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Florence Gregorie Sloan
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The early 19th century was marked by reform movements aimed at alleviating poverty, reducing crime, decreasing illiteracy, and providing better care for the mentally ill. In the United States, as in Europe, the debate over prison reform arose from the growing public fear that the stability of social institutions and values was crumbling, especially because lawlessness abounded across the country in the Jacksonian era.¹ Reformers sought a way to save and preserve the established social order, and reformers found their cure-all solution in the establishment of penitentiaries, which were institutions that sought to transform the criminal into an industrious member of society. As such, penitentiaries were best characterized as the practical exercise of Enlightenment thought, even going so far as to be considered as an alternative to, if not a complete replacement for, capital punishment.²

The conversation about prison reform was emerging as an important discourse in the latter part of the 18th century in the wake of the American Revolution, a time when citizens of the newly independent country would have been seeking ways to differentiate themselves from and improve upon British models because “antebellum reformers believed they operated from within the American Revolutionary tradition.”³ In South Carolina, this is reflected in the 1780s and 1790s through the discussion of the need to reexamine the criminal code and construct a

¹ Stephen Mitz, *Moralists and Modernizers: America's Pre-Civil War Reformers* (Baltimore: Johns Hopkins University Press, 1995), xiii.

² “Chester District, Presentment That The Criminal Code Is Too Harsh, A Penitentiary Is Needed To Provide An Alternative To Capital Punishment, The Introduction Of Slaves To S.C. From Other States Should Be Halted, Both The Gaol and Courthouse Require Replacement, Creditors Should Be Able To Attach The Effects of Debtors, and The Catawba River Should Be Opened For Navigation. (4 Pages) Date: 1816.” South Carolina Department of Archives and History (SCDAH). Online. In addition, in 1839, the South Carolina Special Committee on Penitentiaries said that “death is inflicted, like some potent panacea in a System of quackery, as the only cure for all crimes and offences.” “Perry, Benjamin F., Chairman Of Special Committee On Penitentiaries, Report And One Enclosure, Others Missing, Comparing Penal Systems In Other States And Nations, Giving Details On The Cost Of Penitentiary Constuction, Recommending Reform Of S.C. Criminal Cope, And Recommending The State Adopt The Pennsylvania Penitentiary System. (40 Pages) Date: 1839 C.” SCDAH. Online Records Index.

³ Mitz, *Moralists and Modernizers*, p. x.

bettering house in Charleston.⁴ However, large-scale action was not taken on these aspirations for reform because at the time economic limitations caused by the nationwide postwar depression severely limited available funds. This was exacerbated by crop failure in the South in 1785, which resulted in an empty treasury in Charleston, where the city struggled to fulfill basic services such as waste removal. Economic conditions did not appear to improve in South Carolina until the cotton gin increased the amount of exportable cotton by expanding the amount of cotton-growing areas. However, other factors intervened to keep the subsequent increase in state funds from being used to improve jail facilities. These factors were that the state house in Charleston burned down in 1788 and was rebuilt in 1789, Charleston completed its four-story Orphan House in the mid-1790s, the state raised defensive structures like Castle Pinckney in the late 1790s, and the city of Charleston created a Work House.⁵

As early as 1797, South Carolina was evaluating the comparative costs of building a state penitentiary in Charleston or Columbia, which also reflects the ambiguity of the political structure at this time—while Columbia was established as the new seat of state power in 1786, many in Charleston still sought to exert the city’s influence in state affairs.⁶ Throughout the antebellum period, the districts of the state continued to pester the state legislature with requests for the establishment of penitentiaries. Building a penitentiary, however, was no small undertaking—disregarding the costs and location of such a structure, the amount of material

⁴ “Committee Report On The Petition Of The Intendant And Wardens of Charleston, Concerning Their Power To Erect A Bettering House, To Inspect and Destroy Dangerous Houses and Walls, And To Appropriate City Land For A Burial Ground. (4 Pages) Date: 12/19/1793.” SCDAH. Online.

⁵ Walter J. Fraser, Jr. *Charleston! Charleston!: The History of a Southern City* (Columbia, S.C: University of South Carolina Press, 1989), 176-179, 185.

⁶ “Committee Report On the Comparative Costs of Building A Penitentiary In Charleston Or Columbia, And The Investment In Stock For The Building Of A Gaol in Charleston District. (4 Pages) Date: 12/2/1797.” SCDAH. Online Records Index.; Fraser, *Charleston! Charleston*, 176.

devoted to the debate on how to run a penitentiary was nearly as prolific as the debate over slavery.⁷ The result was that the state penitentiary was not founded until 1866.

The key question which arises is why did it take over sixty years for South Carolina to establish a penitentiary when it recognized a need for one for so long? How was the debate over penitentiaries related to the ‘peculiar institution’ of slavery? And perhaps more importantly, why should the debate on antebellum prison reform matter today?

In this paper, I will seek to answer the first two questions by examining the prison reform efforts made in South Carolina by Robert J. Turnbull, Robert Mills, and Francis Lieber as they compared the state of crime and punishment in South Carolina with the state of crime and punishment nationally across the United States and internationally across western Europe and even South America. I will also examine the Charleston Work House and reforms of the criminal codes for slaves and free blacks as evidence that these institutions and practices functioned as a secondary penal system but were not referred to as such because that would imply equality. To this end, I will primarily focus on the period from 1790 to 1839, from the beginning of the conversation on the establishment of a penitentiary to the most influential legislative campaign for a penitentiary prior to the successful campaign for a penitentiary in 1866. The answer to the last question could be a separate subject in and of itself, but the answer, put simply, is that the problem of punishment is a perennial issue and it is important to understand the intellectual precedents of prison management in order to have a more holistic view of today’s issues.

Today, South Carolina’s prisons are understaffed, much like the system of county jails in the antebellum period.⁸ In 2017, inmate Allen Capers was stabbed in Turbeville Prison in

⁷ Norval Morris and David J. Rothman, *The Oxford History of the Prison: The Practice of Punishment in Western Society* (New York: Oxford University Press, 1995), 117.

⁸ As of April 2019, understaffed prisons are reported to be a nationwide issue. "Shocking Video Shows South Carolina Inmate Apparently Left to Die after Fight," NBCNews.com, Accessed April 29, 2019. Despite lower crime

Columbia, South Carolina, during a fight, and while the video documentations shows that he was dragged away from the fight, he was not given medical attention. As a result, he died while officers restored order—in fact, the video shows that officers can be seen walking past Capers while he bled out. As director of the Turbeville Prison Brian Sterling said, “I don’t know if he should have died, I know that we should have done more to render aid.”⁹ When considering how to address the current problems that the United States prison system faces, it is important to ask why the early prison reformers of the late republic and early antebellum period rejected capital and physical punishments in favor of incarceration, and what the purpose of incarceration is and should be today.

Since the end of the Renaissance, the reform of criminals and their punishments has undergone several rounds of revision as each successive reform has failed to deliver a perfect solution to the problem of crime and punishment in society. In the sixteenth century, workhouses or ‘houses of correction’ were established in England and have been viewed as the forerunner of the penitentiary systems.¹⁰ The publication of John Howard’s work *The State of the Prisons in England and Wales* in 1777 was instrumental to bringing attention to the humanitarian interests of the prison and the condition of prisoners. Francis Lieber’s translation of Gustave de Beaumont and Alexis de Tocqueville’s *Penitentiary System in the United States* in 1833, was another contemporary foundational work produced by early reformers.

Since the amount of published works on penal reform was almost as voluminous as the amount of published works on the debate over slavery, the early prison reformers’ conceptions of

rates in recent years and efforts to reform the current system of mass incarceration, the United States still holds the highest incarceration rate worldwide and this statistic looks unlikely to change in the near future. Campbell Robertson, "Crime Is Down, Yet U.S. Incarceration Rates Are Still Among the Highest in the World," *The New York Times*, April 25, 2019. Accessed April 29, 2019.

⁹ "Shocking Video Shows South Carolina Inmate Apparently Left to Die after Fight," *NBCNews.com*.

¹⁰ Morris and Rothman, *The Oxford History of the Prison*, 83.

confinement are as important to understanding the concept of the penitentiary as the actual historical record of its existence.¹¹ French philosopher Michel Foucault's book *Discipline and Punish*, published in 1975, is recognized as the foundational work of prison historiography. He essentially argued that the Enlightenment's impact on the practice of punishment in western society was to make punishment less about physical retribution and more about a metaphysical transformation of the immaterial soul, a transformation embodied by the purpose of the penitentiary. Literary criticism has also theorized on the conceptions of confinement with Emily Dickinson's description of the imprisoned individual as possessing a double image, "one reflexive and self-disciplining, the other reduced to a soul-numbered living death."¹² Following Foucault's influence, Michael Meranze in *Laboratories of Virtue* develops the argument to assert that the new methods of punishment presented in the penitentiary system were innovations meant to suppress challenges to the new republican order.¹³

Increasingly in recent scholarship, it has become more common to critique Foucault. Mark Kann, in *Punishment, Prisons, and Patriarchy*, argues that early prison reformers were "eager to deprive significant numbers of Americans of liberty and subject them to patriarchal political power."¹⁴ Additionally, Stephen D. Cox has argued that penitentiaries were not nearly as isolated as Foucault presented them to be because they became popular tourist attractions. For example, the Pennsylvania Eastern Penitentiary received four thousand tourists in 1839, and the

¹¹ Morris and Rothman, *The Oxford History of the Prison*, 117.

¹² Caleb Smith, *The Prison and the American Imagination* (New Haven: Yale University Press, 2009), 4.

¹³ Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1996).

¹⁴ Mark Kann, *Punishment, Prisons, and Patriarchy: Liberty and Power in the Early Republic* (New York: New York University Press, 2005), 42.

Auburn Penitentiary in New York received seven thousand visitors and charged a twenty-five cent admissions fee.¹⁵

While much has been written on the subject of penitentiaries in the United States and Europe, and on the connection between slavery and the death penalty in the South, little has been written about how South Carolina fit into the penitentiary conversation in the antebellum period because much of the literature on it refers to the construction of the South Carolina Penitentiary in 1868 and its postbellum legacy. Although Stephen Hindus argues that conservatism and slavery prevented reform of South Carolina's criminal codes, the only work which closely examines the establishment of the South Carolina Penitentiary is a Master's thesis, "The Development of 'An Institution': The Establishment and First Years of the South Carolina Penitentiary, 1795-1881" by John Charles Thomas at the University of South Carolina in 1983.¹⁶

Perhaps Thomas' most important contribution to the almost nonexistent conversation about the development of the South Carolina Penitentiary is that he was the first to bring to light the conversation happening in South Carolina about penal reform in the Antebellum period. He used many archival materials that were then unpublished, but since then the South Carolina Department of Archives and History has made several of these documents available online in digital form. This thesis adds the benefits of new information and perspectives from more recent scholarship, and increased access to archival records than Thomas' examination of the South Carolina Penitentiary. I argue that, while some antebellum leaders viewed penal reform as more closely linked to the possible emancipation of slaves than other Enlightened humanitarian reforms, there was a subset of South Carolinian intellectuals who remained more interested in

¹⁵ Matthew J Mancini, "The Big House: Image and Reality of the American Prison - by Stephen Cox: Book Reviews." *Historian* 74, no. 1 (2012): 102-104.

¹⁶ James W Ely, Hindus, "Prison and Plantation" (Book Review), Vol. 47, No. 2, *Journal of Southern History*, 1981, 273-275.

prison reform than has usually been portrayed. It is likely they might have advocated for reform of the criminal code more if not for the discovery of the Denmark Vesey Plot in 1822.

In order to understand the nuanced arguments on prison reform which dominated a substantial amount of late 18th and 19th century thought, it is first and foremost essential to bear in mind the intended audiences of prison reform literature. Most of the individuals who joined the discussion about American prison reform were those who worked in prisons, were reformers themselves, or were generally “men and women of letters from the world at large.”¹⁷ The first and most obvious of these audiences is the educated class—that is, the general educated public and the politicians with the power to enact large-scale reform. The less important audience was arguably the criminal, or the members of the lower classes who reformers thought would become criminals, in an effort to deter them from becoming criminals. This audience was spoken to through a handful of prisoner autobiographies whose composition was closely supervised by prison officials to reflect well on the reformative success of the penitentiary.¹⁸

When antebellum South Carolinians spoke of “jails” and “prisons” they spoke of two distinct institutions with separate purposes. A prison was meant to hold convicted offenders for punishment whereas a jail was meant to hold those awaiting trial or punishment. It is possible that the “original justification for prison may well have been incapacitation,” and therefore not originally reform.¹⁹ It did, however, come to take on the connotation of religious reform in the wider educated world because “penance’ and its associated meanings have been present in

¹⁷ Michele Lise Tarter and Richard Bell, eds., *Buried Lives: Incarcerated in Early America*, (Athens: University of Georgia Press, 2012), 231.

¹⁸ Tarter and Bell, *Buried Lives: Incarcerated in Early America*, 231-232.

¹⁹ Morris and Rothman, *The Oxford History of the Prison*, ix.

American punishment for centuries. One of the synonyms for prison is penitentiary, which derives from the Middle English *penitenciarie*, an ‘episcopal prison.’”²⁰

In the 1790s, Charleston, which until 1786 was the capital of South Carolina, boasted a city jail which was the constant lament of the political representatives of the Charleston district. What is terribly bewildering about the situation is that it is assumed to be the same jail which was newly constructed in 1771 as a three-story brick structure at a cost of £7,500. This structure would not receive funding for a replacement building until 1802, but this new structure was also in a state of severe disrepair within twenty years.²¹ Clearly, the maintenance of city buildings was not a priority when it came to disease-ridden ‘unhealthful’ jails.

Complaints about this issue originated from the “middling tradesmen dominating the Charleston Grand Jury [whose] periodic protests concerning urban order grew into a torrent of complaints against elite inertia.”²² These middle class movers of society were the primary advocates of urban reform in late eighteenth century Charleston. Historian Emma Hart has labeled them the “civic faction” who created their own space in Charlestonian society by distancing themselves from elites who did not share their interests and by making Charleston’s poor, both white and black, the objects of their urban reforms.²³ However, she argues that their golden age of influence declined with the removal of the capital from Charleston to Columbia in 1786, a phenomenon which was tangibly felt in 1790 when comparing the city’s population to that the rest of the state, and was firmly cemented by 1800 when comparing the city’s population

²⁰ Anne-Marie Cusac, *Cruel and Unusual: The Culture of Punishment in America* (New Haven: Yale University Press, 2009), 20.

²¹ Fraser, *Charleston!*, 128, 205. Additionally, in 1802, private citizens from the Pendleton District also expressed their desire for a penitentiary to be built in South Carolina. “Inhabitants Of Pendleton District, Petition Asking That A Penitentiary House Be Erected In Columbia. (4 Pages; Oversize) Date: 11/15/1802.” SCDAH. Online Records Index.

²² Emma Hart, *Building Charleston: Town and Society in the Eighteenth-Century British Atlantic World*, (Charlottesville: University of Virginia Press, 2010), 175.

²³ Hart, *Building Charleston*, 176.

to that of her former colonial equals of Boston and Philadelphia. The relocation of the state capital and the rise of the backcountry in relation to state politics contributed to Charleston's relative decline and to the parallel decline of its influential middle class—much like “American independence removed the city from a British world, rural growth worked also to separate it from an urban Atlantic.”²⁴ The separation of Charleston from the urban Atlantic world could be seen as a contributing factor to the decline of the city and the state's activity in enacting urban reforms in the subsequent decades as South Carolina's public focus became increasingly insular due to the growth of slavery and the problems it presented to slave-owning South Carolinians' interests in national politics.

Charleston's troubles are indicative of the rest of the state's affairs as well, because if the city jail of such a self-styled prestigious city was the subject of derision by its own citizens, the city jails throughout the rest of the state cannot have fared much better.²⁵ On December 4, 1793, it was reported to the Grand Jury of the General Assembly that the want of a sound roof left the jail's criminal prisoners in great distress, and that “the want of a wall for the front of the jail to prevent the criminals having a communication with the people in the street who supply them with spirituous liquors—by which means they get intoxicated and became very unruly as we are informed by the jailor—” leaves little to the imagination that the Charleston jail was woefully insufficient in the strength of its physical structure.²⁶ Since Charleston held an impressive record on its inability to prevent mass breakouts from the city jail (this happened three times in the

²⁴ Hart, *Building Charleston*, 197.

²⁵ In fact, “grand jury presentments for the period seem to corroborate such a critical view of the county jails. From 1792 to 1799 most of the juries from the respective counties complained of things like the ‘ruinous’ conditions of their jail, the ‘distressed situation’ of the prisoners, and a building ‘much out of repair,’” although none of them seemed to match the level of concern expressed over the conditions at the Charleston jail. John Charles Thomas, “The Development of ‘An Institution’: The Establishment and First Years of the South Carolina Penitentiary, 1795-1881,” 6-7.

²⁶ “Charlestown District, Presentment Concerning Dram Shops, Prisoners Needing Warm Clothing, An Addition To The Jail, Observance Of The Sabbath, And Profanity. (2 Pages) Date: 1/1793.” SCDAH. Online Records Index.

1760s),²⁷ an extremely insecure prison would have been a justifiable cause for citywide concern. Perhaps the best impression of the city at this time was given in 1769, when Charleston was described by a British officer as having:

inconstant, strange, unhealthful weather . . . / Agues plenty without doubt / Sores,
boils, the prickling heat and gout / Musquitos on the skin make blotches /
Centipedes and large cock-roaches . . . / Houses built on barren land / No lamps or
lights, but streets of sand . . . / Every thing a high price / But rum, hominy [grits]
and rice.²⁸

So, while the city was extremely wealthy, it was also an extremely unpleasant place to live no matter one's social class.

In fact, concerns over public drunkenness like those presented on Decemeber 4, 1793, likely informed elite opinions on the need for a penitentiary, because the wealthy elite of the city “believed that plots against their property and perhaps their lives originated in the great numbers of ‘tippling or disorderly houses’ which illegally sold spirituous liquors to sailors, idle and vagrant whites, and slaves.”²⁹ Furthermore, the grand juries of the colony were convinced that tippling houses were the root cause of daily crime.³⁰ The fact that the city watchmen and their wives frequently operated these establishments also did not inspire confidence in the guarantee

²⁷ Fraser, *Charleston!*, 123.

²⁸ Fraser, *Charleston!*, 124.

²⁹ Fraser, *Charleston!*, 122. It is ironic that, as Hart argues, “the dissent faced by Low Country elites had not emerged from the ranks of plain folk, but was instead the result of the coalescing of middling power, principles, and aspirations within an urban context.” Charleston’s rising middle class may not have openly challenged the property and safety of the elite class, but through their reforming measures they challenged the predominant intellectual and moral hegemony of the elites in way that was not as easily quashed as a popular uprising of the city’s poor and destitute. Hart, *Building Charleston*, 176.

³⁰ In a demonstration of the importance of public sobriety, Hart writes that “the membership rolls of the Fellowship Society include many names against which the word ‘excluded’ had been entered, and minutes include discussions to eject members on the grounds of drunk and disorderly behavior, suggesting the importance of upstanding behavior to these societies.” Hart, *Building Charleston*, 238.

of the rule of law.³¹ These suspicions arose in the time of peace between the Seven Years' War and the American Revolution, so it can only be concluded that these anxieties increased at the conclusion of a successful revolution in 1783. Thus, by the 1790s, the penitentiary system, which promised order and a humane, 'enlightened' reform of the criminal and rebellious members of society and was gaining traction as a practical idea in Britain and New England, looked to be a promising solution to the problems facing the city and the state in the early Federal period.

The Charleston jail was still mired in its woeful condition in 1797, at which point the Grand Jury of Charleston scarcely made an effort to conceal its frustration, noting the "little attention paid to former presentments" on the "ruinous condition of the public gaol, disgraceful to the state, as a case of neither proper security for safe keeping, nor in that state of repair and cleanliness needs any for the health of those confined."³² Their request in the same presentment for a prison ship to be anchored in the Charleston harbor during peacetime may have been their temporary solution of the jail's inability to incarcerate its prisoners. Escape would certainly have been out of the question, as well as access to liquor. The leadership of Charleston District continued to complain about the unhealthy condition of the city jail to the state government until 1805, and a year later the legislature and the governor began to investigate the practicality of a penitentiary in earnest.³³

The concerns about the inadequacy of the local jail expressed in the Charleston district presentments of the 1790s, and the noncommittal response of the state government, was not distinctive to the early Federal period. In fact, it was a long-established traditional exchange

³¹ Fraser, *Charleston!*, 122.

³² "Charleston District, Presentment Concerning The Special Jury Law, Paper Medium Loan, Popularity Of Litigation, Need For A Bettering House For Certain Criminals, And Condition Of The Gaol, And Recommending Persons Leaving The State Publish A Notice To That Effect. (3 Pages) Date: 5/15/1797." SCDAH. Online Records Index.

³³ "Charleston District, Presentment Concerning The Unhealthy Condition Of The Gaol, Gaol Budget, And Importation Of Slaves. (3 Pages) Date: 1805." SCDAH. Online Records Index.

between the leadership of the Charleston district and the state government. As early as the 1730s, “the numbers of fugitive slaves, ‘disorderly’ poor whites, brawling sailors, sometimes drunken Indians, confidence men, and counterfeiters within the town alarmed citizens. They believed that the lack of a well-built, escape-proof jail was responsible for the breakdown in law and order.”³⁴ Despite the urging of Charleston’s elite citizenry, the South Carolina General Assembly did not find the Charleston jail, or what passed for a jail, to be deserving of a portion of the closely guarded state budget. Instead, the General Assembly quietly passed the requests on to committees and Charleston was forced to find alternative solutions.³⁵

Their solution was to rent private residences to serve as the “jail.” These “jails” were the epitome of the disorderly system of imprisonment that spurred the prison reform movement in England during the mid-eighteenth century. Since they were private residences, there was little room to separate prisoners from each other. Prisoners were left unguarded with such frequency that escapes were still a commonplace occurrence. The inadequacy of this system, and the attitude of the legislature, was no better exemplified than in the summer of 1745, when

almost all the prisoners escaped from the main jail and subsequently a convict set the prison afire, burning it to the ground. Provost Marshal Lowndes asked the Assembly ‘that something be speedily done’ to build a substantial structure, pointing out that South Carolina was Britain’s only colony ‘that never had erected’ an adequate prison. While the Assembly deliberated, thirteen prisoners who were awaiting trial on charges of murder escaped from their temporary lodgings” and notwithstanding further pleas from Governor James Glen, “the Assembly was unresponsive and prisoners of both sexes continued to be

³⁴ Fraser, *Charleston!*, 57.

³⁵ Fraser, *Charleston!*, 57-58.

lodged together and boarded on meager rations in the ‘close, stinking’ rooms of private dwellings.³⁶

In order to compensate for this inadequacy, many looked to capital punishment to inspire the respect for the law that the jails and other instruments of law enforcement were unable to enforce. This is predominantly why in 1813, there were still 165 crimes which were punished as capital offenses, despite previous unsuccessful attempts to revise the criminal code, which remained much the same as it had been in 1712 when South Carolina was the first colony to accept certain of these British statutes.³⁷ When these punishments were not capital in nature, they remained grotesquely violent—whippings and brandings were mild in comparison to the fate of the horse thief, who was sometimes “ordered to stand in the public pillory with one ear nailed to the post. At the expiration of the sentence the ear was sliced off.”³⁸ All punishments bore the scarring effects of “mechanisms of shame” which were indicative of England’s colonial legacy in the United States.³⁹

The influence of Governor Arnoldus VanderHorst’s call for the establishment of a state penitentiary in 1796 is also reflected in this presentment’s expressed desire for the construction of a ‘bettering house’ for certain types of criminals. Considering the Charleston District Grand Jury’s preoccupation with disorderly behavior and liquor laws throughout the presentments to the state government of the 1790s, it is clear why the idea of a reformatory institution appealed to them. It would allow the state to “cure” its criminals.

³⁶ Fraser, *Charleston!*, 77-78.

³⁷ Fraser, *Charleston!*, 58. Morris and Rothman, *Oxford History of the Prison*, 79, 113. Thomas, “The Development of an Institution,” 8.

³⁸ Fraser, *Charleston!*, 58.

³⁹ Morris and Rothman, *Oxford History of the Prison*, 112.

Concerning attitudes towards the criminal code of South Carolina, the political representatives of the Charleston district took no issue with the harshness of the punishments prescribed, and instead lamented that “many actions heretofore considered as breaches of trust have not been made capital offenses.”⁴⁰ South Carolina’s criminal code was modern in contemporary terms when it was adopted from England in 1712, but by the early Federal period the issue had become whether “too much [was] being done *to* the convict, or was too much being done *for* the convict? [emphasis added].”⁴¹ In fact, the harshness of the punishment was thought to be so effective that public whippings were used in Charleston until at least 1836, and only ceased to be used when they were thought to be a threat to white supremacy. Public hangings, however, continued to be used in much the same way as they were in 18th century England, where the harshness of the punishment was meant to have a deterring effect on criminals and would-be criminals as opposed to the reformatory effect desired by penitentiary advocates. To this effect, these events were “usually advertised weeks before the scheduled date and attract[ed] large, often unruly, crowds.”⁴² Considering Charleston’s extreme concern with widespread burglary in the late 18th century and with the possibility of a proletariat uprising by the rising population of poor, foreign-born whites between 1836-1860, events attracting large and unruly crowds who likely harbored resentment towards those who attempted to impose the law, may not have been the wisest measure.⁴³

In Great Britain and in the United States, prison reform was a principal component of the Enlightenment’s ideal for a ‘civilized society.’ The purpose of this first section is to compare

⁴⁰ “Charleston District, Presentment Requesting An Effective Law To Suppress Vice, That Breaches Of Trust Be Made Capital Offenses, And That Bridge And Ferry Holders Be Obligated To Keep Inns, And Complaining Of The Insufficient Number Of Plantation Overseers, The Unequal Application Of The Patrol Law, And The Condition Of Courthouse And Jail. (4 Pages) Date: 1/21/1794.” SCDAH. Online Records Index.

⁴¹ Morris and Rothman, *Oxford History of the Prison*, 98.

⁴² Fraser, *Charleston!*, 236-239. Morris and Rothman, *Oxford History of the Prison*, 112-113.

⁴³ Fraser, *Charleston!*, 122-124, 236-237.

how South Carolina and Great Britain reformed their criminal codes and practices when basically beginning from the same point of development at the start of the American Revolution. At this time, the conversation about the need for prison reform had already begun in Great Britain, which was reflected in the publication of John Howard's *State of the Prisons in England and Wales* in 1777. Despite the attention of individual Enlightenment thinkers, this work did not garner serious attention or action until the loss of the American colonies created a crisis of reform in Great Britain.⁴⁴ In fact, the colossal embarrassment of losing the American colonies can be said to have been the catalyst Britain needed for action on penal reform—as “political radical” Josiah Danforth promised in 1785, “nothing but a real reform can save us from ruin as a nation.”⁴⁵

The penitentiary movement owes much of its early success as a popular idea to the Quakers. They created the Society for the Improvement of Prison Discipline (SIPD) in 1816, and were firm advocates of the treadmill because it gave them a solution to the most fundamental “struggle between reform and severity” which plagued debates over the penitentiary system by “relacing human discretion with mechanical force, the properly constructed cell and the treadmill.”⁴⁶

The key foundations of the penitentiary—religion, work, and severity—can be traced back to British reformer Jonas Hanway's promotion of solitary confinement as a reformatory practice in his 1776 publication *Solitude in Imprisonment*.⁴⁷ In theory, it was thought that solitude would produce a positive internal change in the prisoner by forcing the individual to consider the wrongness of his or her actions which landed him or her into the penitentiary in the

⁴⁴ "UK | Timeline: Prisons in England." BBC News. April 07, 2006.

⁴⁵ Morris and Rothman, *Oxford History of the Prison*, 85.

⁴⁶ Morris and Rothman, *Oxford History of the Prison*, 97.

⁴⁷ Morris and Rothman, *Oxford History of the Prison*, 86.

hope that the prisoner would be reformed into an individual contributing to the positive good of society. In effect, however, the extensive and complete solitary confinement recommended by the penitentiary system often drove prisoners mad.⁴⁸

In South Carolina, prison reform was one among several potential avenues for reform which arose from an ardent desire to create an enlightened society through the establishment of physical institutions for the betterment of society. This ardent desire to create a better social order was arguably a direct result of the War for American Independence, because the war made many distasteful responsibilities of society distinctly visible—the responsibility of the state to care for the many children orphaned by the conflict and to restore law and order after a period of unrest.⁴⁹ There may also have been a desire to revise the inherited British systems of local governance to create a more wholly American identity, although the criminal code, which is the topic of this paper, would remain largely the same as the British established it in 1712 until well into the antebellum period.⁵⁰

While the establishment of a penitentiary was certainly on the minds of many South Carolinians in the years leading up to 1800 and the start of the new century, it only became a consideration after construction of the Charleston Orphan House was completed in 1794. Part of this delay was due to necessity when a nationwide postwar depression was exacerbated by crop failure in 1785, leaving the city treasury empty. Additionally, the State House at Meeting and Broad Streets in Charleston was destroyed by fire in 1788 and had to be rebuilt the next year,

⁴⁸ Catherine Cox and Hilary Marland, "'He must Die Or Go Mad in this Place': Prisoners, Insanity, and the Pentonville Model Prison Experiment, 1842-52," *Bulletin of the History of Medicine* 92, no. 1 (2018): 78-108. For more information on the continuing debate on the risks of using isolation as a means of punishment, see: Fred Cohen, "Penal Isolation: Beyond the Seriously Mentally Ill," *Criminal Justice and Behavior* 35, no. 8 (2008): 1017-1047.

⁴⁹ Newton B. Jones, "The Charleston Orphan House, 1860-1876." *The South Carolina Historical Magazine* 62, no. 4 (1961): 203-14, 203.

⁵⁰ Thomas, "The Development of 'An Institution,'" 8.

which would have taken first priority among fiscal issues.⁵¹ Despite these obstacles, Charleston still provided for one hundred inmates at its poor house while other city services were allowed to dwindle.

However, new money soon flowed into the South Carolina economy in the 1790s with the increasing amount of exports in rice, indigo, and sea cotton. The development of the cotton gin made the growth of ‘upland’ cotton more profitable, and it also became a significant export commodity as trade in general increased in 1793 because of the war between France and England.⁵² This new revenue allowed for the building of the Charleston Orphan House, a grand, four-story brick symbol of Charleston’s enlightened values, and it was not until 1796 that evidence of serious consideration for the establishment of a penitentiary emerges for the first time in South Carolina.⁵³

The Charleston Orphan House reflected South Carolinians’ ardent desire to create an enlightened society by establishing a series of institutions to serve the moral well-being of society. The impetus for the founding of the orphan house began with the charge given to the City Council in 1783 to provide for the orphans of Charleston’s lower classes. As an Enlightenment institution, this included giving the children an education in order to create a better social order.⁵⁴ In a similar vein, the impetus for the revision of the criminal codes and the establishment of a penitentiary also began in the wake of the American Revolution as the new government now turned its attention to domestic affairs, particularly the restoration of law and

⁵¹Fraser, *Charleston!*, 173-4, 176-9.

⁵² Fraser, *Charleston!*, 174.

⁵³ “Vanderhorst, Gov. A., Message Concerning The Foreign And Domestic Debt, State-Federal Relations, Criminal Code, Militia Law And The Promotion Of Officers To Brigadier Rank, Duties Of The Adjutant General, Condition Of Various Forts, Construction Of A Fort To Defend Charleston, Inland Navigation, The Canal Between The Santee And Cooper Rivers, And The Need For A Penitentiary In Charleston, Public Schools, The Elimination Of Trivial Trials, And The Prevention Of Debtors From Buying Their Own Property At Execution Sales. Date: 11/29/1796.” SCDAH. Online Records Index.

⁵⁴ Jones, "The Charleston Orphan House, 1860-1876," 203-14, 203.

order over the turmoil of wartime.⁵⁵ Furthermore, the criminal code was not the only matter of concern at the start of the 19th century because the state was laying away resources to create South Carolina College (today the University of South Carolina) in the new seat of government in Columbia, which was still far from completion but served the ideal of creating a better social order with educated citizens.

The traditional image that South Carolina, as a Southern state, has never been at the forefront of reform nor the least bit interested in its implementation, is only half true. In the establishment of penitentiaries, South Carolina was most definitely not an innovator in reform. The claim that the state did not keep abreast of these developments, however, is not entirely true and discredits the complexities of Southern intellectual thought in the antebellum period.⁵⁶ A better understanding of the issue is that the state government often prioritized other political or internal development concerns over penal reform or otherwise concluded that while the penitentiary system was an outstanding achievement of moral progress, South Carolina did not need penitentiary institutions like the ‘unruly’ growing populations of the northern states did in order to maintain an orderly and moral society.⁵⁷ Between 1796 and 1860, most of the districts of South Carolina made repeated presentments to the Grand Jury of the state to establish a penitentiary, which was ultimately granted in 1866, long after the pioneering impetus for penitentiary reform had first become a topic of crucial concern for the rest of the country. In effect, South Carolina talked the game of Jacksonian reform on the subject of the penitentiary for

⁵⁵ Fraser, *Charleston!*, 179.

⁵⁶ For an analysis of the difficulty of definitively defining antebellum political thought in South Carolina, see: Raymond James Krohn, "Antebellum South Carolina Reconsidered: The Libertarian World of Robert J. Turnbull." *Journal of the Historical Society* Vol. 9, no. 1, 2009, 129-154.

⁵⁷ A prominent example of a different internal reform prioritized over the penitentiary was the care of the mentally ill, because in the 1820s the conversation about penal reform dissipated in South Carolina, but the state provided for the construction of the Insane Asylum, built in Columbia in 1821.

the better part of sixty years, but did nothing substantial about it until it was viewed as directly relating to the state's interests.

In the 1790s, the penitentiary experiment became a subject of legislative debate in South Carolina following the pioneering measures of Ohio, Pennsylvania, and Virginia to revise their penal codes, with Ohio and Pennsylvania going so far as to abolish capital punishment as a sentence with the exception of murder.⁵⁸ The debate over the establishment of a penitentiary and the revision of the penal code went hand in hand in South Carolina because it would be difficult to fill a penitentiary if the law were to sentence most criminals to death. South Carolina Governors Arnoldus VanderHorst (1794-1796) and Charles Pinckney (1796-1798) espoused statements during their time in office in support of the penitentiary model which then found receptive common ground with public opinion expressed through the *Charleston Daily Gazette*.

A certain Robert James Turnbull offered the reform-minded link needed to garner public attention by taking private initiative in investigating the practicality of the penitentiary question and not merely espousing statements of grand eloquence on the morality of the subject. Henry Latrobe identified this latter phenomenon as a major obstacle to substantial action on the issue of reform, because “to convince mankind that their interests are involved is to make them act, to prove that their duties are concerned will only set them on talking, humanely.”⁵⁹ As the research on the South Carolina Penitentiary shows, especially in relation to the ‘peculiar institution,’ this mere talk and lack of action was the chief obstacle to building a penitentiary in South Carolina. In comparison of South Carolina’s progress, or lack of progress, to the rest of the United States, South Carolinian advocates of penal reform such as citizen Robert James Turnbull in the 1790s,

⁵⁸ Thomas, “The Development of ‘An Institution,’” 8. Although it was not a state until 1803, Ohio did abolish the abolish capital punishment for all crimes except murder in 1788.

⁵⁹ John M Bryan, “Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808.” *The South Carolina Historical Magazine* 85, no.1 (January 1984), 11.

architect Robert Mills in the first decade of the 19th century, and professor Francis Lieber in the 1830s, offer valuable contemporary views of what was considered innovative penal reform and of how far South Carolina lagged behind these innovative reforms.

Turnbull was not a typical native South Carolinian for the circumstances of the late eighteenth century, but by the end of his life would be the epitome of the antebellum plantation-lawyer image. He was the son of an Englishman and a Greek woman who moved to Charleston while it was under British occupation in the Revolutionary War after they met with little success in the British colony at New Smyrna, Florida.⁶⁰ Turnbull was raised in South Carolina, educated in England, and in 1797, ready to make his mark on the world. He did this rather inadvertently by writing a letter to a friend in Charleston while he was traveling in Pennsylvania. In his letter, he offered his views on the usefulness of the newly constructed Walnut Street prison in Philadelphia. Since the topic of penitentiaries was becoming a topic of popular discussion by this time, Turnbull's friend submitted his letters to the *Charleston Daily Gazette* in February 1797. By the end of the year, these letters were published as a book along with several addendums and corrections.⁶¹ Although he claimed not to have held any intention of the letters being seen by a large audience, the fact that this work was his "first emanation of a youthful pen" points to a hopefulness that his research on the Walnut Street prison would attract the interest of someone in a position of influence. His "youthful pen" also served a double purpose by providing a polite and 'humble' excuse for his opinions if they were not well received.⁶²

⁶⁰ "Robert James Turnbull." n.d. Robert James Turnbull | Gibbes Museum. Accessed April 19, 2019.

⁶¹ Bryan, "Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808," 9. Robert James Turnbull, *A Visit to the Philadelphia Prison: Being an Accurate and Particular Account of the Wise and Humane Administration Adopted In Every Part of That Building: Containing Also an Account of the Gradual Reformation, And Present Improved State, of the Penal Laws of Pennsylvania: With Observations On the Impolicy And Injustice of Capital Punishments: In a Letter to a Friend*. Philadelphia: Reprinted and sold by J. Phillips & Son, 1797. eBook, Hathi Trust Digital Library: <https://hdl.handle.net/2027/mdp.35112104498300>.

⁶² Turnbull, *A Visit to the Philadelphia Prison*, p. ii.

The success of Turnbull's work *A Visit to the Philadelphia Prison* is demonstrated through the number of its editions available in WorldCat when compared with his more famous work *The Crisis, or Essays on the Usurpations of the Federal Government*. WorldCat recognizes twenty five editions of *A Visit to the Philadelphia Prison* published between 1796 and 2017 while it only recognizes nine editions of *The Crisis* published between 1827 and 2013.⁶³ This is remarkable considering that the editorials which composed *The Crisis* have been credited by historian William W. Freehling as the "most responsible . . . 'for creating [a] new militancy' in the state, making Robert J. Turnbull 'a hero of the nullification campaign' in the process."⁶⁴ Thus, although Turnbull died in 1833, he was one of the most important advocates for states' rights in South Carolina. Over the course of his adult life, he transitioned from being a penitentiary advocate as a young man to being a prominent states' rights advocate when he reached middle age. This transition is indicative of the shift in popular opinion towards secession which Benjamin F. Perry, a contemporary of Francis Lieber in South Carolina politics, claimed in 1849 to have so transfixed South Carolina politicians since 1830 that it placed the state at a "twenty year disadvantage behind the rest of the nation," especially on the matter of penitentiaries.⁶⁵

Turnbull's writings in *A Visit to the Philadelphia Prison* and *The Crisis* are paradoxical. John Charles Thomas' analysis of Turnbull's opinions in *A Visit to the Philadelphia Prison* is that his "viewpoints on crime and punishment took much of their substance from Enlightenment and Quaker philosophies; this led him to advocate such ideas as the abolition of slavery so blacks

⁶³ "Turnbull, Robert J. (Robert James) 1775-1833," [WorldCat Identities]. Accessed April 10, 2019. <http://worldcat.org/identities/lccn-n83165737/>.

⁶⁴ Krohn, "Antebellum South Carolina Reconsidered: The Libertarian World of Robert J. Turnbull," 129-154, 131.

⁶⁵ Thomas, "The Development of 'An Institution,'" 51.

could share in penal reform.”⁶⁶ The twenty-two year old author actually went so far as to praise the equality whites and free blacks shared in the Walnut Street prison, where they ate at the same table and worked together in the same space.⁶⁷ This is a far cry from Turnbull’s later viewpoints. Not only did Turnbull sit in a position of judgement at the Denmark Vesey trials, but he also advocated the temporary imprisonment of free black sailors shortly thereafter in response to the heightened widespread fear among white South Carolinians of slave revolts, especially on a grand scale. Most importantly in 1822, “Turnbull argued for slavery’s benign nature by emphasizing that bondsmen were well-fed and well-clothed, and neither overworked or without proper care.”⁶⁸

Similarly, before the problem of the expansion of slavery usurped the attention of South Carolinians away from internal reform, South Carolina could have been among the first states to establish a penitentiary system in the United States.⁶⁹ Between 1806-1808, the state government seriously considered the construction of a penitentiary, an effort which art history professor John M. Bryan describes as “abortive.”⁷⁰ As with every effort by the state government to move forward on the subject of establishing a penitentiary, the governor called for action and the state legislature was unwilling to take any substantial action on the matter. In 1803, Governor James B. Richardson requested information from the governors of New York, New Jersey, Massachusetts and Virginia on their newly established penitentiaries. His research was continued

⁶⁶ Thomas, “The Development of ‘An Institution,’” 9.

⁶⁷ Turnbull, *A Visit to the Philadelphia Prison*, 28.

⁶⁸ Krohn, “Antebellum South Carolina Reconsidered,” 134.

⁶⁹ The state was very supportive of internal *development* and promoted the building of canals and even more auspiciously, an insane asylum, but was not keen on the idea of enacting internal *reforms* to institutions already in existence. For more on antebellum internal development in South Carolina, see: Ryan A Quintana, “Planners, Planters, and Slaves: Producing the State in Early National South Carolina,” *Journal of Southern History* 81, no. 1 (2015): 79-116.

⁷⁰ Bryan, “Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808,” 1.

by his successor Governor Paul Hamilton, who prioritized South Carolina's need for penal reform as "the first item on his legislative agenda."⁷¹ Part of Hamilton's failure to see his legislative agenda through to a positive conclusion is that impeachment charges were brought against him and he resigned his position as governor in order to answer these charges.⁷² This is particularly frustrating considering that he was able to persuade some members of the legislature to support his penitentiary agenda.⁷³

Robert Mills, a South Carolina native and one of the leading architects of the early 19th century, proposed a plan for a South Carolina Penitentiary at the start of his career when he was searching for a commission which would cement his reputation as an architect. In his proposal, he drew upon the most current European models. An advocate of social reform long before he was commissioned to design the South Carolina Asylum in 1821, Mills was already an advocate of the ability of architectural design to enact social reform, "a conviction that was the cornerstone of his career."⁷⁴ Anticipating budgetary objections, in his original missive to Governor Hamilton he provided for a construction plan which could be implemented in stages if necessary. Evidence of Mills' dedication to advancing his career and acquiring the best minds to make his penitentiary proposal the best it could possibly be is revealed in his ambitious letter to President Thomas Jefferson in September, 1806. He also visited the penitentiaries in Philadelphia and

⁷¹ Bryan, "Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808," 3.

⁷² "Hamilton, Gov. Paul, Message Transmitting His Resignation In Order To Prepare His Defense Against Charges Brought Against Him. Date: 12/1/1806." SCDAH. Online Records Index. The presumed charges are specified in "Committee Report And Resolutions Respecting The Memorial Of William Rouse, Who Seeks To Impeach The Late Governor After Being Refused A Commission And Being Court-Martialed. (8 Pages) Date: 12/11/1806," as well as "Committee Report And Resolutions Respecting The Memorial Of John Geddes, For Impeachment Of Paul Hamilton, Who Refused To Confer A Militia Commission. (2 Pages) Date: 12/13/1806." SCDAH. Online Records Index. At the time of writing the latter two documents have not been made available online.

⁷³ Bryan, "Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808," 9-10.

⁷⁴ Bryan, "Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808," 2.

Richmond—presumably under the assumption that if a penitentiary could work in Virginia, a slave holding state, then a penitentiary could also work in South Carolina.⁷⁵

During this “abortive” two year attempt to establish a penitentiary a prodigious amount of written material was produced. By the end of 1807, the Judiciary Committee submitted a report which compiled the input of other governors on the penitentiary system in their states and Robert Mills’ proposal for the South Carolina Penitentiary and proposed a bill, presumably on the establishment of a penitentiary.⁷⁶ The entire document numbered 190 pages. Since this effort was able to produce a bill proposal of considerable length, it is the closest South Carolina came to constructing a penitentiary in the antebellum period prior to 1839 and was probably the state’s best chance to do so. But, in losing the early momentum to build a penitentiary at this point in time, South Carolina also lost the benefits of having Robert Mills reside in his native state. Although he did eventually build the South Carolina Asylum, it stands to reason that he could have done much more for the development of the state if he had not found better opportunities in the North.⁷⁷ Instead, Burlington, New Jersey benefited from his penitentiary designs, which were based upon Jefferson’s suggestions which architect Henry Latrobe had incorporated into his design for the Virginia Penitentiary.⁷⁸ The failure of this project came not from South Carolina’s overwhelming recalcitrance to reform, although opposition to the penitentiary system was

⁷⁵ Bryan, “Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808,” 12.

⁷⁶ “Judiciary Committee, Report And Supporting Papers On Part Of Governors Message No. 1 Relating To The Penitentiary System, With Plans, Reports, Correspondence From Governors Of Various States And Robert Mills, And A Proposed Bill. (190 Pages) Date: 12/10/1807.” SCDAH. Online Records Index. Undigitized.

⁷⁷ Bryan, “Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808,” 20.

⁷⁸ Bryan, “Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808,” 21.

certainly present, but from the competition between Charleston and Columbia, the old and new seats of state power and influence.⁷⁹

Furthermore, there may have been a prevailing attitude in Charleston during the antebellum period that the city was already providing for the reform of criminals. When the city jail once again became incapable of keeping its prisoners securely incarcerated in the early 1820s, instead of providing for the construction of a new building, “funds were appropriated in the mid-1820s for a four-story brick wing of solitary cells for hardened criminals.”⁸⁰ By adding solitary cells for the worst offenders, the members of the Grand Jury of the Charleston District were reflecting the impact of developments of penal reform which called for the separation of criminals so that the jail did not become a center for learning more advanced criminal behavior.

This development was also displayed in Governor Thomas Bennet’s (1820-1822) recommendation for the “construction of solitary cells in each of the Gaols of the State subjecting to this and the ordinary mode of improvement all crimes against the State, excepting murder and inciting slaves to Rebellion.”⁸¹ Yet Governor Bennet did not stop there—before the Denmark Vesey plot was discovered, he sought to ameliorate the criminal code in relation to slaves and freedmen. In the same message to the legislature on November 27, 1821, he argued that “there are no provision which present stronger and more urgent claims to the justice, humanity and prompt attention of the Legislature, than those which prescribe the mode of trial

⁷⁹ Bryan, “Robert Mills, Benjamin Henry Latrobe, Thomas Jefferson, and the South Carolina Penitentiary Project, 1806-1808,” 18.

⁸⁰ Fraser, *Charleston!*, 205.

⁸¹ “Bennett, Gov. Thomas, Message Concerning State-Federal Relations, Reform And Codification Of Laws, The Importation Of Slaves, The Need For A Supreme Court Of Errors And Appeals, Improving The Arsenals, Problems Encountered In Internal Improvements, Rivers Needing Improvement, Punishments For Slave Criminals, The Completion Of A Road From Saluda Gap To Charleston, And Militia Reforms Involving Inspections, Training, Court-Martials, And Officers Duties. Date: 11/27/1821.” Image S1650091200000000m.jpg. SCDAAH. Online Records Index. Accessed 4/22/19.

and punishment for crimes committed by slaves and other negroes.”⁸² His reasoning was remarkably similar to that of reforming the criminal code more generally: the early state of lawlessness in South Carolina forced the state’s leaders to adopt harsh punishments and laws, but because the state no longer existed in such a precarious position,

the necessity which dictated [harsh punishments] has long since ceased and been supplanted by affection and sympathies [specific to the ‘peculiar institution’ of slavery], whose growth has been cultivated by the active beneficence and human attentions of their proprietors. The protection to which this class of persons is distinctly entitled, the suggestions of humanity and manifest injustice to which the present system tends, will it is confidently believed produce a salutary change.⁸³

Additionally, between 1836 and 1856, when the Poor House was reformed and named the Almshouse, there was a prevalent impression among wealthy Charlestonians that the Poor House functioned “‘not only as a place of refuge for the victims of misfortune, but as a . . . House of Correction’ [and] was jammed with paupers and criminals”—this reputation was so repugnant to social sensibilities that “the commissioners of the poor urged the city government to find other quarters because the needy poor refused to apply to the old Poor House because of its reputation ‘as a place of punishment for the unworthy.’”⁸⁴ This establishes a clear connection between poverty and crime in Charleston in the minds of contemporary elites. It also establishes a connection between the ideas of ‘correction’ and ‘punishment,’ which was the purpose of the penitentiary: to correct and punish the criminal simultaneously.

⁸² “Bennet, Gov. Thomas, Message Concerning State-Federal Relations,” Image S1650091200000000n.jpg.

⁸³ “Bennet, Gov. Thomas, Message Concerning State-Federal Relations,” Image S1650091200000000n.jpg-S1650091200000000o.jpg.

⁸⁴ Fraser, *Charleston!*, 236.

It is perhaps due to this assumption that Charleston, at least, already provided for the correction of criminals, that outside influence was needed to bolster Benjamin F. Perry's legislative campaign for a penitentiary in 1839. Like the young Robert Turnbull and Robert Mills, Francis Lieber was a strong advocate for the penitentiary system, but, unlike them, he was not originally from South Carolina. Consequently, he is the best example of the dichotomy between liberal reform and the institution of slavery created by South Carolina's particular brand of libertarianism. As a Prussian immigrant who spent much of his first years in the United States in the Northeast, South Carolinian libertarianism, and southern libertarianism more generally, was foreign to him, at least when he first arrived in South Carolina.⁸⁵ A liberal nationalist who held a deep abhorrence of slavery but struggled to express this to his contemporaries in South Carolina, he may have been one of the few prominent members of South Carolinian society with remotely anti-slavery sentiments, which can be directly attributed to his life experiences outside of South Carolina before becoming a professor at the South Carolina College.⁸⁶ This directly impacted his opinions about reforming southern society, because in 1839 he was still new to the state and its customs and therefore could more clearly see the inherent hypocrisy of the social dictates of the 'peculiar institution'.

Even after he awkwardly settled into life in South Carolina by becoming a slaveowner himself, Lieber was still much more open to intellectual life outside of local South Carolinian interests because he "managed to stay in contact with almost everyone who mattered in the intellectual life of antebellum America, as well as with many of his European counterparts" in

⁸⁵ Krohn, "Antebellum South Carolina Reconsidered: The Libertarian World of Robert J. Turnbull," 129.

⁸⁶ Sara M. Benson, "A Political Science of Punishment: Francis Lieber and the Discipline of American Prisons," *New Political Science*, 2015, Vol. 37, No. 3, 382-400.

hopes of finding a professorship anywhere north of South Carolina.⁸⁷ The private opinions of such an incredibly well-connected and independently-minded individual are therefore a dependable contemporary litmus test for how well or how poorly South Carolina compared to reform efforts happening in the rest of the United States and in Europe.

Lieber's private opinions are the most important factor to take into account when judging his principles, because he was afraid of the consequences of his real opinions becoming public knowledge in South Carolina and therefore his public opinions served more as a front for the sake of social norms than an accurate reflection of what he actually thought. Lieber's reticence to do more than hint at his true opinions in his public writings has been scrutinized by many scholars, often with a referral to the time he spent as a political prisoner in Prussia and his keen sense of being an outsider in South Carolinian society. To this suspicion of him as an outsider, it should be added that he partly fit the profile of the four white men who were convicted of supporting the Denmark Vesey revolt in 1822. The white men convicted of conspiracy were distinguished from each other by their place of origin and race, not their names, by South Carolina historians Yates Snowden and H. G. Cutler in 1920. While these authors gave descriptions of Denmark Vesey and other prominent conspirators at great length, only one sentence was given to the white conspirators. They were "four white men, a German peddler, a Scotchman, a Spaniard and a Charlestonian, indicted for complicity, were tried in a court having jurisdiction over whites, and were sentenced to prison for terms ranging from three to twelve months."⁸⁸

⁸⁷ Paul Finkelman, "Lieber, Slavery, and Free Thought," in *Francis Lieber and the Culture of the Mind: Fifteen Papers Devoted to the Life, Times, and Contributions of the Nineteenth-Century German-American Scholar, with an Excursus on Francis Lieber's Grave*, edited by Charles R. Mack and Henry H. Lesesne, (Columbia: University of South Carolina Press, 2005), 13.

⁸⁸ Yates Snowden and H. G. Cutler, *History of South Carolina*, Volume 1, (Chicago, New York: The Lewis Publishing Company, 1920), 558.

Although Lieber was not from the same social class as these men, he bore a certain similarity to them in that he was not originally from a slave-holding state and his status as a well-known advocate of penal reform made his interest in maintaining the social order of slavery questionable, like the lower social class of the white conspirators made their interest in maintaining the status quo of slavery questionable. The difference was that the white sympathizers to Vesey's plan avoided capital punishment for inciting slave rebellion through a legal loophole, but Judge Bay and others made certain this loophole would not be available in the future. Therefore, if Lieber was tried and found guilty of inciting slaves to rebellion in the 1830s-1850s, the consequences for him would have been of a much greater magnitude than they were for the white conspirators of the Vesey revolt in 1822, particularly because it discredited Governor Thomas Bennett's argument for the reform of harsh criminal codes directed towards slaves and free blacks in 1821.⁸⁹

The disparity between Lieber's public accommodation of the 'peculiar institution' and his private remonstrance of it form two very different images of his life in scholarly literature. Some would argue that while he was not an abolitionist, he was also not an advocate for slavery, and was therefore the exemplary advocate of political moderation and accommodation against the rallying cries of the secessionists and the abolitionists. Others place more attention on the unpublished works and unsent letters he wrote to state leaders which were critical of slavery and South Carolina's lack of reform more generally.⁹⁰

⁸⁹ Rubio, "'Though He Had a White Face, He Was a Negro In Heart': Examining the White Men Convicted of Supporting the 1822 Denmark Vesey Slave Insurrection Conspiracy," 50-67. "Bennett, Gov. Thomas, Message Concerning State-Federal Relations, Reform And Codification Of Laws, The Importation Of Slaves, The Need For A Supreme Court Of Errors And Appeals, Improving The Arsenals, Problems Encountered In Internal Improvements, Rivers Needing Improvement, Punishments For Slave Criminals, The Completion Of A Road From Saluda Gap To Charleston, And Militia Reforms Involving Inspections, Training, Court-Martials, And Officers Duties. Date: 11/27/1821." SCDAH. Online Records Index. Accessed 4/30/19.

⁹⁰ For example, in *Francis Lieber and the Culture of the Mind: Fifteen Papers Devoted to the Life, Times, and Contributions of the Nineteenth-Century German-American Scholar, with an Excursus on Francis Lieber's Grave*,

However Lieber managed his personal convictions and societal pressures while living in South Carolina, the constitutional amendment proposals he drafted during the Civil War are proof that he never completely abandoned his hopes for substantial reform. It is true that he would not have identified himself as an abolitionist, but rather thought that slavery was inevitably destined to pass away as an institution. Despite this more abstract and emotionless critique of slavery, it is imperative to notice that when the Civil War broke out and he offered his services to Lincoln, Lieber took a proactive interest in protecting the rights of former slaves. In what can only be seen as a reflection of his interest in penal reform, he wanted to give African Americans representation through the *federal* courts. Perhaps most surprisingly, given his plethora of writings on the need for a humane penal system, most importantly his translation of Alexis de Tocqueville and Gustave de Beaumont's *Penitentiary System in the United States* and his own later publication of "Essays on Subjects of Penal Law and the Penitentiary System," he suggested capital punishment as an appropriate penalty for slaveowners and traders who failed to comply with emancipation.⁹¹ It may be that his twenty years spent in South Carolina convinced him that anything less would be insufficient on the matter of slavery. If this was indeed his perspective, then arguably "though he had a white face, he was a negro in heart," much like the Vesey supporters, but with a vision to create a better legal code in place of violently overthrowing an unjust one.⁹²

Paul Finkelman's tone towards Lieber is more critical, describing him as an egomaniac who adopted a mildly pro-slavery view. Michael Vorenberg's article, however, reveals a forward-thinking man who sought to protect the rights of former slaves and prevent their former masters from re-enslaving them under the name of a new social order.

⁹¹ Michael Vorenberg, "Emancipating the Constitution: Francis Lieber and the Theory of Amendment," in Charles R. Mack and Henry H. Lesene, eds., *Francis Lieber and the Culture of the Mind* (Columbia: University of South Carolina Press, 2005), 25.

⁹² Rubio, "'Though He Had a White Face, He Was a Negro in Heart': Examining the White Men Convicted of Supporting the 1822 Denmark Vesey Slave Insurrection Conspiracy," 50-67.

Ultimately, the penal reform movement and Lieber were both stunted in their success in South Carolina because neither could accommodate slavery and still produce their best contributions to the betterment of society. While the legislators of the state who were opposed to the adoption of a penitentiary did not necessarily equate the penitentiary with a direct challenge to the ‘peculiar institution,’ the penitentiary did present itself as a challenge to the interests of the most conservative members of society because “to the slaveowners of the Deep South, the age of humanitarian reform threatened to become an age of emancipation,” and Francis Lieber and Benjamin F. Perry both considered South Carolina to be one of the most conservative societies in the United States.⁹³ In order to be successful in South Carolina, the penal reform movement would always have to be made subservient to the societal dictates of the ‘peculiar institution.’ This meant that the penitentiary system could not function in South Carolina as it had been designed to do in New England, and its construction as a post-war institution in 1866 was begun with the understanding that it would be an extension of the state’s control over the newly emancipated African American population.⁹⁴

So, even when the penitentiary was finally established, it was unsuccessful in truly achieving the goals of the penal reform movement because it was created as a institutional device for returning to the social dictates of slavery. Similarly, Lieber’s sense of being stifled under the moral duress of living in the slave-holding South was due to his accommodation of slavery in his personal and professional life while privately condemning the institution, and therefore himself for partaking in it. It was only when he, as he seems to have felt, ‘escaped’ this moral conundrum that he was able to undertake the most defining work of his career: writing what has become

⁹³ Jeffrey Robert Young, *Domesticating Slavery: The Master Class in Georgia and South Carolina, 1670-1837*, (Chapel Hill: University of North Carolina Press, 1999), 69. Thomas, “The Development of ‘An Institution,’” 50.

⁹⁴ Thomas, “The Development of ‘An Institution,’” 53.

known as the Lieber Code for President Lincoln during the Civil War. The Lieber Code is still influential today as the “first modern codification of the laws of war.”⁹⁵

Following the conclusion of the Civil War, white South Carolinians became much more receptive to reforming the state’s penal system. This is likely due to a multitude of factors: the defeated Confederates needed something positive to restore their own pride in South Carolina and increase her respectability to the rest of the United States and abroad as well as to find a new method of social control over the state’s African American population. By recognizing that the antebellum system of country jails was grossly insufficient to serve the *entire* criminal population of the state and not merely the white half, the penitentiary that the state legislators had so long pushed away as a challenge to the institution of slavery now became their solution to the absence of slavery.⁹⁶

Since the South Carolina Penitentiary was designed to compensate for the loss of slavery, its primary purpose was not actually to reform the criminal like Governor Orr claimed it to be. The entire process was a “rush job” and the plans for it were not given the same level of research and scrutiny as the 1839 Special Committee on Penitentiaries gave to studying the Auburn and Pennsylvania Systems and their suitability to South Carolina. Whereas in 1839 the commissioners researched the success of penitentiaries in Europe and throughout the United States, the 1866 commissioners only consulted penitentiaries in Tennessee, Ohio, Pennsylvania, Maryland, and Virginia.⁹⁷ This is an astoundingly small number considering that by the start of the Civil War most states had penitentiaries. It can be concluded that their avoidance of northern

⁹⁵ "Lieber Code." Oxford Public International Law. June 06, 2017. Accessed April 18, 2019.

⁹⁶ Thomas, “The Development of ‘An Institution,’” 53. Specifically, “Governor James L. Orr, himself long an advocate of penal code revision . . . cited the same defects in the criminal code as had his predecessors over the last seven decades: lack of mild punishment for minor crimes, a hesitancy of juries to impose the death penalty, and the need for adequate punishment in the county jails.” However, he also “noted that the number of convicts would begin to increase greatly owing to the emancipation of the Negroes.”

⁹⁷ Thomas, “The Development of ‘An Institution,’” 62.

penitentiaries with the exception of Pennsylvania limited the success of the committee's penitentiary tour.

Several other issues factored into the penitentiary's dismal performance, but the root of its unsuccessful record was that it was being applied to a function for which it was not designed. Despite the moral tone of reform which framed the penitentiary conversation in 1866-1867, its real aim was to control the African American population in a fiscally sound manner, not to reform the overwhelming number of African American criminals whom South Carolina politicians clearly expected to fill the penitentiary under Johnsonian Reconstruction. In fact, it seems more attention was being spent on keeping the costs of construction as low as possible rather than being spent on the reforming power the penitentiary was supposed to effect on its inhabitants.⁹⁸ Governor James L. Orr (1865-1868) was acutely aware of the legislature and the public's concern with the cost of the penitentiary following the economic blow of the Civil War. Therefore, he sought to cut costs by using the convicts as the laborers. It is not clear whether or not convict labor was used to construct the penitentiary, only that freedmen composed most of the workforce.⁹⁹

John Charles Thomas uses the newspaper editors of South Carolina to gauge public opinion of state officials' proposals on penal reform. He argues that after the Civil War, for all but the oldest and most conservative members of elite society, their previously unwavering conservative attitudes on the matter of penal and criminal code reform were suddenly turned into votes of confidence for the penitentiary system. The chief supporting points given by these writers were that labor provided by the penitentiary was valuable and that there were popular

⁹⁸ Thomas, "The Development of 'An Institution,'" 63.

⁹⁹ Thomas, "The Development of 'An Institution,'" 53, 65.

fears of a rise in crime from both races because of emancipation.¹⁰⁰ The public's fear and the politicians' desire to turn this situation to their economic advantage through convict labor helps provide an understanding of why Lieber recommended the death penalty as a punitive measure to enforce emancipation. The proponents of the 1866 vision for a South Carolina penitentiary had no intention of using the penitentiary to enforce emancipation—their interests were in creating a penal system that would preserve as much as possible the antebellum social order and be capable of maintaining law and order in a post-war world where the county jail system failed to control convicts in peacetime.¹⁰¹ The weighty importance of the penitentiary in preserving social order is best revealed through the state government's priorities: “the penitentiary commissioners proposed that after completion of the prison, the [leftover] granite could be used to finish the new State house and to rebuild Columbia and Charleston.”¹⁰² Building the penitentiary was deemed more important to South Carolina's interests than rebuilding its two most populous and influential cities and the State House.

In 1839, the members of the South Carolina Legislature's Special Committee on Penitentiaries delivered a hefty and well-researched report recommending that South Carolina adopt the Pennsylvania System and establish a penitentiary within the next few years. The purpose of this committee was not to innovate an entirely new penitentiary system, but to thoroughly investigate the attributes of all other penitentiary systems then in effect throughout the United States and Europe, and from there deliver a recommendation.¹⁰³ The members of this committee did not innovate, but they did without a doubt seek out the most accurate and current

¹⁰⁰ Thomas, “The Development of ‘An Institution,’” 54-55.

¹⁰¹ At the very least, the Penitentiary did not receive convicts until April 18, 1867, under Johnsonian Reconstruction. As a result, the first prisoners to arrive at the South Carolina Penitentiary were two white men found guilty of stealing bread from a freedman. Thomas, “The Development of ‘An Institution,’” 67-68.

¹⁰² Thomas, “The Development of ‘An Institution,’” 66.

¹⁰³ “Resolution To Appoint A House Committee To Study The Penitentiary System In The United States And Europe. Date: 12/6/1838.” SCDAH. Online Records Index.

information available to them and consider how a penitentiary system developed in the North could be adapted to the social order of the South.¹⁰⁴

There was no shortage of information on the penitentiary system for the Special Committee on Penitentiaries to examine in 1839. By the 1820s, many states of the U.S. and Europe had embraced the penitentiary system and were able to provide abundant information on the practical success, or lack thereof, of the penitentiary. Specifically, the Committee named Massachusetts, Maine, Connecticut, Rhode Island, New York, Pennsylvania, Ohio, Illinois, Virginia, New Jersey, New Hampshire, Vermont, Maryland, Kentucky, Georgia, Tennessee, Alabama, Mississippi, Michigan, Louisiana, and the District of Columbia as the “twenty one out of twenty six States of this Union [where] Penitentiaries have been established.”¹⁰⁵ In the rest of the western world, the penitentiary had been adopted by the Province of Upper and Lower Canada, Prussia, France, Belgium, England, Scotland, and Russia.¹⁰⁶ Throughout the Committee’s final report, they

express their deep regret, that, whilst there has been a sort of rivalry in the other states of this great Confederacy, in order to perfect a wise, just and humane system of Penitentiary Discipline for the punishment and reformation of criminals, South Carolina has seemed to remain contented and satisfied with that

¹⁰⁴ “Perry, Benjamin F., Chairman Of Special Committee On Penitentiaries, Report And One Enclosure, Others Missing, Comparing Penal Systems In Other States And Nations, Giving Details On The Cost Of Penitentiary Constuction, Recommending Reform Of S.C. Criminal Cope, And Recommending The State Adopt The Pennsylvania Penitentiary System. (40 Pages) Date: 1839 C.” SCDAAH. Online Records Index. Accessed 4/18/19.

¹⁰⁵ “Perry, Benjamin F., Chairman Of Special Committee On Penitentiaries, Report And One Enclosure, Others Missing, Comparing Penal Systems In Other States And Nations, Giving Details On The Cost Of Penitentiary Constuction, Recommending Reform Of S.C. Criminal Cope, And Recommending The State Adopt The Pennsylvania Penitentiary System. (40 Pages) Date: 1839 C.” SCDAAH. Online Records Index. Images S165029ND0000218000d.jpg— S165029ND0000218000e.jpg. Accessed 4/18/19. All of the states with penitentiaries were deemed to be running them with great success. Of the three states (Alabama, Mississippi, and Michigan) who had adopted legislative support for the establishment of a penitentiary, Alabama and Mississippi were notably located in the Deep South.

¹⁰⁶ “Perry, Benjamin F., Chairman Of Special Committee On Penitentiaries, Report And One Enclosure,” images S165029ND0000218000e.jpg, S165029ND0000218000l.jpg.

creed and sanguinary code of criminal law which had its origin in a barbarous & ignorant age and with a people whose fierce & savage feelings were more evilly influenced by the lore of revenge and destruction than by any principle of justice, reason, or equity.¹⁰⁷

Although the members of the 1839 Special Committee on Penitentiaries disagreed upon the suitability of a penitentiary to South Carolina, they were unanimous in their opinions in at least one regard: it is firmly stated throughout the proceedings of the Special Committee on Penitentiaries in 1839 that any South Carolina penitentiary would only be for the white population of the state. In the “Report of the Special Committee on the Subject of the Penitentiary System,” Benjamin F. Perry, the chairman, argued in favor of the adoption of the penitentiary system by reasoning that

if the Penitentiary System has been successful in the Northern & Middle States, in Scotland & England, France, Belgium, Russia and the Canadias, as your committee are prepared to show, they see no reason why it should not be adopted in South Carolina. If our white population be sparse when compared to that of the other States, our Buildings & preparation need only be the less extensive . . . Our population, though dissimilar in some measure to that of the Northern States, is not unlike that of Kentucky, Tennessee, Georgia, & Alabama.¹⁰⁸

Likewise, the four dissenting members of the committee who submitted a counter-report to Perry’s original committee report argued that

¹⁰⁷ “Perry, Benjamin F., Chairman Of Special Committee On Penitentiaries, Report And One Enclosure,” image S165029ND0000218000d.jpg.

¹⁰⁸ “Perry, Benjamin F., Chairman Of Special Committee On Penitentiaries, Report And One Enclosure,” image S165029ND0000218000l.jpg.

but in South Carolina, crimes are comparatively infrequent—seldom proceed, from the want of bread, that frequent cause of crime in other Countries, and with us, as with every other slave holding community, the Penitentiary System is to be applied to only one half of our population, and that not the part, from which crime usually proceeds; unless we subject our slaves to that punishment (which no one thinks of) and their crimes, when compared to those of our laboring classes of other Communities are few; because the great want (of bread) which is the Constant Source of Crime, with the working classes, elsewhere, does not produce crime with them, for that want they are not permitted to feel.¹⁰⁹

The purpose of the Charleston Work House was to function as a systemic means of punishing the slave population of Charleston, particularly for punishing disobedient and runaway slaves. It stood on the corner of Logan Street and Magazine Street, near the Unitarian Church in downtown Charleston. Prior to the American Revolution, the building used for the Work House operated as a Sugar House, which is likely why it was referred to by slaves and former slaves as the ‘Sugar House’ instead of the ‘Work House.’ In 1931, a former slave named Janie Mitchell recalled an instance where an elderly slave was given a note and told to go to the Sugar House for sugar, but the note actually instructed the operators of the Work House to give him twenty five lashes with a paddle and twenty five lashes with a cowhide.¹¹⁰

A former slave in Charleston was interviewed in 1937 about his recollections of the Work House/Sugar House. He said that, “No slave was supposed to be whipped in Charleston except at

¹⁰⁹ “Carroll, J. P., A. G. Magrath, And D. F. Jamison Of The Special Committee On Penitentiaries, Report Giving Reasons For Rejecting The Need To Build A Penitentiary In S.C. Date: 1839.” SCDAH. Online Records Index.

¹¹⁰ Damon L Fordham, "The Sugar House – A Slave Torture Chamber in Charleston." The Charleston Chronicle. November 29, 2017.

the Sugar House. There was a jail for whites, but if a slave ran away and got there he could disown his master and the state wouldn't let him take you.”¹¹¹

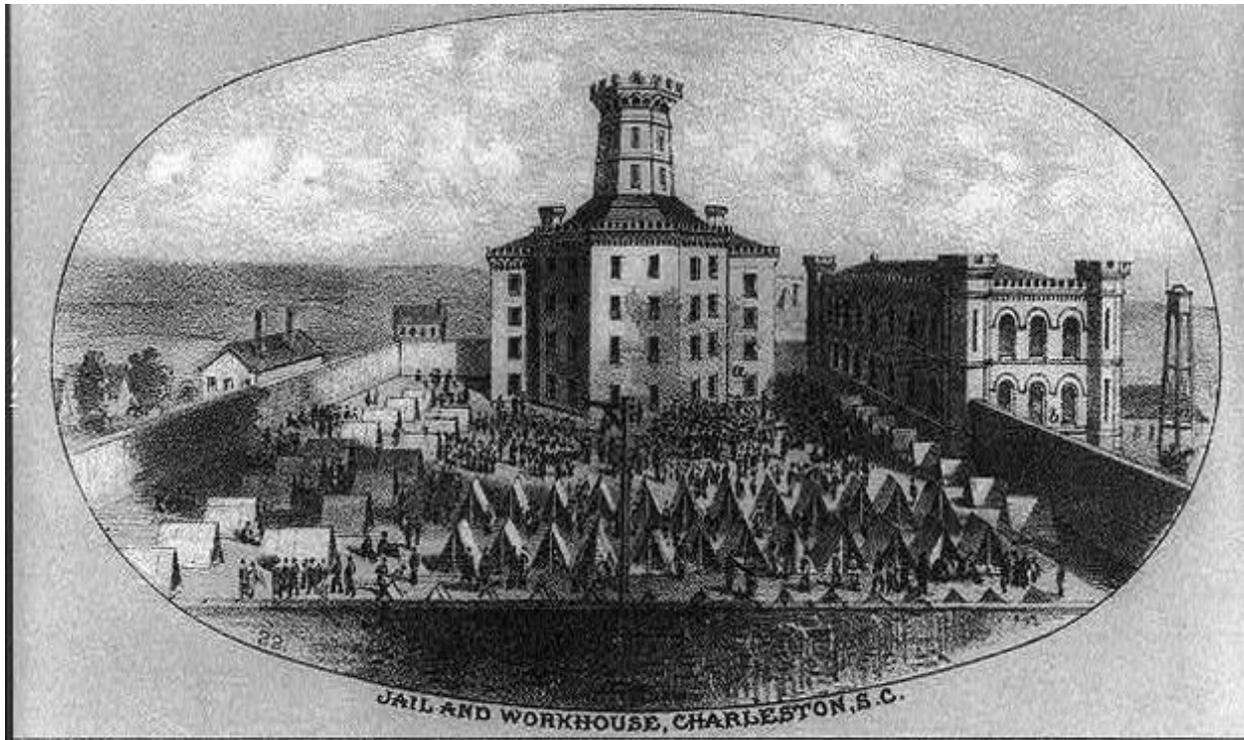
It is a stark contradiction here that whipping was one of the punishments considered too harsh under the British system of criminal law and was replaced with the penitentiary system, but was considered perfectly acceptable in the Work House, which was rebuilt as a veritable fortress in 1851.¹¹² The construction of a new Work House sharply highlights the deep-seated fears South Carolinians held of slave revolts, because even as many districts across the state were lobbying for the South Carolina Legislature to establish a state penitentiary in the 1840s, plans were being laid for the construction of a new and much more escape-proof Work House in Charleston at the cost of \$35,000.¹¹³ In 2019, this amount would be the equivalent of \$1,129,476.92.¹¹⁴

¹¹¹ Damon L Fordham, "The Sugar House – A Slave Torture Chamber in Charleston." The Charleston Chronicle. November 29, 2017.

¹¹² John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York: Oxford University Press, 1999), 180-181. The withdrawal of food was a much more likely punishment under the Penitentiary System than any form of physical mutilation.

¹¹³ Franklin and Schweninger, *Runaway Slaves*, 180-181.

¹¹⁴ "Inflation Rate between 1850-2019 | Inflation Calculator." \$200,000 in 1835 → 2018 | Inflation Calculator. Accessed March 07, 2019. <https://www.officialdata.org/us/inflation/1850?amount=35000>.



The Charleston Work House.¹¹⁵

Furthermore, the language of the final report from the committee about finding a better humanity rings hollow when one considers the common practices of the Work House, which essentially functioned as a jail for slaves under a system which would have been considered extremely backward if applied to the white population. The name ‘Work House’ is misleading in this case because “all of the early houses of correction and workhouses were designed for the confinement of vagrants and other minor offenders whose crimes did not seem to justify capital or severe corporal punishments” but the Work House as it was operated in Charleston has been more accurately labeled a “slave torture chamber” by Fordham.¹¹⁶ The horrendous treatment of slaves in the Work House was made famous by abolitionists Sarah and Angelina Grimké in

¹¹⁵ Damon L. Fordham, "The Sugar House – A Slave Torture Chamber in Charleston." *The Charleston Chronicle*. November 29, 2017.

¹¹⁶ Fordham, Damon L. "The Sugar House – A Slave Torture Chamber in Charleston." *The Charleston Chronicle*. November 29, 2017.

1839.¹¹⁷ Angelina in particular was familiar with the vicious practices there because she taught the workhouse master's daughter and was therefore required to visit their house which was located in close proximity to the Work House.

Historian Gerda Lerner describes the treadmill at the Work House as the worst possible punishment, "a drum with broad steps which revolved rapidly. The slaves' arms were fastened to a handrail above it. Only the strongest and most agile could move their feet in time with the movement of the drum, the others were soon helplessly suspended by their arms, the edge of the steps hitting their legs, knees and bodies at every turn. Several 'drivers' attempted to make the prisoners move by flogging them with a 'cat o' nine tails.' Fifteen minutes on this instrument of torture would cripple a slave for days afterward."¹¹⁸

The most grotesque account of the happenings inside the Work House came from a September 30, 1838, edition of *The Emancipator*. In this newspaper, an anonymous author recently identified as successful runaway slave James Matthews wrote that:

I have heard a great deal said about hell, and wicked places, but I don't think there is any worse hell than that Sugar House. It's as bad a place as can be. In getting to it you have to go through a gate, in a very high brick wall. On the top of the wall, both sides of the gate, there are sharp pointed iron bars sticking up, and all along the rest of the wall are broken glass bottles. These are to keep us from climbing over. After you get into the yard, you go through a gate into the entry, then through a door of wood and an iron door, chained and locked together, so as both to open at the same time. The lower story is built of stone of great thickness,—and

¹¹⁷ Benson, "A Political Science of Punishment: Francis Lieber and the Discipline of American Prisons," 394.

¹¹⁸ Gerda Lerner, *The Grimké Sisters from South Carolina: Pioneers for Woman's Rights and Abolition*, (New York: Schocken Books, 1971), 77-78.

above, brick. The building is sealed inside with plank. Away down in the ground, under the house is a dungeon, very cold and so dark you can't tell the difference between day and night. There are six or seven long rooms, and six little cells above and six below. The room to do the whipping in is by itself. When you get in there, every way you look you can see paddles, and whips, and cowskins, and bluejays, and cat-o'-nine tails. The bluejay has two lashes, very heavy and full of knots. It is the worst thing to whip with of anything they have. It makes a hole where it strikes, and when they have done it will be all bloody.

In the middle of the floor are two big sills, with rings in them, fastened to staples. There are ropes tied to the rings to bind your feet. Over the sills is a windlass, with a rope coming down to fasten your hands to. This rope leads off to the corner of the room, and there are pegs there to tie it to, after they have got you stretched. Slaves are carried there to be whipped by the people in the country four or five miles round, and by all the people in the city, and the guard men carry there all the runaways they take up.¹¹⁹

Recaptured runaway slaves could expect as much as two to five months in the Work House.¹²⁰ In 1839, a city ordinance was given in Charleston to reorganize the Work House because escapes were so frequent—an unsurprising phenomenon considering the punishments inflicted there.¹²¹ It is likely that attention was so focused on the Work House in Charleston because it served the not only South Carolina but parts of Georgia as well, because “for

¹¹⁹ Damon L. Fordham, "The Sugar House – A Slave Torture Chamber in Charleston." *The Charleston Chronicle*. November 29, 2017. Accessed March 07, 2019.

¹²⁰ Amani T. Marshall, ""They Are Supposed to be Lurking About the City": Enslaved Women Runaways In Antebellum Charleston," *The South Carolina Historical Magazine* 115, no. 3 (2014): 188-212, 197-198.

¹²¹ Franklin and Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York: Oxford University Press, 1999), 180-181.

runaways in the Lower South, Charleston was the most popular urban destination along the Atlantic seaboard,” since it was easier to go unnoticed in one of the South’s busiest Atlantic seaports. It was especially easier for skilled female runaway slaves to obtain employment from Charlestonians who did not ask too many questions.¹²²

Because of the excruciatingly hard labor and torturous methods enforced at the Work House, it was without a doubt the embodiment of all the harsh punishments the penitentiary was designed to replace. Compounding this hypocrisy is the recommendation of the Committee on Penitentiaries that the murder of slaves be considered a penitentiary offense and not a capital offense. Murder was still murder, but murdering a slave did not merit the same punishment as for murdering a white person, a member of the state’s ‘civilized society.’¹²³

Antebellum reformers in South Carolina were keeping up with the rest of the country theoretically, always seeking to make themselves knowledgeable about the best systems of penitentiaries and their differences. However, in the desire to accommodate slavery, the ‘peculiar institution,’ made it so that the penitentiary, the highest mode of prison reform, would only serve the white population, which was significantly smaller in South Carolina than in the Northern states where the penitentiaries were deemed successful. Therefore, because the white criminal population of South Carolina could not sustain the profitable operation of a penitentiary, it was decided to be unsuitable to South Carolina by some on the Special Committee on Penitentiaries in 1839.¹²⁴

¹²² Specifically, “the city attracted women from Georgia and up-country South Carolina as well as from plantation along the South Santee, Ashepoo, and Cooper Rivers and on the sea islands.” Marshall, ““They Are Supposed to be Lurking About the City,”” 191-192.

¹²³ “Perry, Benjamin F., Chairman Of Special Committee On Penitentiaries, Report And One Enclosure,” SCDAH. Online Records Index.

¹²⁴ “Carroll, J. P., A. G. Magrath, And D. F. Jamison Of The Special Committee On Penitentiaries, Report Giving Reasons For Rejecting The Need To Build A Penitentiary In S.C. Date: 1839.” SCDAH. Online.

This conclusion alone, however, does not answer the central question of why penitentiaries were such a frequent subject of discussion in the politics of South Carolina throughout the decades leading up to the onset of the Civil War. The timing of the myriad district requests for penitentiaries is intriguing because they grow in number with the increase of vehemence over the slavery debate as the abolitionist movement gained momentum in the United States and Great Britain used her moral might and power of the seas to encourage the rest of Europe and the world to abolish slavery.¹²⁵ This is particularly true of the late 1840s and early 1850s as the question of whether the territories which had been gained in the Mexican War in 1848 would be admitted to the Union as free states or slave states gripped the nation's attention.

One answer to this query is that moral and reform-minded South Carolinians saw reforming the criminal through the penitentiary system as proof that despite the nature of the 'peculiar institution' South Carolinian society was in fact a moral one on par with the rest of the 'civilized world.' In a period where slavery was becoming increasingly indefensible in the United States and in the international sphere at large, it is unsurprising that South Carolina's leaders sought an escape from moral persecution by desiring to be up to standard the rest of the nation on the matter of penitentiaries, a symbol of an enlightened society that many states had already adopted. In fact, by the time of the Civil War, South Carolina was one of only a few states lacking a penitentiary.¹²⁶ It is the unremitting irony of the situation that slavery, the one aspect of their society they were most unwilling to reform, made it impossible for them to effectively enact societal reform where they most desired it.

¹²⁵ Brendan Simms, *Europe: The Struggle for Supremacy, from 1453 to the Present* (New York: Basic Books, 2013), 222-223.

¹²⁶ Thomas, "The Development of 'An Institution,'" 48.

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