

# Freedom and Convict Leasing in the Postbellum South<sup>1</sup>

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In 1868, the state of Georgia began punishing convicts by leasing them to private companies. Georgia's transition from penitentiary confinement to convict leasing coincided with a shift in the composition of its inmates. Fifteen years after the Civil War, African-Americans in Georgia were imprisoned at a rate more than 12 times that of whites. This article finds that black men were most likely to be imprisoned in the convict lease system where they overcame whites' efforts to preserve their position as dependent agricultural laborers. Where elite white landowners were able to reconstitute a dependent agricultural labor force, they had little reason to use the convict lease system to punish their workers. But in urban counties and in counties where African-Americans had acquired considerable landholdings, black men faced comparatively high rates of imprisonment for property crimes.

On November 23, 1864, Georgia's only penitentiary went up in flames. Four convicts remained in the structures left standing at the end of the Civil War. But the population of inmates soon began to rebound. At the end of 1865, the penitentiary held 177 prisoners, and "for the first time a large number of Negroes was among them" (Bonner 1971, p. 318).

Three years later, Georgia began leasing convicts to private companies (Taylor 1942, p. 114). Lessees paid the state for a fixed number of inmates

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and “bore the costs of housing, feeding, clothing, and guarding” them (Myers 1998, p. 9). By 1874, leasing convicts had become the state’s official means of punishing them (Bonner 1971, p. 324). All but the most infirm state prisoners were sent to work in what became known as the convict lease system.

Georgia’s transition from penitentiary confinement to convict leasing coincided with a shift in the composition of its inmates. Before the war, so few African-Americans were imprisoned in Georgia’s penitentiary system that its 1862 statistics did not divide inmates by “color.” By 1880, however, the report of the principal keeper of the Georgia Penitentiary classified more than 90% of Georgia convicts as “Black,” “Yellow,” or “Colored.” Just 15 years after the Civil War, African-Americans were imprisoned at a rate more than 12 times that of whites. Racial disparity in imprisonment in postbellum Georgia was twice as large as it is in the United States today.

How did this rapid reversal in the composition of the state’s prison population come to pass? One common answer is that convict laborers assumed the work of slaves. “In a real sense,” writes Adamson (1983, p. 556), “the convict lease system was a functional replacement for slavery.” In many respects, convict leasing did resemble slavery. Inmates toiled in excruciating conditions and were repeatedly bought and sold (Georgia General Assembly 1870, p. 149; Woodward 1951, pp. 213–15; Duncan 1986, p. 108; Oshinsky 1996, pp. 43–48; McLennan 2008, p. 87; LeFlouria 2015, pp. 75–76). They were whipped and beaten, sometimes to the point of death (Georgia General Assembly 1870, pp. 127, 147–48; Berry 1993, p. 8). In 1870, William Burch, a black man sentenced to life for burglary, testified: “I saw a great many whipped; they were whipped when they gave out and could not do as much work as they wanted them to” (Georgia General Assembly 1870, p. 152).

Despite the similarities between slavery and convict leasing, however, two key differences cast doubt on the claim that the latter took the former’s place. The first is their scale. In 1860, enslaved people made up 44% of Georgia’s population (Kennedy 1864, p. 71). Leased convicts, in contrast, were less than a tenth of a percent 20 years later. Second, slavery was “an overwhelmingly agricultural institution.” In postbellum Georgia, convicts instead worked primarily “in industry, rather than agriculture” (Lichtenstein 1996, p. 19). If convict labor replaced slave labor, we would expect African-Americans to

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have faced the greatest risk of imprisonment in Georgia's cotton belt, where slavery predominated. As I discuss below, the opposite was true.

Other scholars argue that racial disparity in imprisonment typically increases when subordinate groups pose a challenge to dominant groups, who respond by punishing subordinate groups' crimes more harshly than they would otherwise (Blalock 1967; Olzak 1992). I find that this argument has more empirical support than the claim that convict leasing replaced slavery, but only if it is modified to take into account differences in elite landowning and poor whites' economic interests, differences in these groups' relative degree of control over the criminal justice system, and historical evidence about what each group actually perceived to be threatening (Wilson 1978; Tomaskovic-Devey and Roscigno 1996).

In the classic sociological account, subordinate groups most threaten dominant groups where they make up a large share of the population (Blalock 1967). This account is poorly matched to the historical circumstances of the postbellum South because the counties where African-Americans made up the largest share of the population were also the counties where the greatest share of farms were worked by tenants. Planters relied heavily on tenant labor to revitalize the cotton economy after the war. Despite a tangle of laws restricting African-Americans' labor mobility, planters worried constantly about retaining a sufficient supply of workers (Loring and Atkinson 1869; Daniel 1972; Novak 1978; Foner 1983, p. 45; Shlomowitz 1984; Mandle 1992; Tolnay 1999; Ransom and Sutch 2001; O'Donovan 2007). For elite white landowners, as for slaveholders before them, sending a worker suspected or accused of a petty crime to the state penitentiary system meant losing a valuable laborer (Cohen 1976, p. 39; Sellin 1976, p. 138; Tolnay and Beck 1995, pp. 72, 257; Naidu 2010, p. 416). Poor whites, who feared that black tenants would compete with them economically, had fewer reasons to overlook any petty crimes that African-Americans committed (Raper and Reid 1941, p. 19; Tolnay and Beck 1995, p. 70). But in the former plantation counties, elite white landowners often stepped in to prevent their accused workers from being sent away to work for someone else (Du Bois 1904, pp. 44–48; Alston and Ferrie 1999, pp. 22–29).

Far more salient threats to the economic position of both poor whites and elite white landowners, in contrast, were African-Americans' presence in cities and acquisition of land. After the Civil War, African-Americans flocked to southern cities (Rabinowitz 1978, p. 3). Between 1860 and 1870, Atlanta's black population alone increased fivefold. Elsewhere in the state, despite tremendous obstacles, African-Americans acquired considerable landholdings (Du Bois 1901*a*; Matthews 1970, p. 181; Oubre 1978, p. 196; Marable 1979; Foner 1988, p. 104; Ransom and Sutch 2001, pp. 86–87; Hayden et al. 2013, pp. 874–93). Elite white landowners feared that African-Americans' outmigration and economic independence would deprive them of a steady sup-

ply of agricultural workers. Urban and poor rural whites worried instead that black migrants and landowners, respectively, would become economic competitors.

Southern whites' fears, moreover, were not only economic. African-Americans' migration to cities and acquisition of land also threatened to upend the status order ensuring their subordinate social position. Despite their divergent economic interests, many poor whites and elite white landowners adhered to an ideology holding that "race marked all African Americans as a permanently dependent people" (Edwards 1998, p. 333).<sup>2</sup> "Whenever we see a Negro," wrote the *Atlanta Daily Intelligencer* in 1860, "we presuppose a master, and if we see him in what is commonly called a 'free state,' we consider him out of his place" (quoted in Du Bois 1935, p. 39). After the war, poor whites and elite white landowners were "virtually unanimous" that "the city was no place for blacks" and that African-Americans should be prevented from farming independently (Rabinowitz 1978, p. 24; Duncan 1986, p. 57). According to one southern planter, black landowners' "feeling of security and independence [had] to be eradicated" (Smith, Smith, and Childs 1950, p. 236, quoted in Foner 1983, p. 82).

"The masters feared their former slaves' success far more than their anticipated failure," Du Bois (1935, p. 633) observed in *Black Reconstruction in America* (see also Curtin 2000*b*, p. 34). In Georgia, however, freedpeople's success was unevenly distributed about the state. In the cotton belt, where many African-Americans were either actual or potential agricultural laborers, elite white landowners were less likely to use the convict lease system to punish property crimes than they or poor whites were in urban counties or counties where African-Americans had achieved more economic independence.

In the following analysis, I construct a data set linking every Georgia resident enumerated in the 1880 census to the administrative records of inmates confined in Georgia's convict lease system. I use this data set to estimate the relationship between urbanization and black landownership at the county level and black men's likelihood of being imprisoned in the convict lease system. Georgia is a substantively important state—the place where convict leasing "achieved the status of a Weberian 'ideal type'" (Mancini 1996, p. 82)—and the only southern state where county-level information on postbellum black landownership exists (Du Bois 1901*a*, p. 649; Higgs 1982, p. 728). Although

<sup>2</sup> Poor whites, in contrast, "could move out of their dependent position if they accumulated property necessary to remove themselves from the control of an employer or landlord" (Edwards 1998, p. 333). Fields (1990, pp. 99, 107–8) documents that this ideology was slavery's product, not its motivation (see also Morgan 1972). There were important historical exceptions to whites' opposition to African-Americans' economic independence (Rana 2010). For an account of the Knights of Labor's attempt to "universalize economic independence" in the South, see Gourevitch (2015, p. 135).

the number of people imprisoned in Georgia's convict lease system was relatively small, as I discuss in the conclusion, the system's historical consequences may have been much larger.

Black men in counties in the 90th percentile of the population density distribution had more than a 25% greater likelihood of being imprisoned in the convict lease system for property crimes than black men in counties in the 10th percentile. Likewise, moving from the 10th to the 90th percentiles of the distribution of the value of land owned by African-Americans was associated with more than a 50% increase in black men's probability of being imprisoned for property crimes. These estimates were largest for the crimes whites had the greatest discretion to enforce: neither the relationship between population density and black men's likelihood of imprisonment for homicide nor the relationship between black landownership and black men's likelihood of imprisonment for homicide was large or statistically distinguishable from zero. If there simply were more opportunities for property crime in urban counties or in counties where African-Americans owned a relatively large amount of land, white men as well as black men in those counties should have been more likely to be imprisoned for property crimes. They were not. These results are robust to several modeling assumptions, measurement decisions, and identification strategies.

Previous scholarship on the relationship between imprisonment, slavery, and Jim Crow has emphasized the functional similarities between these institutions (Adamson 1983; Alexander 2010). This article focuses instead on their historical connection. In postbellum Georgia, the relationship between slavery and imprisonment was characterized by contention more than by functional succession. It was in the counties where African-Americans evaded plantations or established their own farms—not in the cotton belt—that black men were most likely to be imprisoned in the convict lease system.

These findings yield further evidence that racial disparity in imprisonment has typically increased after periods when African-Americans made significant economic, social, and political gains. The concentration of imprisonment for property crimes among black men in cities and in counties where African-Americans had amassed considerable landholdings is consistent with the thesis that punitiveness often follows progress, "as in the first and second Reconstructions of emancipation and civil rights" (Lichtenstein 2001, p. 194). More generally, the results presented here provide new evidence that subordinate groups are more likely to face imprisonment where demand for their labor is low, where they compete with other groups for scarce resources, and where the groups with whom they compete exert a greater influence over the criminal justice system than the groups that depend on their labor (Olzak 1992; Western 2006; Weaver 2007; Wacquant 2010; Muller 2012; Olzak and Shanahan 2014).

CONVICT LEASING AND PEONAGE IN GEORGIA

In an influential historical account, Blackmon (2008) describes parallels between postbellum southern punishment and slavery. In addition to convict leasing, Blackmon discusses a form of peonage first introduced in Georgia in 1874, when it became lawful for a “convict to hire himself or herself out to any citizen of [the] State” (Hopkins 1875, p. 483; see also Bonner 1971, p. 324; Jaynes 1986, pp. 306–7).<sup>3</sup> Over time, white landowners began abusing the law by accusing black agricultural workers of fraud, having them arrested, paying their fines, and forcing them to work off the debt (Matthews 1970, pp. 151–52; Novak 1978, p. 23; Blackmon 2008, pp. 66–67). African-Americans subjected to the type of peonage Blackmon (2008) describes did not enter the state penitentiary system and do not appear in its records. Their numbers are unknown.

The convicts whose records I examine, in contrast, were confined in Georgia’s state penitentiary system. In Georgia, leasing prisoners in the state penitentiary system to private companies was the formal channel for punishing them. Because of this fact, I use the terms imprisonment and convict leasing interchangeably. Elite white landowners in Georgia had little to gain by prosecuting property crimes through the convict lease system and an appreciable amount to lose (Tolnay and Beck 1995, p. 257). Convicted prisoners, Wright (1997, p. 459) observes, “were taken away from the area for a long stretch, not returned to the planter as a farm laborer.” Although some convicts appeared on farms in the 1880 census, most were found mining coal, grading railroads, manufacturing bricks, and cutting wood. Peonage and convict leasing may have been substitutes, with peonage used primarily in the cotton belt and convict leasing used primarily outside of it.<sup>4</sup> However, without data on the extent and geographic distribution of peonage, this is difficult to determine. Because I focus on Georgia’s official penitentiary system, my conclusions bear on the sources of racial disparity in convict leasing, not in peonage.

IDEOLOGY, INTERESTS, POWER, AND PUNISHMENT

Research on the history of punishment in the United States has traced increases in racial inequality in incarceration to African-Americans’ migration to the northern United States (Muller 2012) and to the political back-

<sup>3</sup> For discussions of the differences between convict leasing and peonage, see Daniel (1972, pp. 24–25) and Novak (1978, p. 24).

<sup>4</sup> If peonage and convict leasing were substitutes, this could partially explain why official rates of black incarceration in the South were low compared to official rates of black incarceration in the North in the late 19th and early 20th centuries (Muller 2012, p. 300).

lash to the historic gains of the civil rights movement (Western 2006, p. 195; Weaver 2007), among other sources. These studies provide evidence for the claim that dominant groups punish crimes committed by subordinate groups more harshly when their dominance is threatened than when it is secure (Blalock 1967). They support a more general argument within sociology that “ethnic conflicts and protests erupt when ethnic inequalities and racially ordered systems begin to break down” (Olzak 1992, p. 13; see also Tilly 1998, p. 75; Grigoryeva and Ruef 2015, pp. 819–20).

Tomaskovic-Devey and Roscigno (1996) modify this argument in two ways. First, they suggest that scholars should attend not only to conflicts between dominant and subordinate groups but also to economic and status hierarchies within dominant groups, particularly “class divisions among the dominant racial/ethnic group” (Tomaskovic-Devey and Roscigno 1996, p. 566; see also Luebke 1990). Second, they stress the importance of understanding the historical content of the threat posed to different segments of the dominant group (Tomaskovic-Devey and Roscigno 1996, p. 567). As we have seen, to both poor whites and elite white landowners, the two most salient signs that the postbellum South’s status order was breaking down were African-Americans’ migration to cities and acquisition of land. To understand how these threats affected black men’s likelihood of being imprisoned in the convict lease system, it is useful to consider their relationship to elite landowning and poor whites’ respective ideology, interests, and power (Wilson 1978, p. 12).<sup>5</sup>

Many poor whites and elite white landowners were influenced by an ideology that consigned African-Americans to a restricted social, economic, and geographic “place” (Raper and Reid 1941, p. 79; Myers 1990a, p. 375; Tolnay and Beck 1995, p. 65). Their opposition to African-Americans’ migration to cities sprang from “a sincere, elemental conviction that race defined appropriate social and economic roles” (Flynn 1983, p. 13; see also Matthews 1970, p. 220; Jaynes 1986, p. 59). In his *Reminiscences*, Carl Schurz observed a “notion prevalent in the South” that “the negro exists for the special object of raising cotton, rice and sugar for the whites, and that it is illegitimate for him to indulge, like other people, in the pursuit of his own happiness in his own way” (Bancroft 1913, p. 320, quoted in Du Bois 1935, p. 135). Black women, who had worked as house servants during slavery, often found stable employment as domestic workers in southern cities (Hunter 1997, p. 50). But urban whites and white planters alike believed that black men were natural agricultural laborers, who in moving to the city rejected their place in southern society. In 1871, the *Atlanta Constitution* lamented that “no better la-

<sup>5</sup> Interests and ideology clearly are not independent. I use the term interests here to mean what groups typically viewed as their interests. Influenced by a different ideology, more poor whites might have concluded that they shared economic interests with African-Americans (Du Bois 1935, p. 700; Patterson 1982, pp. 33–34; Soule 1992, p. 434).



borer for cotton than the colored man can be found; yet he is unwilling to leave the city to go into the country on a farm" (*Atlanta Constitution* 1871, quoted in Rabinowitz 1978, p. 24).

Like their migration to cities, African-Americans' acquisition of land challenged whites' view that they were constitutionally unsuited to economic independence (Du Bois 1935, p. 384; Fields 1990, p. 108; Edwards 1998, p. 333). Landownership signaled freedom and equality; extending African-Americans the opportunity to own land implied extending these as well (Foner 1988, p. 160). Some white planters worried that pockets of land owned by African-Americans would yield political resistance. In 1866, for example, a group of planters in Dougherty County wrote to the Freedmen's Bureau to complain that black men congregating on a nearby plantation had begun to question their authority:

The undersigned engaged in planting in Dougherty Co. State of Georgia in the vicinity of Albany would most respectfully represent that the free colored people hired by them under contract for this year, are not carrying out the terms of the contracts. . . . The reason of this the undersigned can only judge as being owing to the existence of a society among the blacks, the Hd Qtrs of which are upon a plantation about six miles from Albany & in our midst, which is held solely by Colored men . . . the most erroneous ideas are being spread among the blacks. . . . The ideas of freedom spread are, that they can 'talk back' whenever they choose, [and] that they can decide for themselves when & for what causes they can stay away from work. (Hayden et al. 2013, pp. 923–24)

In expressing these concerns, the Dougherty County planters echoed a grievance voiced by planters across all societies where enslaved people had recently been manumitted.<sup>6</sup> Challenges to the symbolic dimensions of domination mattered to many whites as much as did the uninterrupted flow of cotton (Du Bois 1935, pp. 700–701; Jaynes 1986, p. 115; Scott 1990; LeFlouria 2015).

If poor whites' and elite white landowners' racial ideologies typically aligned, however, their economic interests often diverged (Tomaskovic-Devey and Roscigno 1996). Both groups agreed that the primary causes of the "unsatisfactory condition of the black labor on the cotton fields" were the "tendency of the plantation negroes to gather in the cities and large towns" and the "desire of the laborer or freedman to be entirely independent of white men" (Loring and Atkinson 1869, p. 22; see also Novak 1978, p. 19; Wright 1979, p. 94; Jaynes 1986, p. 88; Foner 1988, p. 139; Ransom and Sutch 2001, pp. 46–47; Ruef 2014, p. 111). Outside of the cotton belt, whites, irrespective of their

<sup>6</sup> Foner (1983, p. 72) notes that "it is the ongoing struggle over the definition of freedom and the control of labor that unites the experience of the American South with that of other postemancipation societies." He quotes a Caribbean planter lamenting that access to land produced "a marked diminution of the deference which [ex-slaves] have hitherto been accustomed to pay to those in authority over them" (p. 36).



class, resented the competition of black men who moved to cities or purchased land (Rabinowitz 1978, p. 61; Jaynes 1986, pp. 254–55; Wright 1986, p. 224; Hayden et al. 2013, p. 883). But within the cotton belt, the black tenants on whom elite white landowners relied threatened to further undermine poor whites' economic position (Raper and Reid 1941, p. 19; Bonacich 1972, p. 553; Tolnay and Beck 1995, p. 72). Poor whites' desire for exclusion clashed with elite white landowners' desire for exploitation (Wright 2009).

The degree to which elite landowning and poor whites' ideology and interests affected black men's likelihood of being imprisoned in the convict lease system depended on the power each group had to accuse, prosecute, and convict them or prevent them from being accused, prosecuted, or convicted. In urban counties and in counties with high rates of black landownership, neither group hesitated to use the convict lease system to punish black men accused or suspected of property crimes. In counties where elite white landowners depended heavily on African-Americans' labor, in contrast, they often overlooked minor offenses and intervened to prevent accused workers from being sent away to the convict lease system (Du Bois 1904, pp. 44–48; Raper and Reid 1941, p. 25; Alston and Ferrie 1999, pp. 22–29).

#### PUNISHMENT IN POSTBELLUM GEORGIA

As Democrats took control of both houses of the state legislature in 1872, marking the end of Reconstruction in Georgia (Hogan 2011, p. 139), Democratic Governor James M. Smith assured his constituents that the recent "increase in the number of convicts [was] not due to any augmentation of crime in the South, but is believed to be the result entirely of a more rigid and proper enforcement of the laws" (Ayers 1984, p. 169). The rigid enforcement Smith referred to, however, was selective: it varied with the degree to which African-Americans escaped to cities or began farming independently. In Georgia's cities, black men clashed with white-dominated police forces. In rural counties, where there were few police, civilians and sheriffs instead decided whether to prosecute crimes (Matthews 1970, p. 140; Smith 1982, p. 53).

White civilians, sheriffs, and police often spared suspected whites and dependent black laborers of prosecution. After the Civil War, white conviction rates in Georgia plummeted (Ayers 1984, p. 179; Lichtenstein 1996, p. 29; 2001, p. 192). "It is very difficult to enforce the laws in the South against whites," Du Bois (1901*b*, p. 741) observed, "and red-handed criminals go scot-free." Planters also hesitated to use the convict lease system to punish their workers. Some elite white landowners protected themselves from theft by including in labor contracts provisions compensating them for the value of any items a worker stole (Smith 1982, p. 195). Others paid their laborers'

finer to ensure that they were “kept on the place” (Du Bois 1904, p. 44; Novak 1978, p. 35; see also Blackmon 2008).

Where African-Americans competed economically with whites, in contrast, they were charged with “the maximum of crime” (Du Bois 1904, p. 48). In Georgia’s cities, white officials “arrested, prosecuted, and sentenced blacks accused of minor theft while neglecting white malefactors” (Ayers 1984, p. 184; see also Penningroth 2003, p. 153). Black men, noted Savannah’s *Colored Tribune*, were “subjected to the chain gang while white men for greater crimes [went] unpunished” (*Colored Tribune* 1876a). In 1880, Marcus Franklin, a black man from Milton County, just north of Atlanta, received a 10-year sentence for burglary. The judge who convicted him later admitted that “the case was not a strong one against the defendant.”<sup>7</sup> The following year, Atlanta’s black newspaper, the *Weekly Defiance*, protested, “We have lived in Atlanta twenty-seven years, and we have heard the lash sounding from the cabins of the slaves, poured on by their masters; but we have never seen a meaner set of low down cut throats, scrapes and murderers than the city of Atlanta has to protect the peace” (Watts 1973, p. 172).

White civilians and sheriffs also used the convict lease system to punish black men accused of property crimes in counties where African-Americans occupied conspicuous expanses of land. In 1877, Henry Cappers of coastal McIntosh County was sentenced to 10 years for stealing \$25 from a white man. In the same year, another white man accused Toby Mack, also of McIntosh, of stealing goods.<sup>8</sup> Mack received the same sentence. James Watkins of Heard County, who stole 15 pounds of meat from a rural smokehouse, got a year for each pound (Lichtenstein 1996, p. 17).

Once arrested, black defendants faced white-dominated juries (Matthews 1970, p. 141). In 1876, the *Colored Tribune* criticized commentators “who unblushingly assert that justice is fully accorded to the colored people of Georgia, when it is known that a malignant prejudice excludes them from the jury box” (Ayers 1984, p. 174). The paper noted that Charles Wilson, a black man convicted of “stealing a few pairs of shoes” had received a 12-year sentence, while Owen Guilfoyle, a white man convicted of voluntary manslaughter, got only three (*Colored Tribune* 1876b). From 1866 to 1879, 76% of African-Americans indicted in urban Chatham County, compared to 45% of indicted whites, were sent to Georgia’s convict lease system, whereas 14% of indicted African-Americans, compared to 49% of indicted whites, were given fines (Ayers 1984, p. 329). In 1904, Du Bois (1904, p. 40) surveyed African-Americans throughout Georgia about their treatment in the courts.

<sup>7</sup> Governor—Convict and Fugitive Records—Applications for Clemency, 1858–1942, RCB 9970, Georgia Archives, Morrow.

<sup>8</sup> Albert Colbey Smith Papers, box 3B, MS 2526, Hargrett Rare Book and Manuscript Library, University of Georgia Libraries.

Although some told of merciful judges and impartial juries, most concluded that African-Americans accused of a crime stood little chance of acquittal in Georgia courtrooms unless “they rendered good service to white people” (p. 45). “So many Negroes are arraigned in the courts who are innocent apparently,” said one respondent, “that it is hard too, to answer the question as to the cause of crime” (p. 43).

In 1875, the Democratic legislature passed a “pig law,” which “raised the penalty for hog-stealing from that of a misdemeanor to that of a felony ‘unless the jury recommend to mercy’” (Novak 1978, p. 32). Five years later, Monday Haines, a black man from urban Sumter County, received 12 years for stealing four hogs. Reflecting on the case, Superior Court Judge Allen Fort wrote that the presiding judge was forced to impose this sentence because the jury “did not see fit” to reduce the crime to a misdemeanor. “If the law had allowed discretion,” he concluded, “I think I can say the punishment would have been less.”<sup>9</sup> Nine years into his sentence, Haines continued to manufacture bricks for the Chattahoochee Brick Company.

In sum, the type of punishment black men received in postbellum Georgia reflected, in part, the relative interests, ideology, and power of elite landowning and poor whites. Where the ideology or interests of poor whites and elite white landowners clashed (Tomaskovic-Devey and Roscigno 1996, p. 566), black men’s likelihood of being punished through the convict lease system depended on the relative control each segment of the dominant group exercised over the criminal justice system (Wilson 1978, p. 12; Muller 2012). In postbellum Georgia, prisoners in the convict lease system were not sent to work for the people who accused them of crimes (Wright 1997, p. 459). White landowners consequently avoided using the convict lease system to punish their workers and tried to prevent workers accused by others from being sent away to another part of the state (Du Bois 1904, pp. 44–48; Alston and Ferrie 1999, pp. 22–29).

Where African-Americans achieved a degree of economic independence by moving to cities or acquiring land, in contrast, they threatened the ideology and economic position of poor whites and elite white landowners alike. White officers and civilians looked with suspicion on black men in cities and in counties where African-Americans had acquired noticeable parcels of land. Consequently, black men in urban counties should have been more likely than similar men in rural counties to be imprisoned in the convict lease system for property crimes—those crimes whites had the greatest discretion to enforce. Black men in counties where the value of land owned by African-Americans was comparatively high also should have faced a greater risk of being imprisoned in the convict lease system than similar

<sup>9</sup> Governor—Convict and Fugitive Records—Applications for Clemency, 1858–1942, RCB 9984, Georgia Archives, Morrow.

men in counties where African-Americans were largely excluded from land-ownership. The analysis to follow also provides evidence against the claim that black men had a higher likelihood of being imprisoned for property crimes in these counties only because there were more opportunities to commit property crimes there. Before moving to the analysis, I discuss this alternative explanation.

#### URBAN MIGRATION, LANDOWNERSHIP, AND CRIME

An alternative explanation for black men's comparatively high likelihood of being imprisoned for property crimes in urban counties and in counties where African-Americans had acquired considerable landholdings is that they primarily targeted the property of other African-Americans. Crawford Spencer, for instance, was sentenced to 20 years for stealing meat and rice from Tony Deligal, a landowning black farmer in coastal Liberty County.<sup>10</sup> Woodson Crawford tried to provoke Joseph Jackson, a local black merchant, into repaying a debt by riding one of his mules out of Atlanta, where Jackson lived.<sup>11</sup> He received eight years for horse stealing. But Smith's (1982, p. 175) three-county study of criminal indictments in postbellum Georgia suggests that these cases were exceptional: "most theft incidents," he concludes, "were interracial offenses involving black suspects and white victims."

African-Americans in urban counties and in counties where the value of their land was relatively high should have been better off, on average, than dependent black laborers in the cotton belt (Rabinowitz 1978, p. xiii). Charles Nordhoff (1876, p. 106), who traveled through Georgia in the summer of 1875, noted that "the negroes in and near the cities are usually prosperous. . . . There are fewer black than white beggars." Smith (1982, p. 193) argues that in McIntosh County, where African-Americans owned a comparatively large amount of land, "genuine economic opportunities no doubt discouraged theft crime."<sup>12</sup> In the cotton belt, in contrast, "Sharecroppers chose to commit crim-

<sup>10</sup> Governor—Convict and Fugitive Records—Applications for Clemency, 1858–1942, RCB 24968, Georgia Archives, Morrow.

<sup>11</sup> Governor—Convict and Fugitive Records—Applications for Clemency, 1858–1942, RCB 9800, Georgia Archives, Morrow.

<sup>12</sup> This did not prevent black men in McIntosh from being sent to the convict lease system for property crimes after 1875, the year local black leader Tunis G. Campbell was imprisoned (Duncan 1986, p. 101). Although McIntosh county—an "exception to the local experience of Reconstruction in most of Georgia" (Hahn 2003, p. 214)—elected and appointed several black sheriffs, constables, and jurors from 1868 to 1875 (Smith 1982, p. 120), their numbers dwindled to one black juror from 1876 to 1877 and one black constable and two black jurors from 1878 to 1879 (p. 295). In 1875, Governor Smith made Henry B. Tompkins, whose "animosity against the colored people" was notorious among African-Americans in McIntosh, judge of the McIntosh Superior Court (Duncan 1986, p. 99). An editorial in the

inal trespass or petty larceny, in order to dispose of what they saw as their share of the crop without the landlord's interference" (Lichtenstein 1995, p. 180; see also Jaynes 1986, p. 248). These arguments suggest that, if anything, property crime among black men should have been more widespread in the cotton belt than in cities or counties where African-Americans farmed independently. Nonetheless, to assess the claim that urban counties and counties where African-Americans had relatively high rates of landownership presented more opportunities for committing property crimes, I examine the imprisonment rates of white as well as black men. I also adjust the estimates reported below for the average value of personal property at the county level and estimate the relationships between both urbanization and black landownership and imprisonment for homicide—a crime white civilians and officers had comparatively less discretion to punish.

#### LINKING THE PENITENTIARY AND CENSUS RECORDS OF GEORGIA CONVICTS

To study the relationship between black men's probability of being imprisoned in the convict lease system and African-Americans' presence in cities and aggregate ownership of land, I combine complete-count census data for the year 1880 (Minnesota Population Center 2008; Ruggles et al. 2010) with administrative data on the convict lease system. Data on prisoners in the convict lease system come from the *Report of the Principal Keeper of the Georgia Penitentiary* for the year 1880, which I scanned at the Georgia Archives. Every one to three years, the principal keeper, whose duty it was "to supervise the state's interest in contracts for leasing prisoners" (Bonner 1971, p. 323), sent a report to the governor including a list of all convicts and a description of the conditions under which they labored. The report lists all inmates by name and includes their age, racial classification, crime, sentence, date of receipt, and county of commitment. Most important for my analysis is information about inmates' county of commitment, which I use to link convicts to county-level data from other sources. Typically, data on the whereabouts of prisoners are limited to the location where they are confined rather than the location where they were committed. With information on inmates' counties of commitment, I can estimate the relationship between their likelihood of imprisonment and the extent of urbanization and black landholding in these counties.

I use three primary types of information to link inmates in the principal keeper report to their 1880 census records: their name, whether they were

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Savannah *Colored Tribune* in January 1876 worried that Campbell would not be the only black leader in Georgia to be imprisoned in the convict lease system (Deveaux 1876).

counted among the incarcerated population in the census, and the order in which they appeared in both the census and the principal keeper report.<sup>13</sup> Beginning with the list of names appearing the 1880 principal keeper report, I searched for convicts by name in the census using regular expressions, limiting my search to the incarcerated population. Inmates typically were listed in roughly the same order in the 1880 census as they were in the 1880 principal keeper report. This made it easier to confirm links for prisoners whose recorded names in the two sources were similar but not identical. Prisoners linked in this way appeared in the census in 19 unique group quarters, each with more than one prisoner enumerated in it.<sup>14</sup>

After linking prisoners using the method described above, I checked the links using an approximate string matching algorithm. Eighty-seven percent of the links had a Jaro-Winkler distance of .3 or smaller for both the inmate's first name and last name.<sup>15</sup> Seven percent of the links had a Jaro-Winkler distance of greater than .3 for either the first or the last name because enumerators used a nickname, an abbreviated first name, or an alternative spelling of a name or because they reversed prisoners' first and last names in one of the records. The remaining 6% of the links could be confirmed by the order in which prisoners appeared in both records.<sup>16</sup>

<sup>13</sup> I define the incarcerated population as those people counted in a prison, a penitentiary, a camp, or a chain gang; those whose occupation is listed as an inmate or a prisoner; or those who are counted on a farm or a ranch but whose relationship to the head of household is listed as "inmate" or "prisoner." In 18 cases, I used age data to distinguish between prisoners with the same name. In nine cases, the 1880 principal keeper report erroneously listed the name of a prisoner. I found the correct name by searching the 1878 and 1882 principal keeper reports for inmates admitted for the same crime from the same county of commitment on the same date of admission. In 27 cases, I found that prisoners' names had been erroneously transcribed in the digitized complete-count 1880 census, by consulting the original census manuscripts.

<sup>14</sup> There were 16 exceptions to this rule. Two prisoners were counted in the private households of white families. These prisoners, who could be identified as inmates on the basis of their reported occupation, might have been subleased. Because the 1880 census was taken before the 1880 principal keeper report was published, some prisoners listed in the principal keeper report were not counted among leased convicts in the census. I found 10 such prisoners in their counties of commitment or in county jails. I found three prisoners admitted in 1880—the only individuals in the state with their name—elsewhere in the state. One convict admitted in 1878 was counted at his home address, but his occupation was listed as "in penitentiary."

<sup>15</sup> The Jaro-Winkler distance measures the number of matching characters in similar positions in two strings. It imposes penalties for mismatches in the first four characters and for matching characters that are transposed. Jaro-Winkler distances range from zero, when every character in a string exactly matches the character in the same position in another string, to one, when no character in a string matches the character in a similar position in another string. See van der Loo (2014, p. 119) for a formal definition.

<sup>16</sup> One prisoner's link exceeded the Jaro-Winkler threshold of .3 because his name, as recorded in the digital complete-count census, was erroneously transcribed. Another's ex-

In total, I linked more than 96% of convicts in the 1880 principal keeper report to their census records. More than 42% of the unlinked prisoners were admitted in 1880 and thus probably had not entered the convict lease system when the census was taken. The remaining unlinked prisoners could not be located for unknown reasons. Table 1 shows that the descriptive statistics of the matched and unmatched inmates are very similar.

Another way to assess the accuracy of the links is to examine the spatial distribution of inmates' counties of confinement. In 1880, Georgia prisoners were leased to one of four penitentiary companies. These companies put prisoners to work in different counties across the state. If the links are correct, the prisoners leased to each company should appear together, in a small number of counties, in the 1880 census. The 1880 principal keeper report indicates which company each prisoner was leased to and where its main centers of operation were, but it does not give the location of each company's smaller branch camps, where some inmates were sent to work. According to the 1880 principal keeper report, Penitentiary Companies No. 1, 2, and 3 were centered in Dade, Dougherty, and Greene counties, respectively, with several branch camps around the state. No information is given about the location of prisoners leased to Penitentiary Company No. 4. Because I lack information about the location of convicts leased to Penitentiary Company No. 4, as well as information about the location of prisoners housed in the branch camps, I could not use information about which penitentiary company prisoners worked for to link them to their census records. However, once I linked prisoners on the basis of their name, whether they were incarcerated according to the census, and their order of appearance in both the census and the principal keeper report, I checked that prisoners leased to each of the four penitentiary companies appeared together in the same counties in the census.

As expected, census enumerators found the convicts leased to each company in a small number of counties, including the company's center of operation as indicated by the principal keeper report, and what were likely its surrounding branch camps. The small group of prisoners not found in one of these clusters either were admitted in 1880, most likely after the census was taken, or were enumerated at home in absentia. Nearly all of the prisoners leased to Penitentiary Company No. 1, for instance, were counted in Dade County in the northwest corner of the state, where they labored in coal mines owned and operated by former governor Joseph E. Brown (Roberts 1960; Perkinson 2010, p. 102).<sup>17</sup> Prisoners leased to Penitentiary Company

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ceded it because the 1880 principal keeper report incorrectly recorded his first name—a fact I confirmed by checking the 1882 principal keeper report.

<sup>17</sup> Two prisoners admitted in 1880 had not yet been sent to Dade County at the time of the census and were enumerated in Spalding County instead.



TABLE 1  
DESCRIPTIVE STATISTICS, MATCHED AND UNMATCHED PRISONERS

	Matched	Unmatched
Proportion black . . . . .	.92	.90
Average age . . . . .	25.5	27.2
Proportion imprisoned for a property crime . . . . .	.64	.73
Proportion imprisoned for homicide . . . . .	.13	.13
N . . . . .	1,145	40

No. 2, in contrast, clustered in Bartow, Crawford, Dade, Dougherty, Richmond, and Taylor Counties.<sup>18</sup> Convicts leased to Penitentiary Company No. 3, some of whom were recorded as farm laborers, appeared instead in Bibb, Greene, Jefferson, and Oglethorpe Counties.<sup>19</sup> Finally, inmates leased to Penitentiary Company No. 4 were counted together in Cherokee and Polk Counties.

Several previous studies have analyzed data from the Georgia principal keeper reports. Myers (1990a, 1990b, 1991) and Myers and Massey (1991), for instance, use the reports to construct a statewide time series of imprisonment in the Georgia convict lease system for African-Americans and whites. These studies find that the price of cotton was negatively correlated with state-level imprisonment rates (Myers 1991) and that the black imprisonment rate increased with declines in the share of black men in the state population (Myers 1990a). The black imprisonment rate was also positively correlated with the size of the cotton harvest (Myers and Massey 1991) and inconsistently related to several measures of economic inequality between white and black residents of Georgia (Myers 1990b). In these analyses, “the state of Georgia was conceptualized as a homogenous entity” (Myers 1990b, p. 649). Myers and Massey (1991, p. 281) conclude that there is a “clear need for research that determines whether changes in crime levels, labor supply, and urban concentration were more keenly felt at the county level.” Because African-Americans’ efforts to achieve economic independence and social equality varied dramatically within Georgia, the following analysis uses cross-

<sup>18</sup> Three prisoners leased to Penitentiary Company No. 2, all of whom were admitted in 1880, were found instead in Fulton, Mitchell, and Thomas counties. Jeff Haleman, whose occupation was listed as “in penitentiary,” was counted at his home address in Webster County. A census enumerator who encountered a gathering of laborers at a branch camp in Richmond County noted in the margins of his schedule, “These are prisoners in Brick Yard and have no relation to one another—’Tis true some have similar names but they are from different portions of the State and as far as I could get information were in no way related.”

<sup>19</sup> Census enumerators counted four of the prisoners eventually leased to Penitentiary Company No. 3—all of whom were admitted to the convict lease system in 1880—in Bryan, Fulton, Polk, and Troup Counties instead.

sectional county-level data to examine black and white men's probability of being imprisoned in the convict lease system for property crimes and homicide.

#### DATA AND ANALYSIS

Using the administrative records of inmates in the Georgia convict lease system linked to the complete-count 1880 census, I create two dependent variables. The first is an indicator variable scoring 1 if a prisoner was imprisoned in the convict lease system for a property crime.

I focus on property crimes for two reasons. First, the vast majority of black inmates were imprisoned for property offenses. Figure 1 shows that most of the growth in Georgia's convict lease system was driven by African-Americans' commitment for property crimes.<sup>20</sup> Second, white civilians, sheriffs, and police had more discretion over whether to accuse, prosecute, and convict black men suspected of property crimes than black men suspected of other types of crime. Admissions to the convict lease system for property crimes should consequently have been more sensitive than admissions for other crimes to elite white landowners' economic reliance on black agricultural laborers and to elite landowning and poor whites' concerns about black men's social and economic mobility.

The second dependent variable measures whether a convict was imprisoned for homicide. Compared to property crime, homicide was difficult to ignore. Criminologists agree that homicide rates offer a more reliable signal of crime rates than rates of other crimes. If there is a large and positive relationship between imprisonment for homicide and urbanization or black landownership, this may indicate that the relationship between these latter two variables and imprisonment for property crimes is due to an omitted variable correlated with urbanization and black landownership and with crime generally. Table 2 reports the number of black and white prisoners imprisoned for each type of property offense and for homicide in 1880.

I use county-level data to construct my two main predictors. First, I calculate the population density of each county using census data and information about the land area of Georgia counties in 1880. I subtract all linked prisoners from the population of the counties where they were confined in the convict lease system and add them to the population of the counties where they were committed, then divide these corrected population counts by each county's land area in 1880 using data from the National Historical Geographic Information System (Minnesota Population Center 2011). I then rescale the variable so that it equals the county population, in tens of people,

<sup>20</sup> I calculated the number of convicts from 1869 to 1880 using the principal keeper reports for the years 1869, 1870, 1873, 1875, 1876, 1878, and 1880.

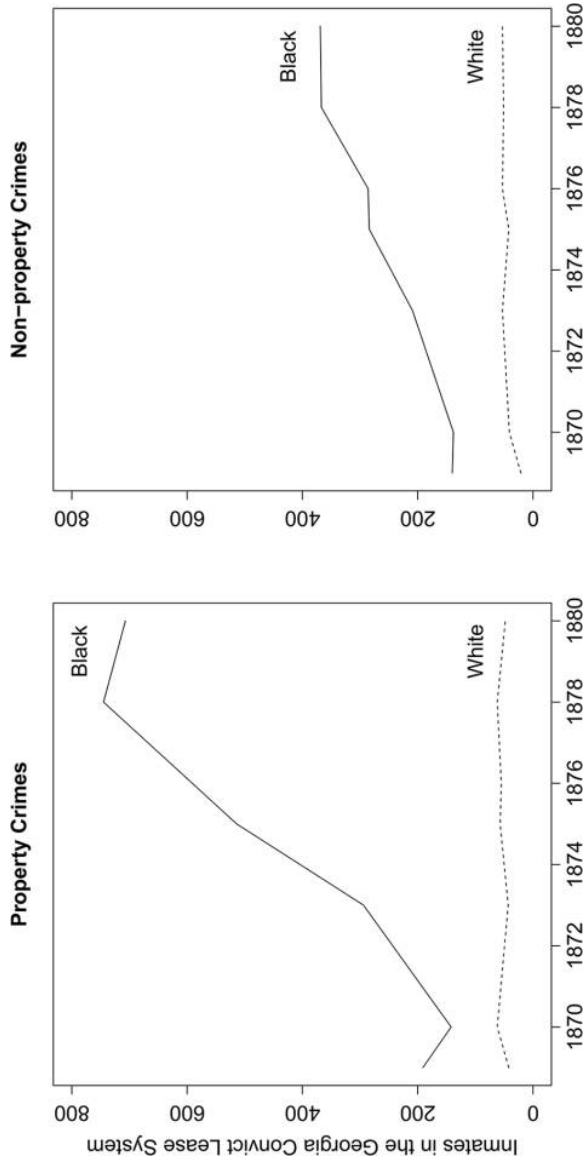


FIG. 1.—Inmates in the Georgia convict lease system, 1869, 1870, 1873, 1875, 1876, 1878, 1880. The growth of the Georgia convict lease system was driven by the imprisonment of African-Americans for property crimes.

TABLE 2  
 PRISONERS IN THE GEORGIA CONVICT LEASE SYSTEM CONVICTED  
 OF PROPERTY CRIMES AND HOMICIDE, 1880

	Black	White
Property crime:		
Animal stealing . . . . .	14	4
Burglary . . . . .	450	17
Forgery . . . . .	22	3
Larceny . . . . .	120	15
Robbery . . . . .	21	1
Simple larceny . . . . .	86	8
Homicide . . . . .	121	31

per square kilometer. I also report results with population density in the log scale. I follow Higgs (1982, p. 735) in using population density as a proxy for urbanization in postbellum Georgia.

I construct my second main predictor using data on the value of land owned by African-Americans at the county level. Du Bois (1901*a*, p. 649) compiled land-value data for Georgia counties in 1880 using the annual report of the state comptroller general. These data have been used in statistical analyses by other scholars (e.g., Higgs 1982). I divide the dollar value of land owned by African-Americans at the county level by the corrected count of the black population of each county. I also report results using the logged per capita value of land owned by African-Americans. Data on black landownership are missing for two of Georgia's 137 counties. Although Du Bois's data do not include information about the number of black landowners in each county, Banks (1905, pp. 34, 128) reports the number of black proprietorships in 31 Georgia counties in 1880 according to manuscript tax digests. The correlation between the number of black proprietorships per capita and the per capita value of land owned by African-Americans in these counties is greater than .8.<sup>21</sup>

County-level data on urbanization and the value of land owned by African-Americans allow me to assess whether black men committed in urban counties or in counties where African-Americans had acquired a relatively high value of land were more likely to be imprisoned in the convict lease system. They do not allow me to determine whether black men working in one occupation or another, or black landowners themselves, were more likely to be imprisoned.<sup>22</sup> Some qualitative evidence suggests that black men who re-

<sup>21</sup> Penningroth (2003, p. 158) notes that African-Americans often purchased and cultivated land communally.

<sup>22</sup> I cannot use census data on whether individual convicts resided in cities because census data reflect convicts' counties of confinement, not their counties of commitment. Occupational data likewise either indicate only that an inmate is incarcerated or report in-

fused dependent agricultural work made up a large proportion of Georgia's state convicts. In 1875, for instance, Principal Keeper John Brown reported to Governor Smith that the typical inmate in the convict lease system was not a rural laborer "trained, in ante-bellum days, to gain his bread by the sweat of his brow." Instead, he claimed, convicts typically were "preachers, teachers, and politicians" and boys under the influence of "carpet-baggers" and "scalawags" (*Report of the Principal Keeper of the Georgia Penitentiary from the 1st Day of January, 1875, to the 31st of December, 1875*, quoted in Lichtenstein 1996, p. 59). It is also possible that in urban counties and counties where African-Americans had amassed considerable landholdings, black men, irrespective of their status, were more likely to be falsely accused. In 1881, Frederick Douglass noted that "if a crime is committed, and the criminal is not positively known, a suspicious-looking colored man is sure to have been seen in the neighborhood" (Douglass 1881, p. 569, quoted in Davis 1998, p. 82). With county-level data on urbanization and landowning, I am able to determine whether black men in counties where African-Americans had achieved a degree of economic independence were more likely to be imprisoned in the convict lease system but not whether black men who themselves sought economic independence suffered this fate.

One difficulty with estimating the relationship between population density and imprisonment in the convict lease system is that Georgia's urban population may have been younger than its rural population. Once they have reached adolescence, young people are more likely than older people to commit crimes. The relationship between county-level measures of population density and people's likelihood of imprisonment could consequently be confounded by the age structure of the urban and rural populations. To account for this, I adjust all estimates reported below for individuals' age and age squared, as reported in the census.<sup>23</sup> Myers (1991, p. 106) uses the percentage of men age 20–29 as a surrogate measure of crime in her time-series analysis.

City dwellers might also be less likely to marry than their rural counterparts. Unmarried people, like young people, are more likely than married people to become involved in crime. Consequently, I include in all models below a variable indicating whether a person is married. Marriage data are missing for 12,266 of the 523,461 black and white men enumerated in

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mates' occupations in the convict lease system, not their occupations before they were imprisoned. The 1880 census does not include information about whether individual respondents owned land.

<sup>23</sup> I assign prisoners their age when they were admitted to the convict lease system rather than their age when the census was taken. I rescale age by dividing it by 10 before squaring it.

Georgia, including some prisoners. In order to retain all observations of linked prisoners, I use multiple imputation for the missing marriage data.<sup>24</sup>

Urban counties and counties where the value of land owned by African-Americans was relatively high typically were also counties where tenancy was comparatively rare. To examine whether the effects of black men's presence in cities or in counties where African-Americans had begun to access land were instead attributable to the prevalence of tenancy at the county level, I adjust the estimates for the proportion of farms that were operated by tenants or sharecroppers. These data come from the *Report on the Productions of Agriculture* (U.S. Department of the Interior 1883), made available digitally by Haines and the Inter-university Consortium for Political and Social Research (2010).

There are fewer challenges to identifying the relationship between imprisonment for a property crime and black landownership because the average black man in counties where the value of land owned by African-Americans was high should have been economically better off than black laborers tied to white landowners in the cotton belt. Absent the effect of black landownership on whites' reaction to African-Americans' economic independence, we should expect black men to have had a comparatively low imprisonment rate for property crimes in counties where the average value of land owned by African-Americans was comparatively high.

But the relationship between imprisonment and landownership among African-Americans could be confounded by the fact that the land they acquired was typically of a low quality. "The chief sources of the earliest land owning by Negroes," Du Bois (1901a, p. 665) noted, "were the waste lands and bankrupt plantations." African-Americans attempting to farm independently in counties where the climate and soil were poorly suited to cotton cultivation might have been forced to resort to alternative means of subsistence, such as fishing, foraging, hunting, and petty theft (Hahn 1982, 1983; Flynn 1983; Lichtenstein 1995).

To account for this potential source of confounding, I include in all models reported below a measure of the suitability of each county's climate and soil for cotton production. To construct this measure, I extract geospatial climate and land data from the International Institute for Applied Systems Analysis (IIASA) and Food and Agriculture Organization of the United Nations (FAO) Global Agro-ecological Zones (GAEZ v3.0) database. These data have been used to measure the historical climate suitability of regions

<sup>24</sup> Specifically, I create an imputation model including all variables used in all analyses and generate 10 imputed data sets using the Amelia II Program (Honaker, King, and Blackwell 2011). I combine the estimates from each imputed data set following the steps described in Carlin et al. (2003, pp. 228–29).

across the globe for cultivating several crops (e.g., Nunn and Qian 2011).<sup>25</sup> I calculate each county's mean suitability for cotton cultivation using 1880 county borders extracted from the National Historical Geographic Information System (Minnesota Population Center 2011) and rescale the variable by dividing by 10.

Because the price of land might have differed between urban and rural areas, I also estimate the relationship between black landownership and black men's probability of imprisonment for property crimes in a smaller sample of counties without cities or towns. Elite white landowners most resented African-Americans' acquisition of agricultural land, and poor whites "were hostile to any conspicuously successful black farmers" (Matthews 1970, p. 162). Thus, the effect of black landownership on imprisonment for property crimes should be observable even in exclusively rural counties. Higgs (1982, p. 735) notes that the population threshold for a city in 1880 is somewhat arbitrary. I therefore present separate results dropping counties with cities and towns based on the two census thresholds: places with 25,000 residents or more and places with 2,500 residents or more.

Counties where African-Americans had relatively more economic independence may also have contained more property that was susceptible to theft. In the regressions reported below, I control for the per capita value of property at the county level, in \$10 units, as recorded in the *Report of the Comptroller General of the State of Georgia from October 1st, 1879, to October 1st, 1880* (Georgia Comptroller General 1880). I combine the value of all seizable property, including household items, animals, crops, tools, watches, jewelry, and silver plate, and exclude the value of real estate.

Finally, it is possible that elite landowners and poor whites feared political resistance to the end of Reconstruction as much as African-Americans' efforts to achieve economic independence (Montgomery 1993, p. 127; Behrens, Uggem, and Manza 2003; Redding 2003, pp. 67–69). Hogan (2011, p. 139) argues that "Georgia in 1876 is the ideal case for illustrating the extent to which blacks and whites resisted Redemption, even against overwhelming odds." Accordingly, I include in all models a measure of the proportion of the popular vote for the Republican candidate in each county in the 1876 congressional election (Inter-university Consortium for Political and Social Research 1999).<sup>26</sup>

<sup>25</sup> All cotton suitability data assume rain-fed conditions and intermediate inputs. Using the IIASA/FAO measures is preferable to using historical measures of improved agricultural land because the land and climate characteristics they are based on are unlikely to have been affected by historical patterns of agricultural land use.

<sup>26</sup> The results are robust to using instead a measure of the proportion of the popular vote for the Republican candidate in each county in the 1878 congressional election. All but two prisoners listed in the 1880 principal keeper report were admitted to the convict lease system before the November 1880 congressional election.



I estimate the relationship between imprisonment in the convict lease system and both population density and black landownership using rare-events logistic regression. Although the convict lease system had a vastly disproportionate impact on African-Americans, the imprisonment rate of postbellum Georgia was low by today's standards (Wright 1997, p. 458; Davis 1998, p. 80). As shown in table 1, there were fewer than 1,200 state prisoners in a population of over 1.5 million. Logistic regression can underestimate the probability of such a rare event. Rare-events logistic regression corrects for the bias in logit coefficients estimated using rare-events data (see King and Zeng [2001] for a discussion).

## RESULTS

I restrict the sample to men age 9–81 and fit separate regressions for African-Americans and whites.<sup>27</sup> I begin by modeling imprisonment for property offenses. Model 1 includes the two main predictors—population density and black land value per capita—as well as individual-level controls for age, age squared, and marriage and county-level controls for the mean suitability of the climate and soil for growing cotton, the proportion of farms that were worked by tenants or sharecroppers, the proportion of the popular vote for the Republican candidate, and the per capita value of seizable property.

Table 3 reports the results of these regressions for black and white men. Among African-Americans, the coefficient describing the relationship between men's probability of imprisonment for a property crime and population density is large, positive, and statistically distinguishable from zero. The same is true of the coefficient describing the relationship between black men's probability of imprisonment for a property crime and black land value per capita. Black men in counties in the 90th percentile of the population density distribution had more than a 25% greater chance of being imprisoned for a property crime than black men in counties in the 10th percentile. The increase associated with moving from the 10th to the 90th percentiles of the distribution of the value of land owned by African-Americans was more than 50%. The coefficients for white men, in contrast, are negative and statistically indistinguishable from zero. The probability of imprisonment for a property crime for both groups increased with age and then decayed.<sup>28</sup> Black men who

<sup>27</sup> Prisoners in the sample range from 9 to 81 years old. Imposing this sample restriction does not substantively alter the results. Men made up more than 95% of the population of linked state prisoners in Georgia in 1880. Haley (2016, p. 29) suggests that the proportion of women in city and county misdemeanor camps may have been higher. For accounts of black women's experiences in the Georgia convict lease system, see LeFlouria (2015) and Haley (2016).

<sup>28</sup> Standard diagnostics indicate that multicollinearity is not a problem. Age and age squared are the only variables in the model with high variance inflation factors.

TABLE 3  
RARE-EVENTS LOGISTIC REGRESSION OF IMPRISONMENT IN THE CONVICT LEASE SYSTEM FOR PROPERTY CRIME AMONG MEN IN 1880 GEORGIA

	MODEL 1			MODEL 2		
	Black	White	Difference	Black	White	Difference
Population density . . . . .	.15*** (.01)	-.07 (.05)	.22*** (.05)	.15*** (.01)	-.06 (.05)	.21*** (.05)
Black land value . . . . .	.11*** (.02)	-.04 (.06)	.15* (.06)	.11*** (.02)	-.04 (.06)	.16*** (.06)
Cotton suitability . . . . .	-.12* (.05)	-.29 (.21)	.17 (.22)	-.12** (.05)	-.27 (.20)	.15 (.20)
Farms operated by tenants . . . . .	.25 (.62)	1.08 (1.32)	-.83 (1.45)	.25 (.59)	1.09 (1.29)	-.85 (1.41)
Property value per capita . . . . .	-.04 (.12)	.13 (.22)	-.17 (.25)	-.04 (.12)	.15 (.21)	-.19 (.24)
Republican proportion of votes . . . . .	.27 (.36)	.04 (.89)	.23 (.93)	.27 (.36)	.22 (.87)	.07 (.90)
Age/10 . . . . .	2.82*** (.37)	2.90** (.93)	-.08 (1.03)	2.50*** (.39)	3.07** (.97)	-.57 (1.07)
Age/10 squared . . . . .	-.47*** (.07)	-.48** (.16)	.00 (.18)	-.43*** (.07)	-.49** (.17)	.07 (.18)
Married . . . . .	-.77*** (.13)	-.35 (.58)	-.42 (.61)	-.66*** (.14)	-.46 (.55)	-.21 (.56)
Illiterate . . . . .				.04 (.14)	1.25*** (.34)	-1.22*** (.36)
N counties . . . . .	135	135	135	135	135	135
N individuals . . . . .	242,564	280,897	523,461	47,308	30,741	78,049

NOTE.—Numbers in parentheses are robust SEs clustered by county. I estimate each model separately for black men and white men. I estimate differences in the coefficients for the two groups by pooling the data and interacting each parameter with a parameter indicating whether an individual man is black. Population density is measured in tens of people per square kilometer. Property value per capita is measured in \$10 units. Age is divided by 10 and then squared.  
\*  $P < .05$ .  
\*\*  $P < .01$ .  
\*\*\*  $P < .001$ .

were married, as well as black men in counties where the soil was suitable for cotton cultivation, had lower risks of imprisonment for property crimes than black men who were unmarried or black men in counties outside of the cotton belt, respectively. Table 3 also reports differences in the coefficients for black and white men. Only the coefficients on population density and black land value per capita are statistically distinguishable from each other. Together, the results from model 1 indicate that black but not white men were more likely to be imprisoned in the convict lease system for property crimes in urban counties and in counties where African-Americans had acquired land of considerable value. If black men's likelihood of imprisonment was relatively high in these counties simply because they offered more opportunities for committing property crimes, we would expect to observe a large and positive relationship between these variables among white men as well.

Black men in cities and in counties where they were able to access land typically were more economically secure than their counterparts in the cotton belt. However, it may have been the poorest and least educated among them who faced the greatest risk of being imprisoned in the convict lease system. Although the 1880 census recorded the literacy of the population, this information is excluded from the complete-count digitized microdata. However, a 20% sample of the "minority" population and a 10% sample of the white population, both created by the Minnesota Population Center, include data on literacy (Ruggles et al. 2010).

The 10% and 20% samples are helpful for generating inferences about the total population in 1880, but they are of limited use for studying convicts, given how few prisoners are observed. To address this limitation, I return to the original manuscript census schedules of all prisoners in my sample and manually record whether they were illiterate.<sup>29</sup> I append the 100% sample of prisoners to the 10% sample of whites and the nearly 20% sample of African-Americans.<sup>30</sup> Sampling within categories of the dependent variable in this way is known as a case-control design. With proper weighting, rare-events logistic regression will produce unbiased estimates of logit coefficients generated with data collected using this sampling method (King and Zeng 2001).

Model 2 in table 3 reports the results of the case-control regressions. Despite the much smaller sample size, the results are very similar to those reported using the complete-count 1880 census microdata. The coefficients on population density and black land value per capita remain large, positive, and statistically significant for black but not white men. Here too the coefficients for white and black men are statistically distinguishable from each other. There was a large class divide in imprisonment among white men.

<sup>29</sup> In 1880, 81% of African-Americans and 21% of whites in Georgia were illiterate.

<sup>30</sup> I exclude all prisoners from the 10% and nearly 20% samples to ensure that prisoners are not counted twice.

Illiterate white men were more likely than literate white men to be imprisoned for a property crime. The literacy coefficient for black men, however, is much smaller and is not statistically distinguishable from zero. The difference in the literacy coefficients across the groups is also large.

Using estimates from model 1, figure 2 depicts the results graphically. The top panel of the figure shows that black men's probability of imprison-

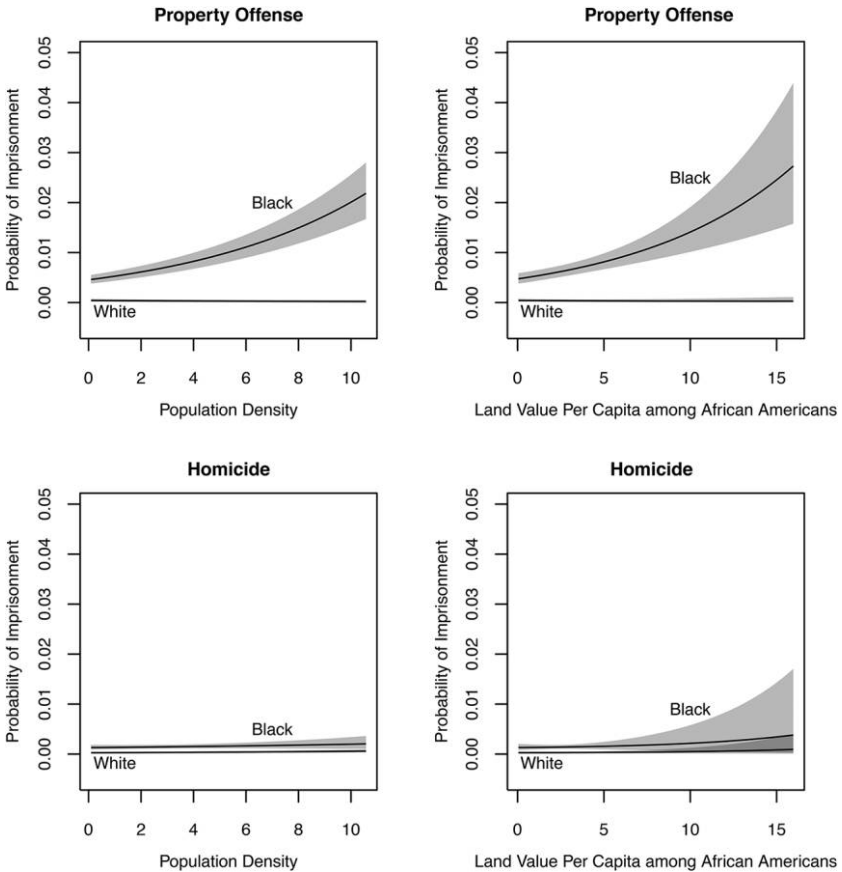


FIG. 2.—Relationship between imprisonment and the convict lease system and population density (*left*) and the dollar value of land owned by African-Americans, per capita (*right*). Black men's probability of imprisonment for property crimes rose sharply with population density and black land value per capita (*top*). This is in contrast to the probability for white men, which remained stable as population density and black land value per capita increased. The relationships between population density and black land value per capita and imprisonment for homicide were small and statistically indistinguishable from zero for black men (*bottom*). White men had a slightly greater chance of being imprisoned for homicide in urban counties and no greater chance of being imprisoned for homicide in counties where African-Americans held noticeable quantities of land.

ment in the convict lease system for a property crime increased sharply with population density and black landownership. In contrast, the probability for white men remained stable as population density and black landownership increased. The bottom left panel shows that the relationship between population density and black men's likelihood of imprisonment for homicide was small and statistically indistinguishable from zero. The same was true of the relationship between black land value per capita and black men's probability of imprisonment for homicide. White men had a slightly greater chance of being imprisoned for homicide in urban counties and no greater chance of being imprisoned for homicide in counties where African-Americans held a relatively high value of land.

#### ROBUSTNESS

Models 3–8 in table 4 reproduce the results in different samples and using alternative specifications.<sup>31</sup> Model 3 drops counties containing places with 25,000 people or more; model 4 excludes counties containing places with 2,500 people or more. In both smaller nonurban samples, black men faced higher risks of imprisonment for property crimes in counties where African-Americans had acquired landholdings of a comparatively high value. Model 5 reproduces the main results with population density and black land value per capita in the log scale.

Models 6 and 7 add to the main specification two alternative measures of African-Americans' economic independence. Model 6 includes a parameter capturing the proportion of the county population consisting of African-Americans who were not living on a farm. Model 7 instead adds a parameter measuring the mean occupational income score of all black men who were not imprisoned. As expected, the coefficients on both of these additional terms are positive and statistically distinguishable from zero. The higher the proportion of African-Americans living in nonagricultural dwellings, and the greater the mean occupational income score of black men, the higher was the likelihood that black men would be imprisoned in the convict lease system for property crimes.

The models presented thus far ignore county-level variation that is not captured by the county-level parameters. Model 8 reports the results of a multilevel logistic regression including county random effects. The coefficients on population density and black land value per capita remain large, positive, and statistically distinguishable from zero. This should increase our confidence that the results presented in table 3 are not driven by unobserved county-level variation. After fitting the multilevel model, I extract

<sup>31</sup> I report instrumental variables estimates in the appendix.

TABLE 4  
 LOGISTIC REGRESSION OF IMPRISONMENT IN THE CONVICT LEASE SYSTEM FOR PROPERTY CRIME AMONG BLACK MEN IN 1880 GEORGIA

	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8
Population density . . . . .				.14*** (.01)	.11*** (.01)	.16*** (.03)
Black land value . . . . .	.13*** (.02)	.10* (.04)		.11*** (.02)	.10*** (.02)	.09** (.03)
Cotton suitability . . . . .	-.06 (.05)	-.06 (.07)	-.10* (.04)	-.17*** (.04)	-.09* (.05)	-.11 (.06)
Farms operated by tenants . . . . .	.22 (.65)	-.03 (.45)	-.08 (.60)	.15 (.56)	.30 (.58)	.18 (.45)
Property value per capita . . . . .	-.06 (.13)	-.09 (.01)	.15 (.13)	.04 (.12)	-.06 (.11)	.01 (.09)
Republican proportion of votes . . . . .	.01 (.41)	-.05 (.29)	.54 (.31)	.17 (.32)	.20 (.32)	.33 (.28)
Age/10 . . . . .	2.93*** (.40)	2.77*** (.38)	2.83*** (.37)	2.81*** (.37)	2.78*** (.36)	2.83*** (.21)
Age/10 squared . . . . .	-.48*** (.08)	-.44*** (.07)	-.48*** (.07)	-.47*** (.07)	-.47*** (.07)	-.48*** (.04)
Married . . . . .	-.79*** (.16)	-.78*** (.17)	-.78*** (.13)	-.77*** (.13)	-.75*** (.13)	.77*** (.11)

Population density, logged.....					.56*** (.07)		
Black land value, logged.....					.24*** (.06)		
Proportion African-Americans not living on farms.....						1.226** (.48)	
Mean occupational income score of black men.....							.08** (.03)
Random effects Moran's <i>I</i> <i>P</i> -value.....							.79
<i>N</i> counties.....	133	121	135	135	135	135	135
<i>N</i> individuals.....	226,158	187,172	242,564	242,564	242,564	242,564	242,564

NOTE.—Numbers in parentheses are robust SEs, clustered by county, in models 3–7 and SEs in model 8. Model 3 reports estimates from a rare-events logistic regression excluding counties with a place whose population was 25,000 or more. Model 4 reports estimates from a rare-events logistic regression excluding counties with a place whose population was 2,500 or more. Model 5 reports the main specification with population density and black land value per capita in the log scale. Model 6 reports the main specification with an additional control for the proportion of the county population consisting of African-Americans not living on farms. Model 7 reports the main specification with an additional control for the mean occupational income score of black men. Model 8 reports estimates from a multilevel logistic regression including county random effects. Population density is measured in tens of people per square kilometer. Property value per capita is measured in \$10 units. Age is divided by 10 and then squared.

\*  $P < .05$ .

\*\*  $P < .01$ .

\*\*\*  $P < .001$ .



the county-level residuals, link them to geospatial data on Georgia counties in 1880, and test whether there is any residual spatial autocorrelation. The *P*-value on the Moran's *I* statistic reported at the bottom of the table indicates that we cannot reject the null hypothesis that there is no spatial autocorrelation in the county-level residuals.

## CONCLUSION

In postbellum Georgia, black men faced comparatively high rates of imprisonment in the convict lease system for property crimes where African-Americans most successfully resisted the economic institutions and social order that replaced slavery. The more urbanized the county in which black men were convicted, the more likely they were to be imprisoned for property crimes. Black men in counties where African-Americans had acquired considerable landholdings, moreover, had a greater likelihood of imprisonment for property crimes than comparable men in counties where African-Americans had achieved a lesser degree of economic independence. The relationships between black men's likelihood of imprisonment for homicide and both urbanization and black landownership, in contrast, were small and statistically indistinguishable from zero. White men's likelihood of imprisonment for property crimes was no higher in urban counties or in counties where African-Americans owned comparatively large quantities of land. White men had a slightly greater likelihood of imprisonment for homicide in urban counties and no greater likelihood in counties where the per capita value of land owned by African-Americans was high. Estimates using different samples, different measures of economic independence, and different identification strategies yield substantively identical results.

These findings are consistent with historical evidence that "African-Americans who rejected their 'place' in the agrarian social order," as well as the black men who lived among them, were disproportionately accused, prosecuted, convicted, and "bound instead to labor in the new infrastructural, extractive, and industrial areas of Georgia's postbellum economy" (Lichtenstein 1996, p. 71). Planters, like slaveholders, had few reasons to punish their laborers using the state penitentiary system, and if their workers were accused by others, they often intervened (Du Bois 1904, pp. 44–48; Sellin 1976, p. 138; Alston and Ferrie 1999, pp. 22–29). In the cotton belt, "accusation and/or prosecution would drive labor away" (Lichtenstein 1995, p. 181). But in cities and in counties where African-Americans had achieved a degree of economic independence, white civilians, sheriffs, and police had little to lose in using the convict lease system to punish property crimes. Their opposition to African-Americans' urban migration and acquisition of land gave them additional reasons to prosecute crimes they might have overlooked if the suspects had been white or bound to a white landowner.

Southern whites' reaction to the gains of Reconstruction, according to Du Bois (1935, p. 678), was the response of "normal human beings" who "at heart are desperately afraid of something." A similar fear characterized the law-and-order politics of the late 1960s and early 1970s (Western 2006, p. 79; Weaver 2007) and the hostility that greeted black migrants to the North during the Great Migration (Muhammad 2010; Muller 2012). Across these periods, the general mechanism was the same: advances in the economic, status, or political position of a subordinate group influenced the type of punishment supported or dispensed by threatened dominant groups. But the character of both the threat and the response in each period was historically specific (Tomaskovic-Devey and Roscigno 1996).

The extent to which the results reported here are representative of other states and other periods should depend not only on the specific historical content of the threat posed by subordinate groups but also on the relative interests, ideology, and power of different segments of the dominant group (Wilson 1978; Tomaskovic-Devey and Roscigno 1996). If, in other states, elite white landowners benefited from the labor of convicted prisoners, we should expect to observe the opposite pattern: black men in counties where there was a high demand for their labor should be more—not less—likely to be imprisoned in the convict lease system. Subordinate groups' rate of imprisonment should also be relatively high when they compete with those segments of the dominant group that wield considerable power over the criminal justice system, as they did during the first Great Migration, or when demand for their labor is low, as it was during the prison boom (Western 2006; Wacquant 2010; Muller 2012; Olzak and Shanahan 2014). All of these claims are predicated on the existence of an ideology that persuades the lower segments of the dominant group that their interests are opposed to those of the subordinate group, such as the idea that African-Americans were "unfit for independence" (Wright 1986, p. 101; Fields 1990; Edwards 1998).

The effects of African-Americans' impressive but incomplete advances in landownership in postbellum Georgia should not be equated with the unrealized consequences of the wholesale land redistribution that they envisioned. Honoring their claim to the land they had worked during slavery "would have made a basis of real democracy in the United States" (Du Bois 1935, p. 602). Such a democracy might have fundamentally transformed the South's criminal justice system (Foner 1983; Duncan 1986; Miller 2011).

Instead, African-Americans' treatment in the convict lease system and exposure to the "racial double standard" of Georgia's police, prosecutors, judges, and juries bred a long-standing distrust of the police and the courts (Lichtenstein 1996, p. 18; Muller and Schrage 2014; Bell 2017). "The effect of the convict-lease system on the Negroes was deplorable," Du Bois (1901*b*, pp. 741–42) wrote in 1901. They "lost faith in the integrity of courts and the fairness of juries." Rabinowitz (1976, p. 62) notes that "strained relations be-

tween segments of the black community and the police . . . were already present in the urban South during the period from 1865 to 1900, when recently emancipated slaves demanded the rights of free men.” The fact that black men faced the highest risks of being imprisoned in the convict lease system in the counties where they had made the greatest strides toward achieving economic freedom and social equality gave further weight to their grievances.

Meanwhile, increases in “the apparent criminal population of the Southern states” tightened the perceived connection between blackness and criminality (Du Bois 1901*b*, p. 740; Davis 1998, p. 75; Curtin 2000*a*, p. 42; Wacquant 2001, p. 117; Loury 2008, p. 35; Muhammad 2010). Southern whites used statistics about punishment to make inferences about crime (Muhammad 2010). In 1893, the *Southern Cultivator* claimed that “the negro population of the South largely constitute the criminal and pauper element of this section,” adding, “The penitentiary statistics of Georgia prove the statement as to the proportion of criminals” (1893, p. 296). In 1876, the *Atlanta Constitution* (1876) observed that “every negro is almost popularly regarded as a thief or rascal.” Within a few years of emancipation, criminality, like dependency, came to be seen as a property of a group.

## APPENDIX

### Instrumental Variables Estimates

The counties where African-Americans managed to acquire comparatively large quantities of land may have differed from other counties in unobservable ways that were correlated with black men’s imprisonment rate. The value of land owned by African-Americans was not randomly assigned, but there were historical determinants of landownership among African-Americans that can be used to identify its effect on black men’s likelihood of being imprisoned in the convict lease system. For two reasons, African-Americans on Georgia’s coast possessed an uncommonly high value of land.

First, Georgia’s coastal counties were part of the state’s low country. In the low country, unlike the rest of the South, many enslaved people had labored under the task system, in which they were assigned a fixed amount of work each day and permitted to use the remaining time as they wished. “By working on their own time to raise more than they needed to eat,” notes Penningroth (1997, p. 412), “slaves accumulated property and created traditions of property ownership and trade.” The savings African-Americans amassed on Georgia’s coast before the Civil War could have enabled them to purchase relatively more land after the war than African-Americans elsewhere in the state (Hargis and Horan 1997).

Second, in January 1865, Union General William Tecumseh Sherman issued a special field order setting aside a 30-mile-wide swath of the coast running from Charleston, South Carolina, to northern Florida for the exclusive use of formerly enslaved people. Thousands of black families settled on the abandoned plantations in the Sherman Reservation (Foner 1988, p. 171). President Andrew Johnson ultimately returned most of the Sherman land to its antebellum owners, but freedpeople holding valid titles were permitted to stay (Oubre 1978, pp. 68–69; Montgomery 1993, p. 118; Penningroth 2003, p. 144; O'Donovan 2007, p. 146). To the extent that African-Americans retained a portion of the land they had obtained through the Sherman grants, the average value of land they owned should have been higher within the former Sherman Reservation than elsewhere in the state. According to Du Bois

TABLE A1  
REGRESSION OF IMPRISONMENT IN THE CONVICT LEASE SYSTEM  
FOR PROPERTY CRIME AMONG MEN IN 1880 GEORGIA

	MODEL 9	MODEL 10	
	Probit (1)	First Stage (2)	IV Probit (3)
Coastal county . . . . .		2.25*** (.56)	
Black land value . . . . .	.04*** (.01)		.08*** (.02)
Population density . . . . .	.05*** (.00)	.08 (.19)	.05*** (.01)
Cotton suitability . . . . .	-.04* (.02)	.28 (.42)	-.04 (.02)
Farms operated by tenants . . . . .	.09 (.20)	-4.88*** (1.46)	.30 (.21)
Property value per capita . . . . .	-.01 (.04)	.03 (.22)	.01 (.04)
Republican proportion of votes . . . . .	.10 (.11)	-.63 (.58)	.08 (.11)
Age/10 . . . . .	.83*** (.11)	.02 (.03)	.82*** (.11)
Age/10 squared . . . . .	-.13*** (.02)	.00 (.00)	-.13*** (.02)
Married . . . . .	-.26*** (.04)	.00 (.02)	-.26*** (.04)
<i>F</i> -statistic . . . . .		16.02	
<i>N</i> counties . . . . .	135	135	135
<i>N</i> individuals . . . . .	242,564	242,564	242,564

NOTE.—Numbers in parentheses are robust SEs, clustered by county. Population density is measured in tens of people per square kilometer. Property value per capita is measured in \$10 units. Age is divided by 10 and then squared.

\*  $P < .05$ .

\*\*  $P < .01$ .

\*\*\*  $P < .001$ .

(1901a, p. 665), “Sherman’s celebrated field order, issued after entering Savannah, gave hundreds of slaves temporary possession of land on the coast and sea islands, which afterwards became permanent in many cases.” The per capita value of land owned by African-Americans was 81% higher in the former Reservation counties than elsewhere in the state in 1875, the first year for which data are available, and 80% higher five years later (Du Bois 1901a). Johnson’s reversal thus “failed to end the ‘undeclared war’ between former masters and former slaves that consumed the lowcountry” (Foner 1988, p. 171).

I create an indicator variable scoring 1 if a county was located on Georgia’s coast and use this to predict the per capita value of land owned by African-Americans. I then estimate the effect of black landownership on black men’s probability of being imprisoned for a property crime using the fitted values from the first-stage regression. Table A1 reports the results of the instrumental variables probit regression. Column 2 confirms that the per capita value of land owned by African-Americans was much higher in coastal counties than elsewhere in the state. Column 3 shows that black men in counties where African-Americans had acquired considerable landholdings because they lived on the coast were much more likely to be imprisoned for property crimes than black men in otherwise similar counties. The instrumental variables probit coefficient is larger than the baseline probit coefficient shown in column 1, most likely because black men in coastal counties would have had lower imprisonment rates than comparable men if whites had not feared their newfound economic independence.

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