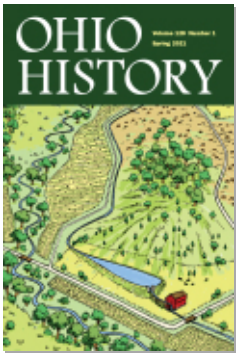
Leviathan in Chains: The Short-Lived Federalization of the Ohio Penitentiary



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Ohio History, Volume 128, Number 1, Spring 2021, pp. 67-85 (Article)

Published by The Kent State University Press
DOI: https://doi.org/10.1353/ohh.2021.0008

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The Short-Lived Federalization of the Ohio Penitentiary

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Erected along the Scioto River in the burgeoning Ohio capital, the Ohio Penitentiary was one of the earliest American prisons. Built to house predominantly men, the Ohio prison hosted thieves, bar brawlers, murderers, and—from July 1863 to March 1864—Confederate prisoners of war (POWs). Captain John Hunt Morgan and his infamous raiders spent the early months of 1863 wreaking havoc through southern Ohio, leaving ransacked businesses, upset railroads, smoldering canal boats, and a horde of livid Ohioans in their wake. Due in no small part to local outrage and Morgan's infamy, upon their capture, Morgan and many of his raiders were locked away in the Ohio Penitentiary rather than the nearby Camp Chase POW camp. Four months later, in an embarrassing turn of events for both the state of Ohio and the Union Army, Morgan and his men broke out of the Ohio Penitentiary and escaped back to the Confederacy.

A great deal of scholarship has been dedicated to John Hunt Morgan, contributing to his renown and status as a Southern folk hero. Yet historians have glossed over the four months he spent incarcerated. While Morgan's escape may appear to have meant little in the grand scheme of the Civil War, it was a tumultuous time in the history of the Ohio Penitentiary and the evolving relationship between state and federal authorities. Housing POWs, particularly Confederate officers, was an uncommon occurrence with little to no precedent to guide the ill-defined relationship between the military and civilian guards. The presence of POWs in the civilian prison created financial, bureaucratic, and

Ohio History, Vol. 128 No. 1 © 2021 by The Kent State University Press

political conflicts that neither the Ohio Penitentiary nor the Union Army were prepared to handle, leading to several crucial security measures falling through the cracks. Despite what the folk tales told of the rebel prisoners' cunning, it was the buildup of tension between military and penitentiary staff and a lack of a clearly understood authority within the prison that allowed Morgan to escape. The trepidation with which the federal government approached commandeering the Ohio Penitentiary, and its failure to actuate their control, was demonstrative of the uncertainty surrounding the centralization of the American State.

In July 1863, the Ohio Penitentiary took responsibility for the rebel prisoners begrudgingly. When Morgan and his men had been captured following the raids through Ohio and its neighbors, Union general Ambrose Burnside was concerned that the existing POW camps, like Camp Chase, would be unable to hold the raiders. Fearing they would escape, Burnside turned to the governor of Ohio and requested they keep the POWs in the penitentiary, where he was sure they would be more secure. Governor David Tod and Ohio Penitentiary warden Nathanial Merion acquiesced but initially restricted the number of POWs they would accept to 30. Despite this limit, the number housed at the Ohio Penitentiary quickly grew to 70.[1] From the beginning, no one was happy with the arrangement. While the military provided some of the supplies for the care of the raiders, most of their needs were to be covered by state funds intended for the criminal convicts. The strain on the institution's finances was exacerbated further by the fact that the penitentiary was not allowed to use the raiders as contract workers, a common practice with their criminal convicts.[2] The federal POWs were therefore a drain on the already tight and heavily scrutinized finances of the state-run penitentiary.

There was also the issue of space. The prison had an original maximum capacity of 500 inmates, though the institution was nearly always at or above capacity, perhaps a reason that Merion requested their charges be limited to 30. Prisoner comfort was evidently a nonissue for the prison administration, and, as a result, the penitentiary remained a diseased and brutal warehouse for years. The original wooden cells were perpetually damp and had tiny windows that allowed in little light or air.[3] Physicians noted the consequences of

1. Annual Report of the directors and warden of the Ohio Penitentiary to the governor of Ohio for the year 1863, Ohio Docs 365.9771 Oh3a, Ohio Historical Society Archives/Library, 7.

2. Annual Report of the directors and warden of the Ohio Penitentiary to the governor of Ohio for the year 1863.

3. Annual Report of the directors and warden of the Ohio Penitentiary to the governor of Ohio for the year 1855, Ohio Docs 365.9771 Oh3a, Ohio Historical Society Archives/Library.

this environment on the physical health of the prisoners, first voicing concerns over the conditions in 1850. The warden agreed with their assessment in 1855.[4] The directors—members of the prison oversight board—determined the prison's shape made it impossible to build an operational and cost-effective ventilation system, so the cells remained an unhealthy setting. Eventually, the administration's concern over cell quality was addressed when a new cell block was built to ease overcrowding. The new cells were constructed of stone, and ventilation tunnels ran throughout the building. While by no definition a comfortable residence, the administration considered the new block a better, healthier alternative to the old cells.[5] The rebels' status as military prisoners, not criminal convicts, created further logistical obstacles as they were required to be segregated from the general prison population. In order to meet these requirements, Merion took advantage of the new cell block that had been alleviating prison overcrowding. This new stone cell block was separated from the criminal convicts and of higher quality than the wood cells, which made them the best option for the military prisoners. While this solved the problem of where to place the POWs, it forced a number of convicts back into the old cells. This immediately re-created the earlier overcrowding crisis, rendering the administration's expensive efforts to alleviate the problem a waste of resources.

Prior to November 4, the POW cell block's chain of command was clearly delineated between both civilian and military guards, with the primary authority being the prison warden. However, despite this clear authority structure, the power dynamic between a civilian guard and military captive did not mirror that of a prison guard and criminal. Thus, in addition to the financial strain caused by the POWs' presence, the Ohio Penitentiary's internal policies were also being challenged by the federal authority's incomplete commandeering, creating a bureaucratic and jurisdictional quagmire. Chief among these conflicts was POW treatment. In common prison practice, convicts were searched, groomed, and bathed upon arrival to minimize the introduction of lice and other vermin into the penitentiary.[6] Merion continued this practice with Morgan and his men. Merion had them stripped

4. Annual Report of the directors and warden of the Ohio Penitentiary to the governor of Ohio for the year 1855, 9.

5. Annual Report of the directors and warden of the Ohio Penitentiary to the governor of Ohio for the year 1856, Ohio Docs 365.9771 Oh3a, Ohio Historical Society Archives/Library, 40.

6. For more on common prison practices, see Mark Colvin, *Penitentiaries, Reformatories, and Chain Gangs: Social Theory and the History of Punishment in Nineteenth-Century America* (London: Palgrave Macmillan, 1997).

of any materials of value, which included pipes, pocket knives, and money, and forced them to bathe, to cut their hair, to have their beards shorn.[7] As proud Southern officers, the Confederates viewed their facial hair as a badge of honor and considered the forced shaving a blatant act of disrespect done to further humiliate them. Salting the wound, the bathing was conducted in view of other prisoners, forcing the POWs to be hosed down while convicts leered at them and tried to catch a peek of the already infamous Captain Morgan and his band of raiders. Their humiliation and anger were channeled into complaints that they were being treated as common criminals and their rights as prisoners of war were infringed.[8] Brigadier General John Mason, the Union officer overseeing the incarceration, questioned these actions but ultimately determined them necessary to maintain conditions within the prison. Beginning with the POWs' intake process, Warden Merion had to navigate a murky line between criminal and military prisoner policy, a challenge with which no previous warden had ever been forced to contend.

As the chief authority of a prison now quasi-controlled by the federal government, Warden Merion devised a routine for the rebel prisoners. Morgan and his men were separated into individual cells with open doors during the daylight hours. During this time, as they were not permitted to be utilized as contract workers, the men socialized amongst themselves with card games and discussion in the hallway of their cell block. They were marched to the dining room twice a day for meals, including delicacies denied to the average convict like sugar and coffee.[9] During the day, prison guards ensured all prisoners were accounted for and performed a daily investigative sweep of the prison cells for contraband. Following supper, prisoners were ordered back to their cells and the bars of each cell were closed. At this time, the military guard was dismissed as their presence after lockdown was considered unnecessary. The prisoners burned candles to write letters or read until given the order to extinguish lights at 10 o'clock, after which prison guards forbade conversation until the doors were opened again at 7 o'clock the next morning.[10]

Predictably indignant at being housed in a criminal prison, a treatment

7. Captain Thomas Hines, *The Escape, 1885,* ed. Don D. John (Louisville, KY: Book Nook Press, 1891), 23.

8. James A. Ramage, *Rebel Raider: The Life of General John Hunt Morgan* (Lexington: Univ. of Kentucky Press, 1996), 183–85.

9. Ramage, *Rebel Raider,* 185.

10. 56th Ohio General Assembly Committee on the Ohio Penitentiary, *Report of the Committee on the Ohio Penitentiary,* 1864, Ohio History Center: 923.573 M8220 1863, Ohio Historical Society Archives/Library, 6–7.

they viewed as insulting to their status as military officers, the POWs began to attempt to contravene their civilian captors. This made discipline of POWs an additional conflict with which the prison administration had to contend. The prison administration applied the rules of conduct to all those housed in the prison, including the POWs. The POWs were therefore disciplined for perceived misbehavior or any broken rules in an identical manner to the criminal convicts. While reports speak of the prison administration and Ohio Legislature's duty to care for the "poor, unfortunate persons" confined in the Ohio Penitentiary, guard testimony and actions speak to their disdain for the prisoners.[11] Guards acknowledged that prisoners would be punished internally for an assortment of infractions, both minor and severe, at the guards' own discretion. As they were employed to handle criminal convicts, guard attitudes regarding discipline developed based on the authority structure between criminal and guard, and thus was built on that experience. To that end, they developed multiple methods of disciplining criminal inmates and applied the same treatment to the rebels.

While corporal punishment was banned in 1856 and wardens maintained that they only permitted legal forms of discipline, later reports suggest that at least one warden continued to conduct unsanctioned corporal punishment by suspending prisoners by their hands so their feet barely touched the floor. This treatment could result in a ruptured spinal column, which a penitentiary physician credited for at least one in-prison death.[12] However, it is unlikely such tactics were employed against the POWs. The POWs were certainly punished for code of conduct infractions, but the prison's concern about enhanced scrutiny of their actions with their unique prisoners likely encouraged them to employ legal methods of discipline. While perhaps not as taxing as being suspended from the ceiling, legal punishments were grueling. Within the law, methods of discipline were limited to solitary confinement in the aptly named "dungeons" and the restriction of nutrition to bread and water. Despite being legally accepted, administrators disagreed over the humanity of restrictive methods of punishment as well. Prison physicians were concerned the lack of ventilation and nourishment was a serious health risk; however, other administrators viewed this effect as a benefit, favoring how weakened constitutions

11. Ohio General Assembly, *Testimony Taken by Standing Committee on Penitentiary under House Resolution No. 31,* 1878, OGA 1.21 P378/878, Ohio Historical Society/Library, 2.

12. Ohio General Assembly, *Testimony Dr. R. Kinsell,* 50. In the 1870s, this became a legal form of discipline via the use of "bull rings." The ducking tub was also later introduced as legal punishment.

led to docile behavior.[13] Beyond calling for shorter stays in confinement, physicians were unable to offer any preferable alternatives to the dungeons to justify the method's disuse.[14] Later, one physician, Dr. James Norton, would suggest whipping as the best chastisement, but Norton feared that the "public might cry about it" and disregarded whipping as an option.[15] Thus, restrictive punishment remained the internally unpopular but chief form of discipline in the Ohio Penitentiary through the years of the Civil War, and many of the rebel prisoners were subject to such treatment. Confederate major W. P. Elliot was placed in the dungeon with his food reduced to bread and water, the same as any other prisoner in the Ohio Penitentiary, and he was certainly not the only rebel who was punished in this manner. The threat of punishment devised for criminals served as a constant reminder to the POWs that they were locked in a prison without being convicted of a crime.[16]

Despite not fully taking over the POW block of the Ohio Penitentiary, Union guards remained in the prison, contributing to the already strained internal politics of the institution and creating a power struggle during Morgan's incarceration. From the initial confinement, it was established that the POWs were not allowed visitors unless they were sick and confined within the infirmary. Even then, the only visitors allowed had to be confirmed Union loyalists, barring the POWs from physical contact with their many Confederate brethren who were paroled in Cincinnati. It also meant that Southern family members were denied access to their POW relatives. Henrietta Morgan, a devoted mother of multiple Confederate soldiers who would be POWs in Ohio, including Captain Morgan, had traveled to Cincinnati in July when Captain Morgan and his men had been confined there immediately following their capture. She then followed the raiders to Columbus only to find that she was not permitted access to her family. Causing a new controversy in the penitentiary, she compensated for her physical absence by sending copious amounts of food, clothing, and other supplies to the POWs.[17] Word spread

13. Annual Report of the directors and warden of the Ohio Penitentiary to the governor of Ohio for the year 1859, Ohio Docs 365.9771 Oh3a, Ohio Historical Society Archives/Library, 11.

14. Ohio General Assembly, *Testimony Dr. James A Norton,* 17. Terms of solitary confinement in the dungeons lasted six to 30 days.

15. Ohio General Assembly, *Testimony Dr. James A. Norton.* Dr. Norton was likely correct. While the move away from corporal punishments was a slow one, society turned much quicker than penal administrators. So, while the prison administration may have approved of reestablishing the whipping post, society likely would have objected, especially as they marched closer to the Progressive Era. See Joseph F. Spillane and David B. Wolcott, *A History of Modern American Criminal Justice* (New York: SAGE Publications, 2012), 88–89.

16. Ramage, *Rebel Raider,* 187.

17. Ramage, *Rebel Raider,* 186.

quickly that gifts were being accepted at the Ohio Penitentiary, and packages flooded the institution. Much to the irritation of the POWs, the federal military authority quickly changed the state prison's policy, declaring that gifts would no longer be accepted and all clothing would be provided by the prison.[18] Morgan himself further contributed to the strain between state and military authority with letters of indignation sent to Union secretary of war Edwin Stanton. Morgan complained of their nights in solitary confinement, but most of all he complained about their daily treatment, which he viewed as equivalent to common criminals. In these letters, Morgan demanded that he and his fellow POWs be treated with all the proper privileges that should be provided to a prisoner of war.[19] This complaint invited further interference by the military in the day-to-day protocols of the state-run prison, confusing the already unstable command structure created by the quasi-occupation of the prison by federal power.[20]

The national attention garnered by Morgan's raids and capture led to not only internal conflicts but also outside criticism. This extended into the South, where the men's confinement in the Ohio Penitentiary drew heavy condemnation from Morgan's supporters. Morgan and his now infamous raid had reached legendary status in the Confederacy, making his separation from his comrades in the POW camps and sequestration in a prison with criminals an insult of the worst caliber. "The Yankees are mean enough for anything but to make a chivalrous officer run the gauntlet," Lieutenant Preston Johnston complained to Morgan's wife, Martha "Mattie" Ready-Morgan, "as a hostage for all their real or supposed criminals would surpass even Yankee meanness."[21] While Lieutenant Johnston's ire befits his role as an intermediary for Morgan and Ready-Morgan, his criticism echoed that of many in the Confederacy. While Morgan's placement in a criminal prison was insult enough, it was heightened by the widely held belief that Morgan was being held hostage in the prison in retaliation for the Confederacy's placement of Union colonel Abel Streight in solitary confinement in a Confederate camp.[22]

The idea of tit-for-tat treatment was not a new concept and not wholly

18. Ramage, *Rebel Raider,* 190.

19. Ramage, *Rebel Raider,* 190.

20. Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 670–71, https://ehistory.osu.edu/books/official-records/119/0677.

21. Letter, Lt. Preston Johnston to Martha Ready-Morgan, Sept. 30, 1863, Folder 4, the John Hunt Morgan Papers, Louis Round Wilson Special Collections Library, Univ. of North Carolina at Chapel Hill (hereafter Folder 4). (The emphasis in the original was removed.)

22. Letter, Richard C. Morgan to Martha Ready-Morgan, Aug. 29, 1863, Folder 4.

false. To address this concern that characterizes all armed conflicts, the act of equal parole, exchange, and treatment predated even the official outbreak of the Civil War. While this was a common tactic, the process of prisoner exchange was much slower to gain traction as it would require the North to recognize the Southern soldiers as prisoners of war and, thereby, recognize the Confederacy. It was not until the threat of retributive bloodshed loomed that Union general John A. Dix and Confederate general Daniel Harvey Hill were able to devise the exchange agreement referred to as the "Cartel."[23]

The Cartel drew upon a practice used by the British and Americans during the War of 1812 and established a "sliding scale to calculate the relative values of officers and enlisted personnel."[24] During this time, paroles and exchanges were performed en masse. However, despite the cooperative nature of the agreement, mutual suspicion soon soured the deal. Officers reported rumors of prisoner maltreatment, evident from the weak and malnourished condition in which they were returned, and they complained of unwelcome and/or unfair terms of parole. In May 1863, two months before Morgan's capture, the Union halted all paroles and exchanges.[25]

While the formal Cartel had collapsed, officers were still exchanged on an individual case-by-case basis. When Morgan was first captured, he was indeed held hostage with the purpose of improving Colonel Streight's circumstances. Morgan expected a quick exchange, and the idea was broached by Confederate officers as well. However, the Confederate agent of exchange, Robert Ould, questioned the practicality of this notion in a letter to Lieutenant Johnston, musing, "Would it be wise? I am sure they are better treated than any of our people elsewhere." Indeed, the exchange of prisoners was becoming increasingly difficult as the war progressed, and Ould was certainly not wrong.[26]

While both sides had anticipated prisoners of war, none were prepared for the massive number of prisoners captured during the multiyear conflict. Neither side had adequate supplies or space to provide the respectful treatment expected in the incarceration of POWs. This led to camps like the aforementioned Camp Chase and Johnson's Island, which was in Lake Erie off

23. Roger Pickenpaugh, *Captives in Gray: The Civil War Prisons of the Union* (Birmingham: Univ. of Alabama Press, 2009), 43–48. For further information on pre-Cartel exchanges, please refer to William Best Hesseltine's *Civil War Prisons* (Columbus: Ohio State Univ. Press, 1998); this is often considered the foremost authority on Civil War military prisons.

24. Pickenpaugh, *Captives in Gray,* 48.

25. Pickenpaugh, *Captives in Gray,* 48–66.

26. Agent Robert Ould to Lt. Preston Johnston, Sept. 19, 1863, Folder 4.

the northern coast of Ohio. Hastily designed, Camp Chase was perpetually damp and muddy with questionable drinking water for the several thousand soldiers that would be housed there. These squalid conditions took a toll on the mental and physical health of the POWs, commonly causing depressive symptoms like abandonment of hygienic behavior, which allowed for the easy transmission of deadly diseases such as dysentery. Though considered better quality than their Southern equivalents, Camp Chase is representative of how Northern POW camps also suffered from poor water, inadequate sanitation, disease, and overcrowding as the Cartel collapsed, conditions that could have justified Ould's hesitancy in attempting a prisoner exchange.[27]

While circumstances may have appeared bleak in the Ohio Penitentiary—multiple officers did note low spirits at the beginning of their imprisonment—conditions in the institution were by far preferable to those of prison camps like Camp Chase or Johnson's Island. For one, the POWs were placed in the new cell block. The new cell block on the south side of the yard was built with concern for the stagnant air caused by the lack of windows or ventilation in the old blocks. These new cells were made of stone designed to combat the damp-induced diseases associated with the old wood cells and had ventilation tunnels running beneath the floor that improved air quality. While this did not make it a comfortable experience, it did mean that Morgan and his men slept in drier cells that kept out the elements better than the structures at the other prison camps. Although Morgan described their first days in the Ohio Penitentiary as "almost unbearable," as time progressed even he acknowledged the improvement of their condition in captivity.[28]

Similarly, the penitentiary's amenities were superior to those available at military prisons like Johnson's Island or Camp Chase. After being settled, Morgan was able to purchase candles from the warden with the funds that had been confiscated upon his arrival.[29] Colonel Richard C. Morgan, John Hunt Morgan's younger brother and fellow raider, similarly "thought our fate, a hard one being sent to a Penitentiary in retaliation for the treatment of Colonel [Streight] but experience has taught us to highly [appreciate] this

27. Hesseltine, *Civil War Prisons;* James Gillispie, *Andersonvilles of the North: The Myths and Realities of Northern Treatment of Civil War Confederate Prisoners* (Denton: Univ. of North Texas Press), 221–22; Ramage, *Rebel Raider,* 186.

28. Letter, John Hunt Morgan to Martha Ready-Morgan, Aug. 12, 1863, Folder 4. It should be noted that it is possible Morgan is referring to the Cincinnati jail that the prisoners were kept in before their transfer to Columbus. But as this letter was penned nearly two weeks after that move, I have interpreted his statement as being in reference to the Ohio Penitentiary.

29. Letter, John Hunt Morgan to Martha Ready-Morgan, Aug. 12, 1863, Folder 4.

Institution . . . for the abundance of grub . . . fresh water, and many other privileges which are granted us."[30] These conditions staved off the malnourishment that became common in POW camps on both sides, resulting in the POWs actually gaining weight during their incarceration.[31]

Though Morgan's imprisonment was relatively comfortable compared to those in Camp Chase and Johnson's Island, he quickly grew restless.[32] As previously stated, the men were locked in their cells for nearly 15 hours every day, from approximately 5 o'clock in the evening to 7 o'clock in the morning. With the cells shut and the candles extinguished, it was silent in the cell block. Any sound the men made, any attempt at conversation with their neighbor, could be heard by the night prison guard. Morgan would comfort himself with the prayer book his wife had given him during the evening hours, but he spent many hours in suffocating, dark silence. Despite his reassurances to his wife and mother, Morgan was not doing well. His nerves were raw and he worried about his pregnant wife, writing desperate letters and erratic journal entries while alone in his cell. Morgan clung to the belief that he would soon be exchanged, but as time progressed it became clear that he would not. Ready-Morgan joined a plea for the exchange of Morgan for Streight, but the Confederacy resisted and maintained that Streight was treated with the respect owed a prisoner of war. Further, they admonished the Union's treatment of the raiders by threatening to have Streight "shaved and put in a felon's cell," and they warned that the Union was pursuing "exactly the course to effect it."[33] Names of other officers were suggested for an exchange, but the negotiations would come to nothing as Morgan was too much of a threat for the Union to allow any one-to-one exchange. Morgan slowly accepted he would not be released, but he remained staunchly unwilling to stay in the penitentiary. Along with his men, Morgan started planning. Finally, when the internal tension between the military and prison guards came to a head, the path opened for their escape.[34]

30. Letter, Richard C. Morgan, Aug. 29, 1863, Folder 4.

31. Ramage, *Rebel Raider,* 186. Ample scholarship has been produced on the Confederate Andersonville Camp and the atrocities that occurred there. I will not address it further, but additional information can be found in Hesseltine's *Civil War Prisons* (1930) and Roger Pickenpaugh's *Captives in Blue* (2013).

32. It is unlikely that harsher treatment would have resulted in more docile POWs. As will be discussed later, the POWs claim that they did not begin planning an escape until harsher punishment was incurred in October.

33. Ramage, *Rebel Raider,* 184–85.

34. Ramage, *Rebel Raider,* 189.

The basic facts of the seven POWs' escape from the Ohio Penitentiary were not contested by any party. The men escaped through holes in the corners of their cells on the night of November 27, 1863, and were discovered missing on November 28. Using cutlery from the prison dining hall, they dug a tunnel through the floor in the left corner of the cell and dropped into the ventilation tunnel. Once inside the tunnel, they carved a hole through the tunnel wall and dug a vertical shaft that opened just outside the cell block walls. After they broke through the prison yard's surface, the prisoners climbed up the frame of the iron gate to get to the top of the southeast wall. They rappelled down the wall using bed ticking and headed south.[35] These basic facts are where the consensus ends and three distinct narratives of the prisoners' escape can be identified: the POWs', the penitentiary's, and the Union Army's.

The POWs' story was told several years after the escape in 1885, when Confederate captain Thomas Hines, a member of Morgan's company and a fellow prisoner, recounted the POWs' escape from the Ohio Penitentiary for a Southern magazine, the *Bivouac*. Hines presented a harrowing tale of honor and fortitude while simultaneously humiliating the Northern command and institution they escaped. He described the beginning of the process as being born from anger. Hines had been punished by the deputy warden for an unspoken offense and was left in the dungeon for 24 hours with nothing but water and bread. Following his release from the dungeon, a furious Hines secluded himself in his cell, forsaking food and drink until he devised a plan of escape.[36]

Hines soon noticed the dry environment of his prison cell that was uncharacteristic of most mid-nineteenth-century prisons. He deduced that there was an air chamber beneath the floor that kept the moisture from permeating the cell—the newly built ventilation tunnel—and he soon devised a plan to burrow out of his cell, through this chamber, and up into the yard. The next day, he shared his plan with his fellow prisoners, all of whom agreed enthusiastically. Once Hines cleverly convinced the guards to allow him to clean his own cell, thereby avoiding the daily inspections, work on the tunnel began on November 4.[37]

The laborers worked in shifts, relieved every hour. Hines remained at the top of his cell, and his head appeared to be buried in a book. Because his reading was not suspicious and he could see down both sides of the hall, Hines

35. 56th Ohio General Assembly Committee on the Ohio Penitentiary, *Report of the Committee on the Ohio Penitentiary,* 7–9.

36. Hines, *The Escape, 1885,* 23.

37. Hines, *The Escape, 1885,* 24.

served as the lookout for the laborers. He would then relieve the laborers with a series of coded knocks on the ground to indicate when it was and was not safe to emerge from the tunnel. Soon, all that remained to dig were the openings in the six other cells, through which the other prisoners climbed down into the tunnels.[38]

According to Hines, the men became adept at creative methods of distraction after a series of close calls with guards. Hines recalled an instance in which the deputy warden was performing a prisoner roll count while Captain L. D. Hockersmith was still working in the tunnel. When Hockersmith was not accounted for during roll, the deputy warden went to the Confederate prisoners' cells to search for him, but his attention was quickly caught by Morgan. Morgan asked the deputy warden's opinion on a design for a memorial, and the deputy warden, taken in by the flattery of a well-known military officer, did not notice Hockersmith slink out of the tunnel and fall into line.[39]

In Hines's recounting of the POWs' escape, the deputy warden was both blindly and immensely useful in carrying out their plan. In order to make the entrance holes to the tunnel in each of the six POWs' cells, they had to be dug from within the ventilation shaft. This required the laborers to know the length of each cell in order to gauge where to dig. To accomplish this, Hines roped the deputy warden into a conversation on the length of the hallway, and the deputy warden produced a measuring tape to prove his point. Captain Morgan's celebrity once again proved useful as he distracted the deputy warden while Hines measured the length of the cells with the measuring tape.[40]

The deputy warden was not the only civilian official whose gullibility Hines identified as a means for the POWs' escape. To ascertain which wall provided the easiest climb, the prisoners needed to get a view of the prison from the top of the wall. So as not to arouse suspicion, Hines wagered the warden that Captain Samuel B. Taylor, a small but strong Confederate prisoner, could climb the wall on the underside of a ladder and descend in the same manner. Taylor could and did, which allowed him a few moments on the top of the wall to identify the southeast wall as the best option to scale in their escape, all while the warden watched unwittingly. Shortly thereafter, during a late-night rainstorm that guaranteed the prison yard dogs would be in their kennels, the seven POWs made their escape.

38. Hines, *The Escape, 1885,* 24.
39. Hines, *The Escape, 1885,* 24.
40. Hines, *The Escape, 1885,* 25.

The POWs' swashbuckling account was clearly exaggerated in order to best demonstrate their own cleverness and resilience. However, parts of the POWs' tale also appeared in both the military and penitentiary investigations launched immediately after the escape. The point of view of the Ohio Penitentiary staff and military personnel was detailed following the Ohio State Legislature's House Resolution 16,[41] passed shortly after Morgan's escape and successful journey to North Carolina. House Resolution 16 called for the organization of a committee to investigate the circumstances surrounding the POWs' escape. Complete with testimony provided by Warden Merion and Union General Mason, the report pitted conflicting statements of events from the prison staff and the military guards against one another. At the heart of the conflict was the lack of a designated authority caused by the federal government's quasi-seizure of a state-run institution. Like the commandeering of the railroads, the Union had retained the right to commandeer authority and confiscate personal property, but they largely preferred to rely on the local authority and negotiated contracts.[42] While this worked well with most of the railroads during the war, which willingly participated in open-market contracts, the military's tepid claiming of authority in a state-run institution was far less successful, and the question of authority was pivotal to the day-to-day operations. The lynchpin of the committee's investigation was a key aspect of the prison's day-to-day operations: daily cell inspections. All sides agreed that regular inspections of the cells would have prevented the building of the tunnel and subsequent escape. The POWs claimed they convinced the guards to let them sweep their own cells, but the military and the penitentiary both vehemently denied having any authority to continue to sweep the POWs' cells after November 4, 1863, each stating that the responsibility was held by the other.

Prior to November 4, both the military and the penitentiary agreed that the ultimate authority in the prison was Warden Merion, with the military guard being secondary figures intended to ultimately follow the word of the civilian prison command. However, for several months the warden's supposed authority was constantly challenged by the military's continuous interferences in prison affairs, which, as discussed above, hindered the institution's ability to operate properly. Thus, on November 4, General Mason and Warden Merion discussed the military's taking a more active charge of the

41. Also referred to as "H.R. 16."

42. Richard Franklin Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859–1877* (Cambridge: Cambridge Univ. Press, 1991), 156.

POWs. The subject was broached at a meeting with the directors, and it was decided that authority within the prison would be shifted. Warden Merion and Julius Wood, a director of the prison, walked away from the meeting anticipating that the military would take full control of the prisoners, including the full transfer of the prisoners' funds, except for providing food, clothing, and the night watch.[43] Following this meeting, the prison physician, Dr. Loving, was relieved of his duties and an army surgeon and a noncommissioned officer—Sergeant Moon—was subsequently appointed as the prison steward for the POWs' cell block.[44] On November 4, Sergeant Moon took control of the POWs as the newly appointed prison steward. Upon his arrival, Merion testified he took the sergeant for a tour of the raiders' quarters. Along the way, he detailed the new responsibilities and duties of the military guard. During the transition, Merion expressed his deep concern about the experience of the new military leader in the prison setting. To address his concern, and to ensure that the transition of authority was conducted smoothly, Merion sent one of his prison guards—Milo Scott—to instruct Moon on how to operate the lockups and the other duties required of the new military watch.[45] Scott testified that he complied with the warden's instructions and that he guarded the POWs together with the military guard for a few days past November 4. Once he thought the military guard was "sufficiently acquainted" with their duties, Scott discharged this duty as the warden ordered and was employed elsewhere in the penitentiary.[46]

From that point forward, neither Warden Merion nor Officer Scott considered themselves to have any authority or control over the POWs.[47] When questioned about whether the military had been neglectful in their responsibilities,

43. Affidavit of Nathanial Merion, Dec. 8, 1863, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 676, https://ehistory.osu.edu/books/official-records/119/0676; Affidavit of Julius J. Wood, Dec. 8, 1863, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 675, https://ehistory.osu.edu/books/official-records/119/0675.

44. 56th Ohio General Assembly Committee on the Ohio Penitentiary, *Report of the Committee on the Ohio Penitentiary,* 10.

45. 56th Ohio General Assembly Committee on the Ohio Penitentiary, *Report of the Committee on the Ohio Penitentiary,* 10–11.

46. Affidavit of Milo H. Scott, Dec. 8, 1863, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, https://ehistory.osu.edu/books/official-records/119/0675.

47. Affidavit of Milo H. Scott; Affidavit of Nathanial Merion, Dec. 8, 1863, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 676, https://ehistory.osu.edu/books/official-records/119/0676.

Merion remained deliberately nonaccusatory in his answer.[48] He considered himself removed from any and all direct responsibility for the Confederate prisoners and therefore could not say whether there had been any neglect, though his guards were always present whenever he went to the cell block at night.[49] Milo Scott was more overt in his accusations, stating that one of the military guardsmen, Lieutenant Gonce, would "frequently . . . come late in the morning or be entirely absent."[50] Ultimately, the penitentiary's view was that the Union had exercised their retained right to commandeer the institution. Thus, the civilian guard had no jurisdiction over the POWs, and it was the military's failure to continue cell inspections that allowed for the escape.

The military's understanding of the November 4 authority exchange was much more limited. They continued to be cautious of pushing their federal power too far—preferring continued local control while exercising authority when it served their interests. Following the meeting with the directors, the military believed that the change in authority on November 4 was task specific rather than absolute, protecting the quasi-occupation of the prison they had established in July. They understood the military's responsibilities to include receiving the funds belonging to the POWs, distributing these funds, guarding the prisoners at meals, and attending to their medical treatment.[51] They believed that cell inspections were still within the jurisdiction of the prison staff and that they had never been instructed to perform the task. Lieutenant Goss, a member of the military guard, testified that following the escape, several of the military administrators and Warden Merion toured the cell again. During this tour, Goss asked why the sweeping had ceased. Merion responded, "One of the directors said let the God-named rebels clean their own cells," and that the guard who had been tasked with the sweep had been told to cease doing so.[52] Perpetuating a now-established pattern of caution

48. It should be noted that Merion initially suspected bribery, though it is not clear whether he suspected the bribed party to be prison or military staff. Nathanial Merion to Col. Wallace, Nov. 28, 1862, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 671, https://ehistory.osu.edu/books/official-records/119/0675.

49. 56th Ohio General Assembly Committee on the Ohio Penitentiary, *Report of the Committee on the Ohio Penitentiary;* Affidavit of Nathanial Merion.

50. Affidavit of Milo H. Scott, Dec. 8, 1863, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 675, https://ehistory.osu.edu/books/official-records/119/0675.

51. Col. Wallace to Gen. Wright, Dec. 6, 1863, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 670–71, https://ehistory.osu.edu/books/official-records/119/0670.

52. Affidavit of Lt. Goss, Dec. 7, 1863, Report of Brigadier General Wright to Secretary of War

with fully commandeering systems, the Union did not consider their jurisdiction expanded beyond those areas specifically listed. They still considered the warden the ultimate authority and, in this case, liable for the damages.[53]

Neither the penitentiary nor the military are particularly convincing in their protestations. The absolutism of both arguments suggests that both sides' testimony was designed to minimize their culpability. Attending to prisoners of war was not a responsibility Warden Merion had requested nor anticipated, but his role was clear. The immediacy with which Warden Merion testified and abdicated all responsibility for an entire wing of his institution suggests either a willful ignorance to the impracticalities of such a measure or an attempt to avoid all liability for the subsequent escape. Additionally, the likelihood that the military guard was willing to accept that prisoners would perform their own cell sweeps and turn over contraband of their own volition is indicative of either laziness, gullibility, or a fervent attempt to avoid implicating themselves in negligence. Giving the military and prison authorities the benefit of the doubt that they are neither lazy nor gullible, it is safe to assume that these stories were carefully worded to avoid implying their own liability.

The greater conflict here is one of federalism. The fault for the escape can likely be easily laid on both military and prison authorities and is best explained by the fact that, while it was required that military prisoners be placed under military guard, there was no protocol in place for POWs in state institutions, and the federal government did not step in to take control and run the cell block as they would the other POW camps. Instead, General Mason and Warden Merion created ad hoc policies as issues arose, leaving the command structure murky and malleable. While the civilian prison authorities attempted to continue running things as they usually would, the raiders were still prisoners of war. Captain Hines's recounting of the admiration the military guards paid Morgan, while likely exaggerated, may not be complete fabrication. As expressed in Morgan's outrage over his treatment as a common criminal, there is supposed to be a level of respect paid POWs, and it would not be unusual that the military would attempt to show some. Further, it is unclear whether members of the Union Army would be willing to appear subservient to a civilian body in front of enemy officers. While the military later

Edwin M. Stanton, Dec. 7, 1863, Serial 119, 672, https://ehistory.osu.edu/books/official-records/119/0672. As previously stated, the idea that prisoners swept their own cells was supported by the escapees' account published by Hines, though he states that the prisoners sweeping their own cells was his idea as a means to conceal the tunnel and tools.

53. Affidavit of Lt. Goss, Dec. 7, 1863.

claimed that they were simply "pretending" to have any real authority over the POWs, their interference in the day-to-day affairs of the prison likely went beyond banning the acceptance of gifts.[54] The spasmodic manner in which decisions were made about prisoner care resulted in the institution's incapability of functioning as either a state or a federal institution. After November 4, a lack of clarity over the responsibilities of both sides resulted in the cells not being swept, a vital and straightforward day-to-day task that would have been conducted by either side had the institution been solely state or federal run. And thus, Morgan escaped. Ultimately, if the federal government had either fully exercised their purported right to commandeer nonfederal property or had left the POWs completely under the control of the State of Ohio, the escape would not have occurred.[55]

The committee's final report demonstrated that this conflict was not between the prison guard and military guard, nor was it even in who bore fault for losing the prisoners. Rather, it is in the conflict created by an expanding federal government into a patriotic but protective state. The committee acknowledged a lack of understanding on both sides as to who was directly responsible for the POWs. This was attributed to the failure for either side to be specific in their written orders, causing the warden and his staff to believe they had been relieved while the military continued to view them as the authority within the prison, including the prisoners of war cell block. Regardless of the formal ambiguity, the committee believed that General John Mason was well aware that he was intended to have complete authority, evidenced by his appointing a soldier as prison steward. Because of this, the committee placed the charges of neglect, in regards to the failure to perform daily prisoner cell inspections, fully on the military. In doing so, they cleared the "State's authorities," meaning the prison staff, of any culpability in Captain John H. Morgan's escape from the Ohio Penitentiary.[56]

The quartermaster of Ohio's report to Governor Tod was slightly more evenhanded. He did not find complete fault with either party but rather on a

54. Brigadier General Mason to Col. Wallace, Nov. 30, 1863, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 670, https://ehistory.osu.edu/books/official-records/119/0670; 56th Ohio General Assembly Committee on the Ohio Penitentiary, *Report of the Committee on the Ohio Penitentiary,* 6.

55. Governor David Tod to Nathaniel Merion, July 30, 1863, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 667, https://ehistory.osu.edu/books/official-records/119/0667.

56. 56th Ohio General Assembly Committee on the Ohio Penitentiary, *Report of the Committee on the Ohio Penitentiary,* 4–5.

lack of clarity over who was the foremost authority. Brigadier General Wright's report stated, "it is evident that the prisoners made great complaint of their confinement in a place designed for convicts only, and in the attempt to treat them as prisoners of war and grant them indulgences not allowed to convicts discrepancies and embarrassments would arise between the military and prison authorities."[57] However, he also acknowledged that if Governor Tod's orders that Warden Merion be the authority over the POWs had been followed, the cells would have been swept and no escape would have occurred.[58]

The committee went beyond simply deciding fault for the escaped POWs; they went on to determine how the Ohio Penitentiary would handle POWs from that point on, returning to Governor Tod's July 30 directive.[59] While seven prisoners of war had escaped at the end of November, 63 Raiders remained incarcerated within the institution. The disorganized squabbling that characterized management of the POW cell block during the first four months of use led to an embarrassing loss of multiple significant prisoners during the height of the war. To address this concern, the committee declared: "That as long as rebel prisoners are confined in the Ohio Penitentiary they should be under the entire control of the Warden. . . . If one officer has command over the convicts, and another over the rebel prisoners . . . there is a great danger for collision, and there may be instances where it is difficult to tell the exact point where the duty of one begins and the other ends."[60]

In doing so, the committee put an end to the military's quasi-commandeering of their state's institution and challenged the federal government's right to exercise any formal authority over a state organization at all. The Morgan incident demonstrated that, while "programmatic confiscation of private property is one of the most effective ways of reshaping a national political economy and promoting strong central state penetration of societal structure," the expansion of federal power during these transition years was anything but smooth.[61] The federal government may have maintained they had the right

57. Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 670–71, https://ehistory.osu.edu/books/official-records/119/0677.

58. Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 670–71.

59. Governor David Tod to Nathaniel Merion, July 30, 1863, Report of Brigadier General Wright to Secretary of War Edwin M. Stanton, Dec. 7, 1863, Serial 119, 667, https://ehistory.osu.edu/books/official-records/119/0667.

60. 56th Ohio General Assembly Committee on the Ohio Penitentiary, *Report of the Committee on the Ohio Penitentiary,* 5.

61. Bensel, *Yankee Leviathan,* 156.

to seize state and personal property; however, their caution in exercising this right was equal parts dangerous and reasonable. Perhaps acting with an abundance of caution, by recognizing that their power—especially at this late stage in a very long war—was fragile, they attempted to avoid providing any opportunity for potential challenges to that authority. However, these self-imposed limitations instead created the very circumstances under which their power could be, and ultimately was following Morgan's escape, refuted by a state. Masked as a charming folktale, Morgan's incarceration and escape illustrates the perils of nineteenth-century federal expansion and the uneven development of a centralized American State.