

Dan Gediman: This is the Reckoning, I'm Dan Gediman.

In our last episode, we heard the remarkable story of Henrietta Wood, an enslaved woman who became free, but was then kidnapped and sold back into slavery by a man named Zebulon Ward, who she eventually sued in court successfully, for reparations. In this episode of our podcast, we'll learn more about this man. In addition to being a kidnapper, a slave trader, and the enslaver of at least twenty-seven people, Ward also made a fortune as a pioneer of the convict leasing system which, through a loophole in the 13th amendment, continued slavery by another name, and made men like Zebulon Ward, very rich.

This is the Reckoning.

Caleb McDaniel: One of the differences between slavery and the convict leasing system was that the keeper of prisons had little incentive to show any concern at all for the well-being of convicts.

Dan Gediman: That's Caleb McDaniel, professor of history at Rice University. He's the author of the Pulitzer Prize winning book *Sweet Taste of Liberty: A True Story of Slavery and Restitution in America*. In researching his book, McDaniel uncovered the story of Zebulon Ward, a prison warden who became a wealthy man by harnessing the labor of the convicts in his care.

Ward's big idea was to perfect a system of convict leasing already in place in Kentucky, to generate as much income for the warden as possible. I asked McDaniel to give us the back-story on how this came to pass.

Caleb McDaniel: Well, the State Penitentiary in Kentucky was founded in 1798. But in 1825, it was reorganized on the Auburn plan, which was so named

because it was first applied in Auburn, New York. And this plan was actually the brainchild of people who thought of themselves as prison reformers, they wanted to give prisoners the opportunity as they saw it to rehabilitate themselves through labor inside the prison walls, instead of being confined in solitude in a cell. And so, in 1825, Kentucky adopted a system where prisoners in the state penitentiary would spend their days manufacturing products that would be sold outside the prison walls. And to do this, they brought in a keeper who would manage the prisoners labor and would be appointed by the state legislature. But instead of being paid a salary, the keeper of the prison would keep as much as half of the proceeds of the products that were made in the prison and sold outside the walls. So very quickly, this plan promised to make keepers huge fortunes. So, by the time that Zebulon Ward made it clear that he was pursuing that job, it was well known as one of the most lucrative in the state of Kentucky.

Dan Gediman: Okay, so thank you for that background information, because it seems important. So how did our friends Zebulon become the Kentucky warden?

Caleb McDaniel: So, Ward was nominated in the state legislature and appointed the new keeper in 1854. Although he didn't take over the job until 1855. And very quickly, it became clear that Ward intended to exploit the labor of the prisoners to the utmost to enrich himself. And in fact, about a year after he started, he renegotiated the terms of the job with the state and began to pay the state a flat rent of \$6,000 a year, in exchange for which he would keep all of the proceeds from the prisoners labor. So, from the state's perspective, this appeared to be a good cost saving measure. But what it enabled was a system of unchecked brutality inside the prison walls. The problem with these convict lease arrangements from the beginning was that they put all the power in the hands of businessmen who had every incentive to push prisoners to make them the most money possible. And so, their unfree labor was marshalled to line the pockets of men like Zebulon Ward. So, from the very beginning, there were

rumors that Ward was treating his prisoners with brutality, that he was requiring them to manufacture more than was really humanly possible in a particular day. One of his prisoners was actually an abolitionist name Calvin Fairbank, who found himself in the state penitentiary because he had assisted enslaved people in Kentucky in escaping to freedom, including a famous Black abolitionist name Lewis Hayden, and Fairbank later wrote a memoir about the time that he spent in the penitentiary under Ward's regime. And he compared Ward to an overseer on a plantation and said that the power that he was given over his prisoners was almost as unchecked as a slave master had over slaves.

Calvin Fairbank (read by actor Alec Volz): Zeb Ward became warden of the prison in 1854. He leased it at \$6,000 a year and made \$100,000 out of the lease in four years. To do this he literally killed 250 out of 375 prisoners. Ward was one of the strongest men I ever knew, physically handsome, socially magnetic, but utterly devoid of heart or conscience. He was a gambler, libertine, and murderer under cover of the law. When he took the keys of the prison he said, "Men, I'm a man of few words and prompt action. I came here to make money, and I'll do it if I kill you all".

He was as good as his promise. All the floggings I received under Ward were for failure to perform the tasks set for me to do, generally weaving hemp--208 yards a day being what I was expected to perform, an utter impossibility. I was whipped, bowed over a chair or some other object, often 70 lashes four times a day, every 10 blows inflicting pain worse than death. Once I received 107 blows at one time, particles of flesh being thrown upon the wall several feet away. My weight, which was 180 pounds when I entered the prison, was several times reduced to 118 pounds. The other prisoners fared the same as I did when they failed to accomplish the work laid out for them. I have seen new men fall at their work, weak from flogging, and when taken to the hospital die before morning from

pneumonia and the strap. Younger and stronger men than I cut their throats, and poisoned, and hung themselves to escape the burdens thrust upon them.

Dan Gediman: It strikes me that the difference between a slave owner and a prison warden in this situation is the, you know, theoretically the slave owner would have a nominal concern for was the health of their slave big because if they drove them to death, they would lose the equity that they had in that slave whereas the warden if they drove someone to death from overwork, malnourishment, whatever. No big deal.

Caleb McDaniel: One of the differences between slavery and the convict leasing system was that the keeper of prisons had little incentive to show any concern at all for the well-being of convicts. Someone who owned a slave at least had a nominal interest in maintaining that person alive in order to keep the capital that inherited in that person. But in the case of a convict leasing system, like Ward's, deaths became depressingly common in these penitentiaries. In fact, annual deaths at the Kentucky State Penitentiary grew over the course of Ward's tenure there, peaking at 23. In 1858, which was almost a 10th of the whole population. And after Ward left the prison, investigators who came to look at his records found that the rate of mortality was higher than it had ever been in the history of the State Penitentiary. That really foretold the future of convict leasing in the post bellum South as well. In fact, it was said that people who leased convicts from southern states, were so unconcerned about the deaths of prisoners that they said, you know, if one dies, they could just go get another from the state.

Dan Gediman: So, when he takes over the Kentucky prison in 1855, what commercial activity where the prisoners engaged in that he was benefiting from. What were they doing? What were they making?

Caleb McDaniel: The main thing that prisoners were making under Ward's regime and the Kentucky State Penitentiary were hemp products. So, rope and bagging for cotton bales that would be sold down the river. And so Ward made a very lucrative career of producing bagging that was marked with his name, the Z Ward brand. And so, most of the prisoners would have been weaving this hemp into various hemp products.

Caleb McDaniel: Most of the hemp was grown there in Kentucky, often by enslaved people who would break the hemp and then it would be brought to Frankfort and manufactured into hemp goods.

Dan Gediman: So yeah, in Kentucky, you can't get away from hemp, right? It's grown by slaves, it's manufactured by slaves. And then what is it used for? Slaves bagging up cotton in the deep south plantations, right?

Caleb McDaniel: Right. So, hemp in Kentucky really connected the state to the cotton kingdom of the Deep South because the cotton planters around Natchez or New Orleans were dependent on bagging to produce the cotton bales that made them so much money when shipped from the Port of New Orleans to foreign ports. So, Kentucky was really part of this transatlantic system of the cotton economy. And one of the main inputs it provided was cotton bagging of the kind that Zebulon Ward forced prisoners to manufacture at the State Penitentiary.

Dan Gediman: Can you give us some sort of idea of what kind of money he was making from? You know, let's just start with Kentucky because, you know, but in a general way, let's talk about the kind of money that he made from this particular, you know, gig that he found for himself.

Caleb McDaniel: Well, one of the problems with the, the prison system, as it was arranged in Kentucky, was that it was very difficult for legislators to know how much the keeper was making, especially once Ward had negotiated a contract where he paid a flat rent to the state, and then had virtually unchecked control over the prisoners in the penitentiary. And so, as the state legislators began to get wise to the ways that this might have been coming in the state revenue, they in 1858, a while considering whether to renew Ward's contract started to think about whether the rent should be raised. But I think the fact that Ward was willing to pay as much as \$12,000 a year, as he proposed shows just how valuable the job was to him. Ultimately, the state decided to raise the rent but to select a new keeper, Ward was simply too tainted by the rumors of brutality in the penitentiary, and by the high rate of deaths. But Ward landed softly. He retired to Versailles and a sprawling farm in Woodford County where he had the wealth now to raise their red horses and by some estimates he had made from 50 to 75 thousand dollars and just a few years as keeper in Frankfort.

Dan Gediman: Can you talk about, to the best of your knowledge, how whether and how Kentucky's experience with prison leasing influenced other states like Tennessee to try this model in the aftermath of civil war and why it was-deemed a good idea?

Caleb McDaniel: Kentucky was definitely one of the first examples of convict leasing being put to effective use by a southern state. And many other southern states looked to it as a model, although they didn't turn to a system quite like the one Kentucky had until after the Civil War. And those economic imperatives only became greater after the Civil War, when the destruction caused by the fighting left many southern states deeply in debt, and with prison grounds that had in many cases been used by military forces during the war. And so, in Tennessee, for example, the prison system was \$50,000 in debt at least after four years of fighting, and the US military had confined prisoners of war in the grounds. So, the state found itself in a situation where the prison was war torn and in debt, and

convict leasing was seen as a way to offload the costs of keeping the prison open onto an enterprising, private contractor. Like in this case, Zebulon Ward.

Dan Gediman: During the antebellum era, state prisons were primarily filled with White prisoners as opposed to Black ones. That it was actually, if I understand correctly, pretty hard to convict a slave of a felony and have them be taken away from their master and imprisoned. That instead, they were, you know, given 39 lashes or whatever it was, on the public square. And that even if they were to be executed, the state would reimburse the owner for some sort of market value for a slave. So, if you could talk a little bit about sort of why prisons in the antebellum era were primarily filled by White people and then how that changed right afterwards.

Caleb McDaniel: Well, before the Civil War, most prisoners and southern penitentiaries were White because the laws of the states gave slave owners an extreme authority over the lives of the people that they owned. And so, it was very difficult to convict enslaved people of crimes that would cause them to be taken away from their legal owners and put into the station penitentiary. But that shifted after emancipation. When in freedom, southern states realized that they could use the prison systems and the Criminal Code as dragnets to capture freed people and confine them in prisons and continue to exploit their labor. Zebulon Ward was right at the center of that transition. After the Civil War, he moved to Tennessee, and took over the state penitentiary there, which very quickly began to fill with Black prisoners who were sent to the State Penitentiary, by county, the same county level officials that were founding the Ku Klux Klan and waging a war against emancipation in post war Tennessee. And subsequently, Ward moved to Arkansas where he took over the state penitentiary there and it too very quickly became a tool for racial domination by the White politicians who managed it.

Dan Gediman: Two years after Ward took over leasing the Arkansas prison, a

Little Rock newspaper ran an expose into Ward's mistreatment of the prisoners. As a result, the state launched an investigation into the allegations. And while it found evidence of (quote) "unusual and unwarranted whipping", Ward received little more than a slap on the wrist. As Arkansas officials continued to turn a blind eye to the carnage, one man decided he just couldn't stay silent.

A.H. Scott (read by actor Alec Volz): To the honorable Board of Commissioners of the Arkansas State Penitentiary. Gentlemen, I herewith submit to you my report as surgeon in charge of the Arkansas State Penitentiary.

Dan Gediman: Dr. A.H. Scott considered himself a Christian man, and in his mind, the brutality he witnessed on a regular basis at the prison, was decidedly un-Christian. He tried to persuade Zebulon Ward to change the way prisoners were treated, but when it was clear that no such changes would be made, he wrote out a list of complaints and sent them to the prison's board of commissioners. It's a very long letter, which we have edited down to his most salient points.

A.H. Scott: First, the prisoners of the Arkansas State Penitentiary are improperly nourished. They are fed incessantly upon poor beef, which generates the largest percentage of disease known in the institution.

Second, the prisoners are overworked, usually more than 12 hours a day and are often forced to walk for 5 miles after work, thereby inducing overhear, hemorrhages, heart disease, and other sickness.

Third, a very large percent of all prisoners bear marks of extreme violence upon their persons, some of them for months after its infliction.

Fourth, the sick are not furnished with proper diet, clean wards, or bedding. But the most outrageous practice is that of starving the sick to death. I

have seen sick prisoners perish and die when I believed they would have survived if they had been furnished with nourishment.

Fifth, the convicts are the stock and trade of [the penitentiary's] manager. His position is paramount to a slave master in the days before emancipation. It is human nature to be avaricious, but with such a power over such resources--God help these poor wretches.

Dan Gediman: We could find no record of any significant actions taken as a result of Dr. Scott's charges against Zebulon Ward. It seemed that no matter what Ward did, or how many complaints were filed, no one was able to remove him from his job, and he remained as warden of the penitentiary until 1883³. But even after that, he continued to lease convicts from the penitentiary to work on his cotton plantation, and to take part in various building projects that he oversaw.

Dan Gediman: So, to wrap things up here, how wealthy did he become from all this prison leasing activity that he did in these three states?

Caleb McDaniel: Ward had definitely learned from Kentucky and Tennessee, just how much a man can make by pushing prisoners through a convict leasing system. And so, in the 1870s, he learned that the Arkansas State Penitentiary was being leased out to the highest bidder. So, he moved to Little Rock and took over the third penitentiary that he had run. And it was the one that made him the wealthiest. By the time he died in the 1890s, he left behind an estate that was worth at least \$600,000 to his family, and that would have made him a multimillionaire in today's terms. So, it was a very lucrative business, but a brutal one, that Zebulon Ward had gotten into.

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