

to black folks’ survival around Birmingham. This approach relied on white justice, but not Old South ethics. It reflected a parochial Alabama logic, which Black occasionally dressed up as “Alabama citizenship.” But it kept alive traditions of common democracy, fairness, and individual worth that could ignore the color line as a matter of justice and self-interest, even as those values were under heavy assault by the revival of Old South morals and a New South’s colonial economy.

NONE OF BLACK’S UNDERSTANDING or lawyering skills nor a chance to beguile white jurors with his own testimony was now available to John Brown and others who worked Birmingham’s convict mines under life sentences. Yet, convicts not serving life terms also had been injured in the same accident at Aldrich mine. The Alabama Supreme Court had not blocked these men from filing suit or testifying on their own behalf, and several of their names appeared in Black’s office files in cases against the Montevallo Mining Company.

Among the state’s oldest, Montevallo’s Aldrich mine had supplied raw materials for foundries in Selma where many of the Confederate cannons were manufactured. After the war, John Aldrich began Alabama’s modern mining industry at Montevallo. In the early twentieth century, free blacks and whites worked the coal mine bearing Aldrich’s name until a dispute arose over terms of a new contract. When the UMW threatened to strike, Montevallo fired free miners and leased more than one hundred and fifty state convicts, all African Americans. Union officials protested futilely that “whenever there are differences between miners and operators, convicts have been introduced.” In 1917, Montevallo was the third-largest user of convict labor in the state. By 1920, Montevallo’s caverns were the most dangerous in Alabama. Men crawled around on their stomachs and backs to mine the Aldrich coal, which was of rich quality despite its softness. Recently, influenza had killed twenty-three convicts at Aldrich before sufficient medical precautions were instituted. Aldrich’s rate of death and injury was reportedly five times higher than the rate for free miners.

Henry Lewis, a leased convict, became an Aldrich accident statistic in September 1920, when the mine’s roof collapsed, belching stones, explosive gases, and fire from the earth’s private parts. Lewis’s leg and foot were crushed, leaving him permanently crippled. Along with others, he sued the company in state court for negligence. It was, however, in federal court where Black prosecuted

the case for Lewis and several other prisoners in November 1921. Each convict had sued for more than \$3,000 in damages, and, while Montevallo Mining was owned and operated principally by men living in the Birmingham area, a parent corporation had been chartered in Delaware where it maintained a mailing address (probably along with a multitude of other corporations in a lawyer's office). On the basis of this legal residency in another state, company attorneys successfully argued that "the controversy in said suit is between *citizens* of different states" and should be transferred to federal court.

In other words, because the U.S. Supreme Court had decided in 1886 that a corporation was a "person" or citizen (actually the ruling meant white person) with individual rights under the Constitution, Montevallo's Delaware mailing address permitted it to escape state court for the federal court's more protective environment. This was a common legal maneuver in 1921, but its routine occurrence obscured an extraordinary irony about the complexity of race and class in Birmingham. At the end of 1921, virtually the only white group in Birmingham who applauded President Harding's call for greater political and economic equality for Southern Negroes was the city's best citizens, including leading industrialists. Yet, when their companies stood as persons in a courtroom, with both money and state law already in their favor, industrialists feared that ordinary white citizens on state court juries were overly generous or biased in favor of indigent black claimants.

Henry Lewis's case was presented before U.S. District Judge W. I. Grubb, who had been the lawyer opposing Black in Willie Morton's mining case in 1909. Black could have requested a federal jury, but he took his chances with Judge Grubb. Because Lewis was an illiterate pauper—able only to make his distinctive "X" as a signature on the affidavit—Judge Grubb permitted Hugo Black to summon witnesses without covering the usual court cost.

Absent a jury to persuade, Black presented his case in a straightforward, economical manner. Witnesses established the cause of the fallen rocks and the extent of Lewis's injury. Because Lewis had not been free to leave the mines, Black didn't have to rebut a defense of contributory negligence. He did put on evidence tending to show that the company had failed to place customary props in the mines to hold up the roof. On November 29, Judge Grubb awarded Henry Lewis \$4,000.<sup>3</sup>

Judge Grubb's decision was unique. In 1921 only a trial judge in Alabama could hear a case involving a convict miner. All other states in the nation

had outlawed the leasing of state prisoners to private companies. In Alabama the convict lease system had survived since the end of the Civil War when federal troops destroyed the state’s prison (which Confederates had used as a munitions factory). In 1866, Alabama’s Whig Governor Robert Patton leased convicts to a hidden subsidiary of the Alabama and Chattanooga Railroad for \$5 and provided a state loan of \$15,000 to feed and house them. Less than three years later, the governor became president of the same railroad that never repaid the state loan.

After Reconstruction, Alabama and other Southern states used convicts in lieu of slave labor for building new industries. Black men by the thousands were jailed for serious or petty offenses and sent from county and state prison into Southern marshes, swamps, and forests to lay railroad tracks and cut virgin lumber. Many were also sent into the mines. Alabama leased its entire prison population for a monthly fee of around five dollars per man.

“Most of these poor devils were from rural counties and didn’t know the inside of a mine,” observed one prison reformer. Yet they quickly adapted or died. Except on the Sabbath, convicts worked from before sunrise until after dark, and worked standing barefoot, summer and winter, in pools of chilly water inside the mines. “We would leave the cells at three o’clock AM and return at eight o’clock PM going the distance of three miles in rain and snow . . . we go to cell wet and arise wet,” recalled one. “Day after day we looked death in the face & was afraid to speak.” In 1873, 13 percent of Alabama’s convicts died in mines while the state realized an income of a few thousand dollars.

In the face of extraordinary death rates, state officials blamed the prisoners. Alabama’s prison warden explained that many convicts entered the mines with diseases and sickness and died from problems unrelated to a mine’s hardships and conditions. “When a nigger gets down,” explained a prison official, “he has no come-back” to survive illness. The state’s own statistics told another story. Most causes of death among convicts were tuberculosis, pneumonia, diarrhea, and accidents—consequences of the mines’ damp, dusty, and hazardous conditions. Other convict fatalities were attributed to “dirt eating” or “masturbation,” reports that reflected not only a cover-up but also a corrupt imagination about sin and sex among poor whites and blacks.

In 1881, John H. Bankhead, Sr., became Alabama’s prison warden. Trumpeting reform, Bankhead used lawsuits and threats of exposure to renegotiate state leases. Two years later, with Bankhead’s blessing, Alabama largest mining

operators met in a Birmingham hotel and divided convict laborers among themselves. The state's new contracts increased revenues and concentrated convicts in larger mines, primarily those owned by Pratt Mining Company. The prison warden promised that state inspectors would improve dangerous mines, but new leases were transacted only for added money and profits. The numbers of leased convicts rose from fifteen hundred to seven thousand, and Alabama's convict revenues enlarged tenfold within a decade. Working conditions and death rates remained much the same.

On a state salary of \$2,000, Warden Bankhead began creating a political dynasty and family fortune. One former state official investigated the convict department and discovered obvious corruption. "How can the Governor fail to cause proceedings to be instituted at once [against Bankhead]?" he asked. "Are we all thieves?" Formal charges were never brought, but a Birmingham industrialist's diary survives to record that mining companies provided payoffs to John Bankhead even after he had left his position as prison warden and was serving in the U.S. Congress.

Whatever Bankhead's private sins and rewards, his public reforms did not improve prisoners' safety. The death rate for convict miners remained extraordinary, and state health officers declared their living conditions were unfit and unsanitary. Julia Tutwiler, daughter of a Black Belt educator and Alabama's premiere social crusader, declared that the leases "combine all the evils of slavery with none of its ameliorating features." Armed with a "Bible basket," Tutwiler often swung herself onto the last platform of the state's slow-moving trains as she traveled tirelessly for decades to implore legislators, industrialists, and the public to meet their Christian duty to abolish the lease system. Tutwiler almost single-handedly aroused support for better inmate conditions in mining stockades and prompted the state to become one of the first to build schoolrooms at convict camps. But she always fell short of her primary aim.

"We cannot do our work as efficiently or thoroughly . . . if we had a regular force of men," explained industrialist J. W. Sloss in the 1880s. The "unregular" convicts were also a guarantee of cheap labor. Leased convicts cost industrialists less than free miners, and the existence of inexpensive, forced workers, who labored every day except the Sabbath, suppressed free miners' wages. In 1886, the U.S. Bureau of Labor reported that labor costs of Alabama's free miners were reduced by 20 percent because of wage competition from convicts. Yet, the most critical advantage of convict labor was its "check on free labor, keep-

ing down strikes” and union organizing. An official of the Knights of Labor defiantly declared: “Organized labor will line up in one brotherhood until no convict will compete with labor,” but convict leasing survived far longer than the Knights’ union.

At the end of the nineteenth century, Alabama’s Populist and progressive politicians proclaimed opposition to convict leasing, but they were unable and, at times, unwilling to end the practice. Julia Tutwiler knew why. John Bankhead had arranged a Faustian bargain where both powerful whites and the state government could gain from the sale of black bodies. The state government had begun to receive substantial revenues from convict labor. In 1892, T. C. I. was paying the state almost \$150,000 over two years for fifteen hundred miners at less than half the cost of free labor. “I am sorry to say that many citizens regard this fact as proof that our convict system is imminently successful,” Tutwiler noted.

The convict death rate dropped to one of its lowest levels under T.C.I.’s leasing. Still, more than seventy black men died in the convict mines. Half of all convicts were imprisoned for misdemeanors or crimes involving less than a year’s sentence. In 1893, a convict mine manager informed Governor Thomas Jones that among his fifteen hundred convicts the most “diseased and disabled are those who are likely to commit the petty offense for which they are sent here.”

In the twentieth century, state officials increasingly relied upon selling convicts to mining companies, lumber camps, and cotton mills for tax revenues, which had been severely limited by the new 1901 constitution. By 1907, when B. B. Comer led Alabama as its first progressive governor, the state’s yearly income from convict leases had swollen to \$646,345—16 percent of state revenues and 27 percent of general funds (excluding ear-marked revenues for education and pensions). As a result, Comer and other politicians ignored the state inspectors’ reports on the mining camps’ terrifying problems, and a year later Birmingham industrialists relied on convicts to help break the 1908 miners’ strike.

In 1913, UMW attorney Frank White spearheaded the Alabama Convict Improvement Association to abolish leasing. The association’s members included a wide range of women civic leaders, labor officials, newspaper publishers, public officials like Judge William Fort, and advocates for better transportation who wanted convicts used for roadbuilding. White condemned leasing as worst

than African slavery, and other reformers criticized the mining camps' use of the lash and the "dog house," a vertical hot-box large enough only for a man to stand erect as the Deep South's summer heat cooked his swollen body in the juices of his sweat and blood.<sup>4</sup>

Bedridden after years of activism, Julia Tutwiler endorsed the new initiative. "Alabama cannot afford to be ranked with Russia and Morocco," she pleaded. ". . . The law condemned these men to hard labor, the State put them to death." The *Mobile Register* said the "system stinks to the high heaven." A Birmingham reformer declared, "Alabama's lease system is her unholy and most indefensible shame." After the 1908 strike, U.S. Steel's T.C.I. lost a bid for a new convict contract and, afterwards, declared that it did not care for the system.

In 1915, after months of study, a state legislative committee issued its findings: "the convict lease system of Alabama is a relic of barbarism, a species of human slavery, a crime against humanity." Committee members, including Will Welch (Black's assistant solicitor at the time), found that a convict's average life expectancy in the mines was only seven years, and that some convicts, like two farm boys convicted for taking a train ride without paying for it, died shortly after arriving from ignorance of mining procedures. DeBardeleben Coal Vice President Milton Fies testified against convict leasing before the committee, but the Alabama Coal Operators Association opposed reform. As the prime contractor for convicts, Pratt Coal dispatched officials and lawyer John H. Bankhead, Jr., to lobby against the committee's proposal. A bill passed the House, but Governor Charles Henderson reneged on a campaign promise to stop leasing. He explained that "the practical side of administering the convict system must not be lost."

The following year, despite charges that industrialists and politicians were "rolling up wealth by working convict labor to compete with free labor," Governor Henderson renewed contracts to Pratt Coal, Sloss-Sheffield Steel, Montevallo Mining, and a few other companies. Forty-eight convicts were killed that year in mining accidents in Alabama and many more died from the effects of the mines' deadly conditions.

Most of the dead were African Americans. Yet many state officials declared convict leasing a tremendous success. In 1916, for the first time in history, the state of Alabama generated higher gross revenues—more than \$1.5 million—from convict leases than from general taxes. The leases accounted for 22

percent of state receipts and 38 percent of all revenues outside of earmarked funds.

During World War I, a Sloss-Sheffield official bitterly complained that the state wasn't supplying enough convicts in accordance with state contracts. Governor Henderson commiserated, assuring the mining manager that the state government also was "suffering" from a drop in the number of state prisoners.<sup>5</sup> It was a routine exchange between executives worrying about their bottom lines and nothing less than an open, brutal admission that both private profits and state revenues suffered because too many black men were fighting for their country and too few were available for arrest, conviction, and forced labor.

In 1919, another legislative committee investigated Alabama's unique "form of human slavery," and condemned the "policy of the state to brand the convict with the dollar mark" by leasing him to the "bidder who will pay the most for him, like so many slaves or cattle." The committee called leasing "legalized murder." Legislators had toured every convict camp and found numerous instances of senseless torture. In one case, a camp warden whipped a sick prisoner with a spiked rubber hose after other miners discovered him lying in a pool of underground water. The convict died in the washhouse. His cause of death was officially listed as "tuberculosis."

The committee discovered that 90 percent of all cripples in the prison department came from mistreatment or accidents in the mines and 80 percent of all state prisoners suffering from "tuberculosis" developed the illness in convict mines. According to a state physician, at least thirty convicts from the mines, including Montevallo's Aldrich, were in the prison infirmary because of severe lashings or whippings. The committee discovered five men at convict camps whose skins had been totally burned from their bodies. "They were lying on beds covered with oil cloth with secretions dripping from their burned bodies and scarcely breathing." Legislators concluded simply: the "system is wrong. It is indefensible."

Three Black Belt legislators authored a minority report dismissing complaints as unreliable stories about the past. They blessed the leasing system as a necessary evil serving a noble cause. "We must have money to educate the children of the State, to take care of the blind and helpless little ones," observed the dissenting members. While the people of Alabama were willing to pay taxes, these legislators declared, "We do not believe that they would be willing to pay more taxes to maintain in idleness and luxury the house-

breakers, highwaymen, and murderers.” Black Belt politicians also opposed moving convicts to work on public roads. In that case, black men would have more chances to escape and menace society. The minority report cited recent news from Georgia where “an escaped negro had been lynched . . . for raping a delicate white woman.”

Governor Thomas Kilby declared his support for abolishing the system, *if and when* doing so became practical. Like other governors, Kilby concluded that a “practical” time was always in the future—in someone else’s administration. In a show of duplicitous politics, Kilby and the legislature abolished the lease system in 1919 with an effective date three years in the future, on December 31, 1922, the last days of Kilby’s term. Now, as Birmingham concluded its fiftieth anniversary, another legislature followed Governor Kilby’s new recommendation to push back the deadline to 1924 or beyond.

Alabama’s state government had become addicted to convict revenues. By 1920, the convict department generated almost \$2.5 million—20 percent of the state’s total gross revenues. It was the largest source of state receipts and almost a third of the state’s entire, non-earmarked funds. The state’s general taxes produced only \$1.76 million in 1920.<sup>6</sup>

Alabama’s financial dependency on forced black labor now created as much resistance to change as the coal companies’ opposition. With the complete collapse of Alabama’s miners’ union, most industrialists thought they could manage a workforce of free black miners as well or better than one of convicts. For state government, however, ending the convict lease system would have required substantial new taxes, something the Kilby administration adamantly opposed.

In late 1921, Governor Kilby was under strong criticism because he had increased the taxable assessment of personal property by as much as 50 percent. He had attempted earlier to revise Alabama’s arcane tax system by proposing a graduated income tax and small additional business taxes. Cheered on by the conservative *Montgomery Advertiser*, corporate leaders and Black Belt planters successfully squashed the reform. Kilby’s new taxes worsened an already bizarre tax structure. In 1921, for example, the state’s eighth largest source of general revenues came from new registration licenses for dogs. The pet tax produced one-third as much revenue as all taxes and licenses from the state’s private corporations. Alabama had the lowest per capita taxes and the lowest corporate taxes in the nation. It also had the nation’s only system of state fi-

nancing that depended on a “species of human slavery” to generate the state’s largest source of revenue.

In the name of government efficiency, black convicts in the lease system in late 1921 were left to “look death in the face” within the darkness of three Alabama mines. According to federal reports, measured by deaths per worker, Alabama had the nation’s most dangerous mines. The rate of death was even higher in the state’s convict mines. An average of forty-four convicts died within mines each year from accidents. In addition, dozens of death certificates listing “pneumonia” and “tuberculosis”—today more accurately identified as black lung disease—confirm that the mines’ everyday conditions were as deadly as falling rocks. In fact, based on the 1919 legislative committee’s findings, more than eighty-five convicts, mostly African Americans, died from conditions and accidents in Alabama mines each year during the early 1920s.

Yet, death and illness were not the only daily horrors for convicts. Beyond the sight of legislative committees and reformers, beyond political duplicity, poor white men hired to guard the mining camps wore the “badge of cruelty and the inhumanity of the damnable convict lease system.” These men took the Old South’s mores at face value, not as a license to abuse people for profit, but as the inherent privileges of skin color in lives that had too few others tangible advantages. It was the same vile, exhilarating power for racial terror stained with the same insanity that fueled the South’s lynching.

“They’d done told me never to take nothin’ off them bastards,” remembered Jim Saunders who had been hired to guard Alabama’s convicts in one of the mines around Birmingham. Saunders recalled his first incident with a young black prisoner two weeks after he was given a lawman’s oath and the power of life or death. “So I jes went over to him an’ nearly beat his brains out with my club,” the white man said. “That nigger wasn’t able to dig no more coal for a long time.”

Despite their brutal actions, guards like Saunders were not men living beyond society’s own boundaries for sanity or decency. These men heard, understood, and echoed persisting sentiments. “They was a lot of people back then who was causin’ trouble ’bout the convicts,” the former guard continued. “They said it wasn’t right fer th’ State to hire ’em out to th’ operators . . . But I don’t know . . . A man wouldn’t be so ready to rob or kill somebody if he knowed he was goin’ to th’ mines.”

Following the larger white society’s rationale, Saunders shrouded his be-

havior with reasonable, colorblind arguments of law and order. "I remember they told us to shoot quick as hell if anybody got rough, or tried runnin' off," continued Saunders like an actor hypnotized with the horror of his own monologue. "They said they was lots more whar these came from an' that when you knocked one of 'em off it was no worse'n killin' a hog or a cow. I never did have to kill nobody."

For decades the Alabama Convict Department's rules and regulations stated: "Each and every officer and guard is expected to deport himself as a gentleman"—Southern gentleman. In practice, it meant the opportunity to act on a white Southern gentleman's privilege, an unexamined, unaccountable liberty to do as a man pleases with other human beings on the other side of the color line. Yet, in industrial Birmingham a white man living on the margins and working with a gun and lash at his side did not have the same restraining self-interest as the Old South's gentleman who built his wealth by preserving as well as exploiting the slaves he owned and worked. At mining camps, places Hugo Black called "vengeful hells," there were no moments of shared humanity or human morality. The white man's Almighty became his skin color, without any other forceful moral or practical restraints. "We did some things that wasn't right, I know . . .," the former guard confessed. "We useta keep a big barr'l out back of a shed at th' mines an' when I think back on it now, I know we whooped niggers jes' to have fun. We'd pull their britches off an' strop'em across th' barr'l by their hands an' feet so they couldn't move, an' then we'd lay it on 'em with a leather strop," Saunders recalled. "I've seen niggers with their rumps lookin' like a piece of raw beef. Some of 'em would pass out like a light, but they'd all put up an awful howl, beggin' us to stop," he remembered.

"Th' company had lots of ways to make a bad convict work, but us guards didn't follow 'em much," Saunders admitted. "Didn't nobody want to put a convict in th' sweat box, or feed him on bread an' water, fer they wasn't no fun in watchin' that."<sup>7</sup>

WITHIN THREE MONTHS OF HIS DAY IN COURT, Henry Lewis discovered that judicial opinions about Alabama's convict miners could be circumvented as easily as legislative promises. In late January 1922, Montevallo Mining Company filed for voluntary bankruptcy in federal court and suspended all claims, contracts, and court awards against it. The company's lawyer was appointed