

## **Unfree Labor on the Free Frontier: Convict Labor in California, 1851-1911**

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On January 29th, 1850, Senator Henry Clay of Kentucky produced an amendment to allow for the admission of California to the Union. It read, in part:

That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the republic of Mexico, it is inexpedient for Congress to provide by law either for its introduction into, or exclusion from, any part of the said territory; and that appropriate territorial governments ought to be established by Congress in all of the said territory, not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery.<sup>1</sup>

In short, Clay was arguing that because slavery did not already exist in the territories acquired from Mexico by the expedient of war, there was no need to pass laws barring its introduction into the new states. By 1850, the slavery issue was at the forefront of congressional debate, most especially when new states were on the cusp of admittance into the Union, and Clay's proposed amendment was an attempt to placate both the pro and anti sides of the debate. Despite the heated nature of the debates over slave labor and statehood, however, abolitionists and free labor activists at the state and national levels did not find the ethical conflicts regarding forced labor to be an issue when the bodies in question were convicted of crimes (in some cases, those crimes simply being poverty and destitution). State legislators from New York to California argued consistently that convict labor was both exploitable and morally justifiable.

Involuntary servitude was written into the first California Constitution, passed in 1849 before official recognition of statehood. Article I, Section 18, declares that "Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State."<sup>2</sup> California

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<sup>1</sup> Resolution introduced by Senator Henry Clay in relation to the adjustment of all existing questions of controversy between the states arising out of the institution of slavery (the resolution later became known as the Compromise of 1850), January, 29, 1850; Senate Simple Resolutions, Motions, and Orders of the 31st Congress, ca. 03/1849-ca. 03/1851; Record Group 46; Records of the United States Senate, 1789-1990; National Archives [retrieved from <http://www.ourdocuments.gov/doc.php?flash=true&doc=27&page=transcript> March 1, 2016].

<sup>2</sup> Cal. Const., art I, § XVIII. (1849).

## Unfree Labor on the Free Frontier

lawmakers were clear from the beginning of the state's existence that it would be a state free of the stigma of slavery, yet they left for themselves a loophole through which they could still benefit from unfree labor. In fact, President Fillmore's signature on the bill granting statehood to California was barely dry when the legislature of that state began experimenting with what they hoped would be a profitable prison system.

For the next several decades, facing pitfalls, corruption, and free labor opposition at seemingly every turn, the California Legislature experimented with a number of systems of prison labor exploitation, from convict leasing to state-use-only. Proponents of using prison labor were steady in their devotion, never failing to try again when something inevitably went wrong. In this paper, I will uncover an oft-ignored chapter of California's legislative past, and discuss California's long and often floundering attempt to make unfree labor into a lucrative enterprise. It is my desire to show that this is as much a part of California's history as the Gold Rush, and perhaps even more.

### Useful Labor without Competing

Although no one has written a book focusing specifically on convict labor in early California, Rebecca McLennan deserves a mention in any historiography of unfree labor. McLennan's *The Crisis of Imprisonment* (2008) focuses on the convict labor exploitation in the North, challenging a historiography which has almost exclusively focused on the Postbellum South. She writes:

Although...the activity and ideology of forced productive labor, and the legal condition of penal servitude from which that labor was tightly entwined hung, like a heavy iron chain, across a century-and-a-half of American legal punishment, most scholars of penal history have either glossed over it, treated it as a peculiar affliction of the New South (made symptomatic in chain gangs, convict leasing, and penal farms), or denied it played any significant role in prison life, administration or politics north of the Mason-Dixon Line.<sup>3</sup>

Historians, McLennan argues, have tended to either focus on convict labor in the postbellum South or on hard labor in the Early Republic, leading one to the conclusion that convict labor simply disappeared in the North somewhere around

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<sup>3</sup> Rebecca McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (Cambridge: Cambridge University Press, 2008), 5-6.

1820. However, the North indulged in contracting systems well before the Civil War and well after—McLennan places the date range of the Northern contract labor system as approximately between 1820 and 1890.<sup>4</sup>

McLennan's discussion of legislative processes also give some insight as to the root beliefs that informed California legislators. In New York State, where McLennan's story is centered, state legislators were drawn generally to prison plans that either favored solitary confinement or forced labor. Although originally solitary confinement seemed like the more humane plan, both reformers and lawmakers quickly changed their minds when it was discovered that far from being induced to true penitence, prisoners went insane, died, or attempted suicide. In contrast, hard labor seemed a kindness.<sup>5</sup> Contract labor, in which the state sold the labor of its convicts to private interests, was an attractive option for state legislators, as it fulfilled their moral duty to reform prisoners with hard labor while also promising to offset operating expenses for the prisons.<sup>6</sup>

United States Labor Commissioner Carroll Davidson Wright's sentiments in his 1886 *Annual Report of the Commissioner of Labor* serve to underscore how deeply imbedded ideals of reformatory hard labor for convicts were:

It is universally conceded that convicts should be employed at some useful labor...At the present time the convict-labor problem, briefly stated, is, how shall convicts be employed in useful labor without unduly competing with labor outside of penal institutions, either in the wages of labor or in the price of products?<sup>7</sup>

Although Wright was concerned with the competition between free and unfree labor, he was still deeply wedded to the idea that prisoners should remain employed in some sort of useful labor, rather than remaining idle. The roots of this idealization, of the reformatory nature of hard labor, run deep in this country, but McLennan places the connection of the need for that labor with a convenient source of revenue at the New York State Prison at Auburn, established in 1816. The Auburn Plan, which involved convicts being kept busy by hard labor, was proposed as an alternative to the Pennsylvania Plan, which mostly focused on the isolation of prisoners and silent contemplation of crimes.

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid., 58.

<sup>6</sup> Ibid., 57.

<sup>7</sup> United States Department of Labor, *Second Annual Report of the Commissioner of Labor* (Washington, D.C.: Government Printing Office, 1887), 31.

## Unfree Labor on the Free Frontier

Although prison reformers initially disapproved of convicts being forced to do hard labor, they supported it for the most part by the 1840s. The primary reason for reformers' change of heart was that, as mentioned previously, solitary confinement turned out to be far more harmful than beneficial to prisoners.<sup>8</sup> As the Auburn plan became widespread at the institutional level, it became associated with the sale of convict labor to private enterprise.<sup>9</sup> By the time Wright was concluding his 1886 report, not only had the Auburn Plan become popular among reformers and radicals alike, but both groups were expressing strong sentiments about the labor of convicts needing to be "useful," i.e., not a "profitless exercise," such as turning a crank or running a treadmill.

Wright's project in 1886 was to collect data on United States prisons in an attempt to find out if their use of convict labor presented an unfair competition with free labor. He defined four different types of labor currently utilized in the United States Penal System. The first, the leasing system, was no longer employed in California. This was the first system attempted by the State Legislature in the 1850s. The contract system, in which a contractor employed convicts by the day and had immediate control over their labor and discipline, was an attempt to rectify some of the worst problems of the leasing system, namely abuse and neglect of the convicts, but it too was eventually abandoned. By the last quarter of the nineteenth century, California prisoners were working under the piece-price and public-account systems. In the piece-price system, a contractor gives raw materials to a prison, prisoners manufacture finished goods, and finished goods are sent back to the contractor. In the public-account system, the institution buys raw materials and converts them to finished goods to sell on the open market.<sup>10</sup> California's reliance on the latter two systems of employing their prisoners was the result of a decades long struggle, beginning shortly after the 1849 ratification of the first California Constitution.

From its beginning, California legislators were interested in how best to utilize their burgeoning prison population. Interestingly, over the entire course of California's experiments with convict leasing, contracted convict labor and finally a state-use labor system, the legislature never sought to question whether it might be a better idea to reform the laws to send fewer people to prison. On the contrary, in 1855 the legislature passed laws like one, "to punish vagrants, vagabonds, and dangerous and suspicious persons," which proposed to sentence a wide variety of people including homeless wanderers, beggars, "common

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<sup>8</sup> McLennan, *Crisis of Imprisonment*, 58.

<sup>9</sup> *Ibid.*, 53-7.

<sup>10</sup> United States Department of Labor, 1886, 4.

prostitutes and common drunkards” to jail and hard labor for up to ninety days.”<sup>11</sup>

Leasing out the prisoners to one James Estell, who would house, guard, employ and clothe them, seemed the most logical solution in 1851, especially for a state which did not levy income taxes. At this time, state leadership was not yet concerned with issues of competition between free and unfree labor. Their only concern was that Estell would cheat them and subcontract out the prisoners under his jurisdiction. “It would be dangerous to the discipline of the prison,” they fretted, “at the first quarrel between [Estell and an outside contractor], either the discipline would be relaxed to get more work done in a day, or the outside man would be forced to abandon by the lessee.”<sup>12</sup> Regardless of the potential risks, the Joint State Prison Committee concluded jubilantly that “after a month the [prison] institution ought to support itself by the products of its own labor.”<sup>13</sup>

James Estell lost his contract only a few short years after he had received it. Just one year after the Prison Committee concluded that the state prison institution would soon be self-supporting, a new Board of Directors for the State Prison grimly seized that power from Estell, who had sorely abused it. A routine inspection had revealed that “prisoners were without shoes, badly clad, and in other respects in a bad condition.” The Board provided shoes and clothing to those who were lacking, and the prisoners were reacquired by the state that had wished to foist their care off on someone else.<sup>14</sup> Whether or not to use convict labor was never the question—the debate was over how to best utilize that labor.

With the failure of the lease system, legislators turned to the contract system which, by 1872, was well and truly entrenched. In their annual “Report on the condition of the State Prison,” the Joint Committee found that out of 883 prisoners, 421 were employed by outside contractors. There were three main contractors at this time: Stone & Hayden, saddle and harness makers, who contracted approximately 115 convicts at any given time; Merriam & Cole, furniture manufacturers, who employed approximately 200; and A.W. Baldwin, a boot and shoe manufacturer who usually employed about 100 laborers. In addition to the contracted laborers, an additional 200 prisoners were employed by

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<sup>11</sup> McLennan, 57.

<sup>12</sup> “Supplementary Report of the Joint State Prison Committee with reference to New Prison Buildings, Discipline, Etc.” In *Appendix to the Journals of the Senate*, 6th Session (Sacramento: State Printer, 1855), 6.

<sup>13</sup> *Ibid.*, 9.

<sup>14</sup> “Report of the State Prison and Accompanying Documents,” In *Appendix to the Journal of the Senate*, 6th Session (Sacramento: State Printer, 1856), 7.

## Unfree Labor on the Free Frontier

the state as “waiters, cooks, clerks, washmen, gardeners, teamsters, etc.” Convict laborers also made bricks in San Quentin’s brickyard.<sup>15</sup>

It was with growth of the contract system that free labor began to protest against convict labor. The first groups to begin clamoring against the contract system were mechanics and manufacturers, who protested that convict labor would drive down both wages and prices. The San Francisco Coopers, or barrel makers, assembled in July of 1861 to protest the contract system of convict labor. They adopted a list of resolutions for the purpose of “protection of ourselves and families and the honor of our present trade.” They were not assembling to protest the use of convict labor, but “to prevent the authorities from carrying out their designs for the enrichment of heartless capitalists,” i.e. “the prevention of convict labor in opposition to industrious mechanics.” In other words, these free laborers had organized to fight back against what they saw as competition from those who worked without wages.<sup>16</sup> When the Mechanics League formed a month later for “the purpose of carrying on a fight against the abuses of convict labor,” the mixed trade association of workmen vowed to “protect the workers against convict and Chinese labor.”<sup>17</sup>

Although that League was short-lived, the Mechanics’ State Council formed a few years later with similar aims. In 1872 they sent a memorandum to the State Legislature, which was included in the Appendices to the Senate Journals of that year. At this point they asked that, if California must continue to use convict labor to create finished products, the products of convict labor should “compete with Chinese labor, in cases where they have monopolized any particular branch of business.”<sup>18</sup> White merchants and mechanics hoped to nullify two economic threats with one codified demand. By mandating that the State only compete in the free market with the manufacture of products which were primarily Chinese-made, such as cigars and cigar boxes, workmen could compromise with a government which was clearly not interested in cutting off the profits reaped from prison labor. Furthermore, these workers proposed a way

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<sup>15</sup> “Report on the State Prison by the Joint Committee of the Senate and Assembly,” In *Appendix to the Journal of the Senate*, 19th Session, Vol. 2 (Sacramento: State Printer, 1872), 5.

<sup>16</sup> Ira B. Cross, *A History of the Labor Movement in California* (Berkeley: University of California Press, 1935), 31.

<sup>17</sup> *Ibid.*, 31.

<sup>18</sup> “Report on the State Prison,” 1872, 3.

for everyone to share in the profits: convicts could produce heavy jute bags for vegetables, thereby also increasing the profit share for domestic hemp farmers.<sup>19</sup>

### **“Profitable Labor”: A Clash of Ideologies**

Article X, Section 6 of the second California Constitution, adopted March 3rd, 1879, reads:

After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, co-partnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.<sup>20</sup>

This section created quite the controversy when it was debated during the Constitutional Convention of 1878-1879. Representative Patrick Wellin of San Francisco proposed the section as it came eventually to be worded. In an impassioned speech, he declared that under the current system, less than half of the State’s fifteen hundred prisoners were currently employed, leaving the rest of the prisoners shockingly idle. It was costing the State money, he explained, to keep a “workshop four hundred feet long by sixty feet wide, four stories high, supplied with a two-hundred horse-power engine,” truly the latest in technology, “running day after day for the benefit of people who employ less than five hundred of these prisoners.” The prisoners “work about as well as the average white laborers,” but their care and maintenance were too expensive. “Now, the State has to feed these men, furnish the machinery, supply the building, furnish the power for driving the machinery, pay an engineer, and supply water, for the sake of hiring out four hundred and seventy-five men at fifty cents a day.” The prison should not be wasting funds like this, he explained, but should be self-sustaining, and using the potential labor stored up by all of those idle convicts would solve this problem.<sup>21</sup> Just as the Manufacturers had requested in 1872, Wellin suggested that prisoners be put to work making jute bagging for grain. “We will take these one thousand idle men and put them to work, and make them earn something. If they cannot earn half a dollar a day, they can earn twenty-five

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<sup>19</sup> Senate Journals appendix 1872, “Memorial from the Mechanics’ State Council in reference to State Prison Labor,” In *Appendix to the Journals of the Senate and Assembly*, 20th Session, Vol. 6 (Sacramento: State Printer, 1874), 5.

<sup>20</sup> Cal. Const. art. X, § 6.

<sup>21</sup> E.B Willis and P.K Stockton, *Debates and Proceedings of the Constitutional Convention of the State of California* (Sacramento: State Printer, 1880), 1033.

## Unfree Labor on the Free Frontier

cents, and it is better to have the whole number working at twenty-five cents, than to have one third only working at fifty cents.”<sup>22</sup>

Wellin’s assertion that the convicts are often as good as white labor sticks out, mostly because the race of early California’s convicts is absent from official accounts, as well as from the work of historians. Mostly, though, the bulk of his speech is expressing alarm both that there are a lot of idle convicts and that the State is losing money on them. The former problem refers back to the Auburn Plan, and ingrained ideologies regarding the necessity of hard labor in the reformation of wrong-doers. Even before the combination of profit and convict labor, reformers had suggested a variety of seemingly useless tasks to keep prisoners and indigents engaged in labor, such as a treadmill proposed in 1824 for an almshouse. On the flipside of this preoccupation with the labor of the derelict and the degenerate was a distrust of idleness in all forms—part and parcel of the same ideology which led to the creation of the vagrancy act proposed in 1855. This type of thinking was in line also with contemporary ideology as to the role of the government in reform. Massachusetts and Pennsylvania experimented as early as the late seventeenth century with sending debtors and vagrants to workhouses, therefore exploiting their labor in the name of reform.<sup>23</sup> In the early eighteenth century, many colonies began to allow in law for people convicted of property crimes to be sold as convict servants. At the time, selling convicts into servitude looked altruistic when compared to more bloody punishments.<sup>24</sup> In contrast, convict labor must have looked like a humane mode of punishment to Wellin and his contemporaries. In a way, the convict labor systems of the nineteenth century begin to look like an institutionalization of an old practice. Additionally, the State still aimed for the prison system to be self-sustaining, something which they had yet to truly accomplish.

Wellin certainly had his detractors, but none who were interested in debating him about the human rights of convict laborers. Marion Biggs, representing the Third Congressional District, was appalled that the Legislature should take the drastic step of removing the contracting system. “I think the new section offered by the gentleman is a very dangerous doctrine to be engrafted in the organic law,” he blustered. “No such principle as that ought to be engrafted on the law of this State, as it will be very expensive and nobody knows whether it will ever succeed or not.” Biggs continued to assure those listening that he was “a workingman himself” and, therefore, was not trying to compete with free

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<sup>22</sup> *Debates and Proceedings*, 1034.

<sup>23</sup> McLennan, *Crisis of Imprisonment*, 23.

<sup>24</sup> *Ibid.*, 29.

labor.<sup>25</sup> While James Caples of Sacramento County agreed with Wellin that leaving one thousand prisoners in “idleness” was “an outrage upon the taxpayers,” he scoffed at the idea of trying not to compete with free laborers. How can we occupy a thousand prisoners, he pointed out, if they are not able to work for fear of competing with free labor?<sup>26</sup> Charles Beerstecher of San Francisco scoffed that it was no use to put an amendment in anyway, since the men of the convention lacked the power to “compel the Legislature to act,” or “to pass laws.” Besides, “men have appealed on behalf of the suffering laboring people of San Francisco time and time again, during the last ten years, demanding that the Legislature inaugurate a system of labor,” and every time they were beat out by an entity he referred to as “the [contractor] lobby.”<sup>27</sup> Despite objections, however, the section under consideration did pass.

Despite efforts of some legislators to take their concerns into account, organized labor was far from mollified by the new Constitution. In March of 1879, the Sacramento Daily Union reported that Dennis Kearney’s “obsequious organ,” the *San Francisco Chronicle*, was accusing the new Constitutional Amendment against convict labor of being a “dishonest attempt to deceive the public,” as it did not make provisions for the importation of convict-made goods from other States and simply chose to “substitute the State for the contractors as employers of convict labor.”<sup>28</sup> To their credit, the California State Prison System’s production of goods only increased after 1879. This angered free labor activists, who focused their energies on the creation of a State Bureau of Labor Statistics. That Bureau put out a report on convict labor in 1884 in which they found that convict labor did, in fact, compete with free labor.

The State Board of Prison Directors was also immensely unhappy with the demands of the new Constitution, as can be gleaned from the tone of their annual reports following its ratification. In 1881, they griped that the:

State must become a manufacturer; must superintend the mechanical operations of the shops; invest its own capital; purchase its own material with which to carry on different branches of business, and dispose of the manufactured goods, as well as to suffer all the losses in machinery,

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<sup>25</sup> *Debates and Proceedings*, 1035.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Ward McAfee, “A History of Convict Labor in California,” *Southern California Quarterly* 72, no. 1 (Spring 1990): 19-40, 22.

## Unfree Labor on the Free Frontier

stock, and bad debts, and the expenses and perplexities incident to the buying, manufacturing, and selling of goods.<sup>29</sup>

The Board was clearly unhappy about this massive undertaking. Why should they have to wrestle with such a weighty task, they groused, when “nearly all” other United States prisons were utilizing the contract system? Furthermore, they warned, “in almost every prison where the system of State management has been tried, it has been abandoned.”<sup>30</sup> They decided to proceed with the creation of a jute mill at San Quentin, as manufacturing bags for grain would employ an estimated five hundred convicts at any given time, and the unskilled nature of the work would open it up to disabled prisoners unable to complete other hard labor regimens, or so they argued.<sup>31</sup>

Two years later, the Joint Committee was making a chagrined report that the Board of Prison Directors, who were also supposed to be working for no wages, not only went ahead and built a costly jute-bag manufactory without express permission to do so, but had been merrily paying themselves the princely sum of one hundred dollars per month each via a loophole in the law that allowed them to be recompensed for travel costs.<sup>32</sup> This was not the sum total of all graft. San Quentin’s Warden Ames exploited convict labor and State-owned materials, a water-wheel for “his own use,” but neglected to record any evidence of its existence.<sup>33</sup> Ames also decided to find a work-around for the constitutional proscription against contracting by colluding with a furniture company called N.P. Cole & Co to allow them to continue to function as before under the auspices of the new laws.<sup>34</sup> Clearly, the Committee had been under the impression that contractors would simply hand over their equipment and cease operations once the contract period was ended by law, and that all prison officials would act in the best interest of the State. Both the naïve tone of the Committee and the corrupt practices of the Board follow a theme: California State

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<sup>29</sup> “First Annual Report of the State Board of Prison Directors of the State of California,” In *Appendix to the Journals of the Senate and Assembly* (Sacramento: State Printer, 1881), 6.

<sup>30</sup> *Ibid.*, 6.

<sup>31</sup> *Ibid.*, 9.

<sup>32</sup> “Fourth annual report of the State Board of Prison Directors of the State of California,” In *Appendix to the Journals of the Senate and Assembly* (Sacramento: State Printer, 1883), 3-4.

<sup>33</sup> “State Board of Prison Directors,” 1883, 3-4.

<sup>34</sup> *Ibid.*, 10. N.P. Cole’s counterpoint was that convict labor, being naturally inferior to free labor, should not be seen as a threat: “Convict vs. Free Labor,” *Daily Alta California*, March 28, 1884.

Penitentiary law and reform were more ideological than practical in nature. In 1885, Ames, not removed as Warden despite corruption charges, gloated that the jute factory was thriving, not in the least because it made so many more convicts, such as “mere lads,” employable. “Every weak point has been strengthened, the entire factory subordinated to discipline and exact system; and its business relations to the community.” He was personally responsible for establishing “precise methods,” and the furniture department was finally closed down.<sup>35</sup> All was well, Ames concluded, and no one was competing with free labor.

### **The Decline of the Contract System**

Whatever Warden Ames’ assurances, Labor Commissioner Wright found differently. Folsom, which had been built a couple of years prior, was utilizing the public-account system for the 328 convicts’ primary labor of quarrying and dressing stone. San Quentin was on the piece-price system, and despite Warden Ames’ protestations to the contrary, still employed 93 convicts in the making of furniture. The largest number of San Quentin’s inmates were employed making jute bags, as promised, although Wellin’s idea of employing 1000 convicts at this labor was for naught, as only 409 were employed in the jute factory.<sup>36</sup>

Despite these attempts at reforming the prison labor apparatus, the legislature still engaged in the impossible task of simultaneously trying to appease free labor activists, while employing prisoners productively without allowing the prison system to deplete governmental funds. The State Legislature, for instance, tried to address the concern of free labor competition in 1889, outlawing the public sale of all prison-made goods within the state, except for jute bags, only to find themselves in financial hot water as a result.<sup>37</sup>

In an attempt to stop fiscal hemorrhaging while continuing to not provoke the anger of free labor activists, the legislature proposed, in 1905, a “state-use” system, which allowed for convict labor to manufacture only those goods to be used by other institutions within the state. In 1911, the law’s purview was expanded to include all governmental agencies. However, the jute manufactory at San Quentin, much celebrated by the State Prison Board, was soon found to be creating health problems amongst the inmates, a cause for concern. A former convict jute factory worker disclosed in 1911 that “the air is charged with fine particles of dust, fatal to the weak-lunged.”<sup>38</sup> In 1913, that same mill was blamed for a tuberculosis outbreak amongst prisoners at San Quentin.

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<sup>35</sup> “State Board of Prison Directors,” 1883, 12.

<sup>36</sup> United States Department of Labor, 1886, 10.

<sup>37</sup> McAfee, “A History of Convict Labor,” 25.

<sup>38</sup> Quoted in McAfee, “A History of Convict Labor,” 28.

## Unfree Labor on the Free Frontier

With the automobile becoming more and more prominent, highway building became an increasingly viable alternative to jute-bagging. Although prisoners would still be doing backbreaking labor, road camps seemed like a healthful outdoor means of employment. By the 1920's, 12.6 percent of state prisoners were working on the highways.<sup>39</sup> A 1913 article by Joseph Pratt, State Geologist of North Carolina, Chapel Hill, gives us some insight into the hopeful nature of this new utilization of convict labor. "To my mind," he wrote,

one of the main objects of punishment of a convict is to bring forcibly to his mind the fact that he has committed a crime against society, but that society will be ready to receive him again as a citizen if he makes good during the serving of his sentence, and for this reasons every opportunity should be taken by the state to give the convict every chance possible to make a man of himself.<sup>40</sup>

To this end, the greatest work a convict could do would be on the roads. Roads were the very definition of a public good, for the benefit of the state and its citizens and not in any way in conflict with free labor.<sup>41</sup> Finally, the State could exploit the unfree labor of its prisoners without incurring the wrath of organized labor.

### Conclusion: Unfree Labor on the Free Frontier

The origin of the historiographical positioning of California as the embodiment of the free frontier is in Frederick Jackson Turner's 1893 speech to the American Historical Association in which he linked the ideals of freedom and progress with westward expansion. The American frontier, Turner proclaimed, was more purely American in its quality than any other part of the continent, and that the frontier was marked by an ever-expanding character. "The most significant thing about the American frontier is, that it lies at the hither edge of free land."<sup>42</sup> Here, Turner meant "free" to have two meanings. The frontier was characteristically free both by nature of its lack of settlement and also by its

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<sup>39</sup> McAfee, "A History of Convict Labor," 28.

<sup>40</sup> Joseph Hyde Pratt, "Convict Labor in Highway Construction," *Annals of the American*

*Academy of Political and Social Science* 46 (March, 1913): 78-87, 78-9.

<sup>41</sup> *Ibid.*, 80.

<sup>42</sup> Frederick Jackson Turner, *The Significance of the Frontier in American History* (New York: Frederick Ungar Publishing Company, 1963), 28.

essential resistance to slavery. Slavery could not take root in the West—or at least, it was a foregone conclusion that if attempted, it would fail to thrive.<sup>43</sup>

In a 1929 essay, from the *Southwestern Historical Quarterly*, entitled, “The Natural Limits of Slavery Expansion,” Charles Ramsdell expanded upon Turner’s thesis, asking, “Would slavery, if legally permitted to do so, have taken possession of the territories or of any considerable portion of them?”<sup>44</sup> In order to answer this question, Ramsdell broke down what he saw as the necessary factors for the expansion of slavery. The industrial revolution and an increasing demand for raw cotton from international markets meant that farmers and planters needed to seek cheap and productive lands on which to grow cotton. Where these cheap and productive lands could be found, a lack of availability of free labor made it inevitable for planters to resort to slave labor.<sup>45</sup> However, “it was well understood by sensible men, North and South, in 1850 that soil, climate, and native labor would form a perpetual bar to slavery” in most of the land seized from Mexico in the Mexican-American wars. It was “possible southern California could have sustained slavery, but California had already decided that question for itself, and there was no remote probability that the decision would ever” be reversed.<sup>46</sup> California was established as a free state, and so it remains. The subject of convict labor, however, was never part of this vein of historiographical thought, as its existence was not seen as antithetical to a free California.

The first historians to approach the subject of convict labor in California were Lucille Eaves, whose *A History of California Labor Legislation: With an Introductory Sketch of the San Francisco Labor Movement* was printed in 1910, and Ira Cross, who published his more well-known *A History of the Labor Movement in California* in 1935. Both were interested in the strong labor organization of California and of San Francisco in particular. As such, convict labor does not take central stage in either monograph, serving instead as an obstacle that free labor activists pushed back against repeatedly until finally they were heard.

Stacy Smith, who published *Freedom’s Frontier* in 2013, is an excellent example of a much-needed shift in California historiography, one which I hope to see continue, though she does not mention convict labor in her monograph. Smith writes that “westward-bound African-American slaves...northward-bound Mexican and Chilean contract workers...eastward-bound Chinese credit-ticket

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<sup>43</sup> *Ibid.*, 50.

<sup>44</sup> Charles Ramsdell. “The Natural Limits of Slavery Expansion.” *The Southwestern Historical Quarterly* 33, no. 2 (October, 1929), 92.

<sup>45</sup> *Ibid.*, 94-5.

<sup>46</sup> *Ibid.*, 101.

## Unfree Labor on the Free Frontier

laborers and prostitutes...Native American apprentices...were each different facets of a common struggle over the meaning of freedom in California.<sup>47</sup> It is at the intersection of both of these histories—convict labor outside the South and unfree labor in California—that the convict lease system and its subsequent iterations in California can be located.

The issue of convict labor is central to the history of California, founded as a free state and with a strong history of free labor agitation from its beginning. How to treat prisoners, how to employ them, and how to make a profit from their labor was a hotly-debated but crucial topic to California lawmakers in the first decades of its statehood. However, the historiographies of both unfree labor and California have ignored this part of California's past, furthering by their tacit admission the idea that unfree labor was restricted to the South. It is my hope that current political debates regarding the intersection of legislation, capitalism, unfree labor and the place of prisons in society will lead to a return to the history of labor and politics—this time with some thought given to the invisible exploited labor force at the center of the debate.

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<sup>47</sup> Stacey Smith, *Freedom's Frontier: California and the Struggle Over Unfree Labor, Emancipation, and Reconstruction* (Chapel Hill: University of North Carolina Press, 2013), 6.

## Bibliography

- “Broom Manufacturers Organize.” *Los Angeles Herald*, May 21, 1901.
- Cal. Const. art. X, § 6. (1879)
- Cal. Const., art I, § XVIII. (1849)
- California Senate, 6th Session. “An Act to punish vagrants, vagabonds, and dangerous and suspicious persons.” Sacramento: Government Printing Office, 1855.
- Cross, Ira B. *A History of the Labor Movement in California*. Berkeley: University of California Press, 1935.
- Eaves, Lucile. *A History of California Labor Legislation: With an Introductory Sketch of the San Francisco Labor Movement*. Berkeley: University Press, 1910.
- Fierce, Milfred C. *Slavery Revisited: Blacks and the Southern Convict Lease System, 1865-1933*. New York: Africana Studies Research Center, Brooklyn College, City University of New York, 1994.
- “First Annual Report of the State Board of Prison Directors of the State of California,” In *Appendix to the Journals of the Senate and Assembly* (Sacramento: State Printer, 1881), 6.
- “Fourth annual report of the State Board of Prison Directors of the State of California,” In *Appendix to the Journals of the Senate and Assembly* (Sacramento: State Printer, 1883), 3-4.
- Lichtenstein, Alexander C. *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*. London: Verso, 1996.
- McAfee, Ward. “A History of Convict Labor in California.” *Southern California Quarterly* 72, no. 1 (Spring 1990): 19-40.
- McLennan, Rebecca M. *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941*. Cambridge: Cambridge University Press, 2008.
- “Memorial from the Mechanics’ State Council in reference to State Prison Labor,” In *Appendix to the Journals of the Senate and Assembly*, 20th Session. Sacramento: State Printer, 1874.
- Pratt, Joseph Hyde. “Convict Labor in Highway Construction.” *Annals of the American Academy of Political and Social Science* 46 (March, 1913): 78-87.
- Ramsdell, Charles. “The Natural Limits of Slavery Expansion.” *The Southwestern Historical Quarterly* 33, no. 2 (October, 1929): 91-111.

## Unfree Labor on the Free Frontier

- Resolution introduced by Senator Henry Clay in relation to the adjustment of all existing questions of controversy between the states arising out of the institution of slavery. January 29, 1850. Senate Simple Resolutions, Motions, and Orders of the 31st Congress, ca. 03/1849-ca. 03/1851. Record Group 46; Records of the United States Senate, 1789-1990; National Archives.  
<http://www.ourdocuments.gov/doc.php?flash=true&doc=27&page=transcript> accessed March 1, 2016.
- “Report of the State Prison and Accompanying Documents.” *Appendix to the California Senate Journal*, 6th Session. Sacramento: State Printer, 1856.
- Smith, Stacey L. *Freedom's Frontier: California and the Struggle Over Unfree Labor, Emancipation, and Reconstruction*. Chapel Hill: University of North Carolina Press, 2013.
- “Supplementary Report of the Joint State Prison Committee with reference to New Prison Buildings, Discipline, Etc.” *Appendix to the California Senate Journal*, 6th Session. Sacramento: State Printer, 1855.
- “Trying to Deceive the Public.” *Sacramento Daily Union*, March 12, 1879.
- Turner, Frederick Jackson. *The Significance of the Frontier in American History*. New York: Frederick Ungar Publishing Company, 1963.
- Willis, E.B. and P.K Stockton, *Debates and Proceedings of the Constitutional Convention of the State of California* (Sacramento: State Printer, 1880).
- Woodward, C. Vann. *Origins of the New South, 1877-1913*. Baton Rouge: Louisiana State University Press, 1951.