe physical cruelties. In the first place, they were overworked. It is reported that in North Carolina "[t]hey put the men down to such a grueling pace that the lives of the road convicts came to average less than five years."<sup>34</sup>

When the prisoners could not meet this ordained pace, they were punished. Punishment to stimulate greater production was the fate of these road convicts as it had been the fate of the slaves before them. For years the whip symbolized authority. Writings of the era refer casually to the "whipping boss."<sup>35</sup> A North Carolina case involving the homicidal brutality of a road-guard tells of relentless leather-strap beatings and "brutality almost beyond conception."<sup>36</sup> In 1933, the whip was legal in nine states including South Carolina.<sup>37</sup>

Whether in form of the whip or its more sophisticated replacements, punishment provided the general guise under which "atrocities . . . [were] daily perpetrated upon American citizens in almost every State of the South . . . ."<sup>38</sup> Authorities<sup>39</sup> abound with grim descriptions of those chain gang tortures—"some of the most inhuman practices ever visited by man on man."<sup>40</sup>

It is not surprising, then, that the chain gangs had eventually to fail; but the process was a slow one. The inadequacies and abuses of the chain gang system were revealed repeatedly to the citizens of each area before they demanded action. Recurrent public scandals all over the South and the investigations that

33. L. ROBINSON, *supra* note 4, at 119-20.

34. Mohler, *supra* note 7, at 583.

35. Clarke, *supra* note 22, at 76.

36. State v. Mincher, 172 N.C. 895, 901, 90 S.E. 429, 432 (1916).

37. Wilson, *supra* note 30, at 534.

38. Terrell, *supra* note 12, at 308.

39. Page, *Men in Chains*, 141 THE NATION 561 (1935); Wilson, *supra* note 16, at 44; Wilson, *supra* note 30, at 532-34.

40. Page, *supra* note 39, at 562.

followed them served to enlighten the legislatures, the press, and the public.<sup>41</sup>

Toward the middle of the century, most states responded to reason and either abolished chain gangs altogether or brought them under state control.<sup>42</sup> In 1943 South Carolina and Georgia were the only states who still retained the county system.<sup>43</sup> A 1956 law gave Georgia—technically, at least—strong state control over county policies.<sup>44</sup>

### III. THE SOUTH CAROLINA CHAIN GANG SYSTEM

In South Carolina able-bodied male convicts are sentenced in the alternative to the Central Correctional Institution or to custody of the county.<sup>45</sup> At that point the county supervisor in his discretion may choose which convicts will serve on the county gangs.<sup>46</sup> Only *convicts* may be compelled to work the roads, and a prisoner bound over from magistrate's court to the Court of General Sessions cannot be so assigned.<sup>47</sup> There are no fixed age limits within which a prisoner can be made to work the roads<sup>48</sup> so long as he is male and "able-bodied."<sup>49</sup> In practice, a prisoner is usually sent to the county camp unless "sick, aged or incapacitated for work,"<sup>50</sup> unruly or dangerous, in which case he goes to the Central Correctional Institution.<sup>51</sup>

The presiding judge always has the authority to specify that a given prisoner be sent to the Central Correctional Institution if the judge feels that such person is not safe or unsuited for the chain gang.<sup>52</sup> If the county supervisor has chosen a prisoner who

41. See Page, *supra* note 39, at 562.

42. For an analysis of the trend away from the county controlled chain gang during this period, see Wilson, *supra* note 16, at 44-46.

43. F. HAYNES, *supra* note 3, at 201.

44. GA. CODE ANN. § 77-312 (1964).

45. S.C. CODE ANN. § 17-554 (1962).

46. Interview with W.D. Leeke, Director, South Carolina Department of Corrections, in Richland County, Oct. 28, 1968 [hereinafter cited as W.D. Leeke, Oct. 28].

47. 1920 OP. S.C. ATT'Y GEN. 33.

48. 1957-58 OP. S.C. ATT'Y GEN. 90.

49. S.C. CODE ANN. § 17-554 (1962).

50. F. HAYNES, *supra* note 3, at 204. See also Greenville Piedmont, Mar. 1967, at 4, cols. 4-8 (4 page special ed.) [hereinafter cited as Piedmont survey]. This survey revealed the ratio of chain gang laborers to Central Correctional Institution inmates to be approximately even. Mr. Friday estimates the ratio still to be roughly even. G.S. Friday, Oct. 28. Inferentially, the *solid* majority of able-bodied convicts are on chain gangs.

51. Interview with G.A. Decell, Assistant Director, South Carolina Department of Corrections, in Columbia, Nov. 14, 1968 [hereinafter cited as G.A. Decell, Nov. 14].

52. S.C. CODE ANN. § 17-554 (1962).

is found to be unsuitable, the supervisor may confine such prisoner to jail<sup>53</sup> or release him to the custody of the Department of Corrections.<sup>54</sup>

The convicts on county chain gangs are under the care of the county supervisor.<sup>55</sup> The county authorities are required to provide medical care<sup>56</sup> and food and to employ suitable and efficient guards. Expenses are paid from the county fund.<sup>57</sup>

The prisoners maintain the county roads and highways, bridges and other public property.<sup>58</sup> They cannot legally be assigned to work on private property<sup>59</sup> nor can they be employed "in connection with or near any road contractor or overseer."<sup>60</sup> No provision is made for the payment of wages.

In the 1967 session of the South Carolina General Assembly an act was passed providing for state inspection of county and city jails and county work camps.<sup>61</sup> Pursuant to the provisions of this act the Director of the Department of Corrections appointed as supervisor of Jail and Prison Inspections, Mr. G. S. Friday. Having inspected and graded approximately 80% of South Carolina's county work camps, Mr. Friday has acquired an authoritative insight into the county chain gang program in South Carolina.

Mr. Friday has found that the South Carolina county prison camps are exceedingly weak in two vital areas. First, the county officials in most instances make virtually no attempt at classification of new inmates; that is, there is no exploration of their past histories, medical backgrounds, job experience, education, criminal records, and the like. The prisoners are generally housed and employed indiscriminantly with no attempt to segregate the young from the old, the misdemeanant from the felon.<sup>62</sup>

Equally disturbing is the total absence of recreational and training facilities at the county camps. Of the camps Mr. Friday

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53. 1963-64 OP. S.C. ATT'Y GEN. 283.

54. 1914 OP. S.C. ATT'Y GEN. 86.

55. S.C. CODE ANN. § 55-451 (1962).

56. S.C. CODE ANN. § 55-480 (1962).

57. S.C. CODE ANN. § 55-468 (1962).

58. S.C. CONST. art. 12, § 6. The constitution provides for road and highway labor. In practice the chain gangs maintain other county property. W.D. Leeke, Oct. 28.

59. 1926 OP. S.C. ATT'Y GEN. 108.

60. S.C. CODE ANN. § 55-451 (1962).

61. S.C. CODE ANN. § 55-315-316 (Supp. 1968).

62. Interview with G.S. Friday, Oct. 27.



has inspected only three were conducting adult education classes in the evenings. The remaining camps sponsored no programs of any kind.<sup>63</sup>

Various programs within the communities, such as Alcoholics Anonymous, church groups, adult education programs, welfare and vocational education services, could be effectively used for the benefit of these county prisoners. Most areas claim an abundance of such organizations that might be exploited with little financial or administrative burden to the county. But this source has been virtually untapped. The result is that practically every prisoner chosen to work on a county chain gang is, for the entire duration of his sentence, deprived of rehabilitative training.

#### IV. EVALUATION

##### A. *Old Notions Reviewed*

One of the principal arguments in support of the early chain gang system was based on economic considerations. The deep-seated belief that the chain gangs were financially valuable served to retard the process by which they were phased out of southern penal systems. An opinion has persisted, however, that this traditional faith in the chain gang as an economic institution is probably ill-founded. Such skepticism derives partly from the probability that convict workers, grouped and under guard, work poorly.<sup>64</sup> It is dubious also whether the productivity of the chain gang system justifies paying its administrative costs, including salaries for the "host of guards who dog the footsteps of prisoners."<sup>65</sup>

In modern times it seems probable that the chain gang is even less effective economically. Faith in the economic feasibility of the chain gang<sup>66</sup> developed at a time when convicts were literally being worked to death. Today, under what is hopefully a more humane program, with more emphasis on care of the prisoners, the economic value of the system should have diminished materially.

The antiquated county rule system would seemingly place even greater economic strain on the program: each county must handle its own buying, feeding, housing and administration.

63. *Id.*

64. See *North Carolina's Chain Gang Problem*, *supra* note 29, at 427.

65. L. ROBINSON, *supra* note 4, at 188.

66. See generally Wilson, *supra* note 30.

Although no study has been made, it would appear that such an unwieldy scheme cannot be financially sound.<sup>67</sup> This writer, along with local correctional officials,<sup>68</sup> feels that centralization would be an essential step toward preventing financial waste in this area.

Besides its supposed economic effectiveness, another traditional argument in favor of the road gang program was that it provided invigorating out-of-door activity, "highly essential to the health of the convicts."<sup>69</sup> Today it is recognized that road work offers the convicts an opportunity—not just to exercise, but to "work off" hostilities and frustrations. In addition, a road convict might develop essential "work habits" and make valuable changes in his attitude toward work.<sup>70</sup> It is conceded, then, that chain gang labor has some psychological value. It cannot be denied that for some prisoners working the public roads is better than confinement "behind the walls."

Still, giving the convict an opportunity to exercise, relieve tension, and get used to working falls short of the modern concept of what prison labor should do. Today the primary aim of prison labor, like the general goal of corrections, should be "to reform the social offender."<sup>71</sup> While road work does have its limited value, "the mere fact the prisoners are made to work is no evidence that they are being reformed."<sup>72</sup> The development of "work habits" might benefit a few prisoners, but it is probable that the great majority of them already know how to work. "For these, and in particular for those who before coming to prison were something more than manual workers, the unskilled work . . . can hardly be considered as treatment."<sup>73</sup>

What, then, can be considered "treatment?" To be of substantial and lasting value to the inmate, a work program must accomplish two purposes: It must (1) equip him to earn a decent

67. The Piedmont Survey at 3 quotes the Aiken County Supervisor's opinion that the counties would save money by hiring contractors to maintain public works. It also refers to public dubiety in general: "Critics of the chain gang system say unmotivated prisoners and inadequate supervision actually cost the taxpayers more eventually."

68. W.D. Leeke, Oct. 28; G.S. Friday, Oct. 28; G.A. Decell, Nov. 14.

69. Hiller, *supra* note 18, at 254.

70. G.A. Decell, Nov. 14; Interview with S. Goodwin, Recruiting Officer, "Project First Chance," South Carolina Department of Corrections, in Columbia, Nov. 14, 1968 [hereinafter cited as S. Goodwin, Nov. 14].

71. Hiller, *supra* note 18, at 256; see CONTEMPORARY CORRECTION 243 (P. Tappan ed. 1951); Lopez-Rey, *supra* note 8, at 10.

72. Wilson, *supra* note 30, at 542.

73. Lopez-Rey, *supra* note 8, at 14.

living upon release and (2) instill in him some measure of self-esteem. Only on training a prisoner to perform some sort of skilled labor can these two goals be practically realized.<sup>74</sup>

An effective prison work program, besides offering training in skilled trades, should offer a diversity of activities, with a systematic assignment to jobs.<sup>75</sup> Whenever possible, the prisoner should be able to exercise some choice among the occupations offered.<sup>76</sup> In some cases, of course, it is preferable for treatment purposes that a prisoner be excluded from working altogether.<sup>77</sup>

### B. *The Danger of Isolation*

An essential goal of modern convict work programs is to simulate conditions *outside* the prison, minimizing wherever possible the isolation of prison laborers from the free laboring society.<sup>78</sup> Unfortunately, the chain gang system can little avoid the isolation of its prisoners. Not only are they sequestered geographically, they are in South Carolina by statute prohibited from working "in connection with *or near* any road contractors or overseer."<sup>79</sup>

This separation of the chain gang laborer from free labor is only one aspect of his isolation. A primary psychological argument against the state-use system, of which the public works system is a variation, is that it isolates the prisoner by making him labor solely for the benefit of the state, while he neither influences nor experiences the effects of the free labor market:

[I]n making the prisoner work exclusively for the satisfaction of the State's [or the county's] needs, which more often than not are represented by a restrictive number of unskilled tasks, the feeling of frustration, if not of antagonism, is either maintained or increased.<sup>80</sup>

The third aspect of the road convict's isolation is perhaps the most devastating of them all: There is widespread agreement among modern penologists that "[a]ny productive employment—industrial, agricultural, or public works—must be closely integrated with the vocational training and educational programs."<sup>81</sup>

74. G.A. Decell, Nov. 14; see Clarke, *supra* note 22, at 78.

75. See CONTEMPORARY CORRECTION 244-47 (P. Tappan ed. 1951).

76. Hiller, *supra* note 18, at 267.

77. See Lopez-Rey, *supra* note 8, at 14.

78. See Lopez-Rey, *supra* note 8, at 15.

79. S.C. CODE ANN. § 55-451 (1962) (emphasis added).

80. Lopez-Rey, *supra* note 8, at 15.

81. CONTEMPORARY CORRECTION 244 (P. Tappan ed. 1951).

And yet, despite the obvious desirability of such integration, the South Carolina county chain gangs are completely isolated geographically and administratively from any treatment facilities of the Department of Corrections.

### C. *The Case for Wages*

Thus the county system, by its isolation of the chain gang laborer, secludes him from these essential influences that logic and modern penology say he should have. In addition, the chain gang system begrudges him the dignity of a wage, however small, for his daily labors. This practice probably derives from the basic notion that the state and county are entitled to the free labor of one who has broken the laws.<sup>82</sup> This notion is outdated. The current trend all over the country, based on economic progress and public opinion, is toward the payment of a wage.<sup>83</sup>

Numerous theories have influenced the current trend. One is that prisoners have a basic right to compete within the labor market, not only for jobs but for pay.<sup>84</sup> Many believe that convicts should be paid in order that they may reimburse the state for their board, compensate injured parties,<sup>85</sup> and supplement their discharge allowances.<sup>86</sup>

It is also thought that failure to pay prisoners merely casts upon others the responsibility of supporting their families. This shift of responsibility might have serious domestic as well as economic effects: "[A]nd why break the economic bonds of family life that are often all-important in keeping men upright?"<sup>87</sup>

The strongest and most widely approved reason for paying prisoners is that pay provides an incentive for better work and behavior.<sup>88</sup> The persuasive argument that follows points up the drastic inadequacy of a no-incentive program:

Men are assigned to their jobs entirely without regard to their preference or capacity; they are kept at their unattractive tasks by fear of punishment; they receive no return for their labor . . . . Such labor is mere

82. 18 C.J.S. *Convicts* § 13 (1939).

83. S. RUBIN, *THE LAW OF CRIMINAL CORRECTIONS* ch. 8, § 12, at 289 (1963).

84. Lopez-Rey, *supra* note 8, at 19.

85. L. ROBINSON, *supra* note 4, at 2-3.

86. *CONTEMPORARY CORRECTION* 248-49 (P. Tappan ed. 1951).

87. L. ROBINSON, *supra* note 4, at 2.

88. *See CONTEMPORARY CORRECTION* 248 (P. Tappan ed. 1951).

slavery; and slave labor always has been insufficient and always will be. It is hopeless to expect men to do good work unless they can see some advantage to themselves in doing it.<sup>89</sup>

#### D. *Ignoring the Rehabilitative Ideal*

Thus it is seen that both the nature of the work exacted and the denial of even a token wage contribute to the degradation of the county prisoner. What is equally unfortunate is that no effort is made to treat them. In the county system today there is virtually total disregard for "[t]he one creditable motive which should prevail at all times and places, the motive of reformation . . . ."<sup>90</sup>

The ultimate goal of correctional rehabilitation is "retraining individuals to achieve adequate adjustment in the community."<sup>91</sup> The intermediate designs which lead to that goal are varied. First, there must be an effective system of classification. Classification is the process by which diagnostic and reception centers gather detailed social and psychological data which through treatment planning determine the ultimate disposition of the individual case. Classification programs are based on the belief that individual treatment is not possible without knowledge of the prisoner's background, his limitations and abilities.<sup>92</sup>

Once it is determined what kind of treatment an individual should have, the immediate and enduring goal of the program is to bestow upon the prisoner a status that is not degrading<sup>93</sup> and to give him hope for an increasingly higher station. He must believe that he can eventually regain or even surpass whatever status he enjoyed in the free community.<sup>94</sup> Only in this way "can an individual be brought back to become a cooperative member of the greater society."<sup>95</sup>

It has been emphasized that the present system in South Carolina fails to provide even the most perfunctory training at the county level. What is even more ironic is that the inmates of the county camps are deprived completely and arbitrarily of partici-

89. Osborne, *Prison and Common Sense*, 132 THE ATLANTIC MONTHLY 371 (1923).

90. Mohler, *supra* note 7, at 532.

91. *Id.* at 11.

92. See generally Mohler, *supra* note 7.

93. See PENOLOGY 19 (C. Vedder & B. Kay ed. 1964).

94. *Id.* at 15.

95. *Id.* at 19.

pation in the many progressive programs being administered through the Department of Corrections. A brief explanation of these programs will point up the great inequity of this arbitrary deprivation.

When a convict is rejected by the county supervisor, he goes to the Central Correctional Institution in Columbia. Prior to admittance there, he is taken to the Reception and Evaluation Center for classification. As a result of this processing, he may be enrolled in one or more of several training programs at the Central Institution. These programs include: (1) extensive academic instruction from the illiterate through the college level, (2) occupational training in the area of data processing, and (3) a federal sponsored program called "Project First Chance," which offers vocational training in eight different fields.<sup>96</sup>

One of the most important programs which road convicts are deprived of is *work-release*. A qualified inmate of the Central Correctional Institution within a year of his parole eligibility may be released on a daily basis to work at a paying job in the community. This system achieves a dual purpose. In the first place the prisoner's income is distributed to his family for their needs, to the Department of Corrections to pay for the prisoner's board, and to a fund which will be paid over to the prisoner upon his release. Also, the prisoner, by working in the community, achieves a gradual readjustment to the free society.

Whether on work-release or not, all Department of Corrections inmates nearing their release dates receive prerelease training. The participants are housed in the prerelease centers nearest the communities into which they will be released. At these centers they receive instructions designed to help them readjust to the basic functions of community life.

Because they are able-bodied and can perform manual labor, convicts who are chosen by the county supervisors forfeit any participation in the above mentioned programs. It is ironic that those who most need treatment and would best respond to it go instead to the chain gangs. Chain gangs must, because of restraint problems, operate with minimum security inmates. This means that all the tough, experienced criminals—among them the incorrigibles—go to Central Correctional Institution for training they do not want and will never use. In addition, those

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96. W.D. Leeke, Nov. 15.

who cannot work because of various physical handicaps go to the Central Correctional Institution, even though they cannot enjoy the benefits of the vocational training and work programs. It is interesting to note also that a convict must be sentenced to more than six months before he can be sent to the Central Correctional Institution. Hence, the true recidivists, those people who spend their whole lives in and out of jails for minor offenses, are denied the treatment they desperately need.<sup>97</sup>

### E. Possible Destructive Influences

How many of your captives are in any respect, improved or reclaimed? Why are they taught neither profitable trades nor individual self-respect? And why, too, must they be forced not only to wear the uniform of shame and to knit their brows under the stinging blow, but also to work day after day in the open, before the public gaze . . . .<sup>98</sup>

Sixty years ago this writer recognized the drastic inadequacy of the chain gang system; not only that it denied the prisoner a chance of rehabilitation, but that it subjected him to humiliating influences that might further erode his already weak resistance to crime. Today in the South Carolina county penal system inadequacies exist that might, beyond denying him any help, do the prisoner infinite harm.

It will be remembered that the counties generally do not classify or segregate their prisoners.<sup>99</sup> Although the truly dangerous criminals are generally sent to Central Correctional Institution, the failure to classify at county level might have a tragic effect upon

the casual beginner in crime by forcing him day after day into an association he cannot escape with men whose very speech is mud. It will not be long before he learns their slang, adopts their scale of values, and is infected with their attitude . . . . Once he is accepted as a member of a gang only a miracle will regain him from their clutches.<sup>100</sup>

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97. G.S. Friday, Oct. 28.

98. Clarke, *supra* note 22, at 70.

99. G.S. Friday, Oct. 28.

100. F. HAYNES, *supra* note 3 at 337, quoting from PATTERSON, THE PRISON PROBLEM OF AMERICA (1934). See also Wilson, *supra* note 30, at 535.

It seems that this "moral contamination"<sup>101</sup> might be the unhappy destination of the inexperienced first offender in South Carolina, particularly in view of the fact that no age specifications delimit the class of offenders from which the county supervisors may choose.<sup>102</sup>

The associational dangers to the casual beginner extend beyond the possibility of his being corrupted by a "tougher" breed. The blanket failure to screen and segregate county prisoners creates the additional possibility described below:

When a person is seduced in prison—as many are—and indulges in [homosexual] acts more or less regularly during incarceration, he is apt to suffer . . . a permanent moral degeneration . . . and upon release is found to be a confirmed sex pervert.<sup>103</sup>

Some writers have espoused the opinion that the chain gang prisoner, due to the nature of his confinement, is particularly inclined to become "institutionalized;" that is, "he learns to look upon the chain-gang with something of institutional loyalty, and to preserve inviolate its unwritten traditions."<sup>104</sup>

Remembering that the county system provides neither classification to obstruct nor treatment to divert any such tendency, one can only realize that here lies an additional injustice to the chain gang prisoner, for institutionalization is directly antagonistic to the rehabilitative ideal: "[I]f rehabilitation isn't to remain an empty word it must be recognized that its first objective should be the prevention of the transfer of loyalties from the larger community to the prisoner community . . . ."<sup>105</sup>

To perform without pay their "unattractive tasks,"<sup>106</sup> to acquire neither "profitable trades nor individual self-respect,"<sup>107</sup> to shift their allegiances to its "unwritten traditions,"<sup>108</sup> this is the unfortunate obligation of our chain gang laborers. The result will be that many of them will leave the chain gang only to return again, because a prisoner who is returned to society demoralized is rather certain to revert to crime.<sup>109</sup>

101. CONTEMPORARY CORRECTION 86 (P. Tappan ed. 1951).

102. 1957-58 OP. S.C. ATT'Y GEN. 90.

103. CONTEMPORARY CORRECTION 181-82 (P. Tappan ed. 1951).

104. Clarke, *supra* note 22, at 77. See also Keeler, *supra* note 6, at 569.

105. C. Vedder & B. Kay, *supra* note 93, at 15.

106. Osborne, *supra* note 89, at 371.

107. Clarke, *supra* note 22, at 77.

108. *Id.*

109. See L. ROBINSON, *supra* note 4, at 2.



### F. *Hope*

Several recent developments afford material hope for the future. The aforementioned legislation establishing a jail and prison inspection program could produce desirable results by bringing to the attention of the county supervisor the inadequacies of his program. The act only provides, however, for a perfunctory filing of the inspector's findings. It does not establish any machinery by which the county might be compelled to upgrade its program to the standards adopted by the Board of Corrections.<sup>110</sup> Although most supervisors have been receptive to the inspector's evaluations and have demonstrated an interest in trying to improve their programs,<sup>111</sup> it seems that the authority to close a non-complying camp would be an indispensable feature of an effective inspection bill.

Another bill, passed during the 1968 legislative session, will protect a large category of offenders from the injustice of the chain gang system. The Youthful Offender Act<sup>112</sup> permits the indefinite sentencing of any offender between the ages of 17 and 25 to the Department of Corrections for treatment purposes. Persons sentenced as youthful offenders are of necessity not available to the county supervisors for assignment to road gangs. The Youthful Offender Act represents a major breakthrough in South Carolina's correctional development.

Yet as long as the county roads require maintenance, the county supervisors must attempt to fill the vacancies created by those who as youthful offenders avoid assignment to the chain gang. Although operating with a diminished manpower supply, the system itself, regrettably, is still there.

### V. CONCLUSION

It is time for South Carolina to assume its proper responsibility in the administration of its correctional system. Our county rule system, "the most antiquated to be found anywhere in the United States,"<sup>113</sup> demolishes the ideal of state control that brought about abolition of the lease system 70 years ago. It prevents "uniform standards in penal methods."<sup>114</sup> It has "doubt-

110. S.C. CODE ANN. § 55-315, -316 (1962).

111. G.S. Friday, Oct. 28.

112. S.C. CODE ANN. §§ 55-391 to -400.6 (Supp. 1968).

113. F. HAYNES, *supra* note 3, at 201.

114. Wilson, *supra* note 16, at 46.

ful" economic advantages.<sup>115</sup> It ignores a distinct and persuasive national trend toward unification of state penal systems.<sup>116</sup>

If road and public property maintenance can be integrated into an enlightened correctional treatment program, it can only be so integrated under state control. If road and public property maintenance must be replaced by a modern and more intelligent convict-labor program, it can only be so replaced under state control. Legislation created the county chain gang and legislation can end it. Only through its destruction can we assure for all of South Carolina's prisoners that their individual protection under the law does not end when the trial judge pronounces sentence.

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115. *North Carolina's Chain Gang Problem*, *supra* note 29, at 427.

116. See Hiller, *supra* note 18, at 241; CONTEMPORARY CORRECTION 89 (P. Tappan ed. 1951).