

One

The Origins of U.S. Imprisonment

Beyond the Penitentiary

It is well-known, that in no one place are offered more injurious and vicious examples, than in a prison, where condemned, untried and all other classes of prisoners, are intermingled, without regard either to age, sex, or condition. . . . Accustomed to idleness, debauchery, and practice of frauds upon their keepers, upon visitors and each other, the young and inexperienced criminal is early taught to imitate the dexterity of his elders.

—Turnbull, 1796, p. 19

The prisoner has a right to share in prison, comfortable clothing, wholesome food, pure air, and a free use of water, equally with a humane discipline and ample means of moral instruction.

—Dix, 1845, p. 39

Capt. William Burch, the drunken warden, had come in from his revels, towards midnight; he dragged the sufferers from their beds . . . and was giving vent to his cruelty by putting them to the torture. To hear them scream, and see them writhe and smart under the strap, or the paddle, was to him a rich and sumptuous feast.

—Thompson, 1855, p. 119

Communities have always employed some method of punishment. However, the prison as we conceive of it today as a mechanism of punishment in its own right that is central to the operation of the criminal

justice system, only emerged at the end of the 18th century. Modern penal confinement, in this view, is characterized by a series of innovations that include architectural design, systems of classification, reasonably consistent sentencing practices, and a centralized, professionalized administration. Its operation is shaped by the various goals of deterrence, reform, punishment, and rehabilitation (see, for example, Foucault, 1995; Johnson, 1973; Ignatieff, 1978; Rothman, 1971, 1980; Melossi & Pavarini, 1981; Morris, 1995). Before the onset of modernity, institutions known as prisons did exist. Yet they were usually utilized merely as receptacles to hold offenders prior to their “real” punishment or coercively to house debtors. Punishment was almost always physical, and included whipping, branding, and the death penalty. Offenders could also be fined and publicly humiliated by being placed in the stocks.

From the 1770s, such practices in both Europe and America came under sustained criticism, at least when generally applied. Individual reformers, like John Howard in England, or groups such as the influential Philadelphia Prison Society in Pennsylvania headed by Benjamin Rush, commented widely on the evils of corporal punishment and on the inhumane conditions of confinement. The effects of reformers’ comments and actions were patchy. For certain individuals and in certain places—most notably for slaves, free Blacks, and their descendants in the South—the foundation of a prison system did not supersede corporal punishment but rather existed alongside it for many years. Indeed, state-sanctioned whipping in U.S. prisons continued in some places well into the 1970s.

One of the first actions of the nascent Philadelphia Prison Society was to lobby successfully against the so-called “wheelbarrow men” who were “employed in cleaning the streets, repairing the roads, &c.” Such men, according to the Quaker industrialist and charter member of the Philadelphia Prison Society, Caleb Lownes, had “their heads shaved and [were] distinguished by an infamous habit” (Lownes, 1794, p. 4). Although the critique of the “long continued, visible, or public punishment, by degrading labour in the streets or upon the highways” (Anon., *Brief History of the Penal Legislation of Pennsylvania*, 1845, p. 3) is often presented as one that was driven by moral sentiment, documents from the time suggest that prison reformers were dismayed as well by more pragmatic difficulties, such as controlling those set to labor in this fashion. “However well-meant,” Lownes laments, such hard labor

... was soon found to be productive of the *greatest evils*; and had a very opposite effect from what was contemplated by the framers of the law. The disorders in society, the robberies, burglaries, breaches of prison, alarms in town and country—the drunkenness, profanity and indecencies of prisoners in the streets, must be in the memory of most. (Lownes, 1794, p. 4)

Existing laws in Pennsylvania were repealed in 1790 and legislation passed to authorize the erection of cells “in order to confine therein the more hardened and atrocious offenders, and for the employment of convicts within the gaol, and not as formerly, in public” (Brief History of the Penal Legislation of Pennsylvania, 1845, p. 4). The refurbished Walnut Street Jail that opened that same year ushered in a new, recognizably modern form of the prison (Teeters, 1955). Confinement in cells, classification, work, education, uniforms,¹ religious instruction, and rehabilitation in the United States all originated at this time. The new penitentiary even separated women and debtors from the rest of the male convicts.

Yet, how useful and accurate is it to trace the origins of U.S. imprisonment to one institution? What of those populations who were not confined either in Walnut Street Jail, or in those institutions that are usually connected to it, namely Eastern Penitentiary in Philadelphia and Auburn Penitentiary in New York?² What are some other possible histories of incarceration in the United States and how might they inform our understanding of the system today? As Michael Ignatieff put it in his revisionist account of British prisons,

The real challenge is to find a model of historical explanation which accounts for institutional change without imputing conspiratorial rationality to a ruling class, without reducing institutional development to a formless *ad hoc* adjustment to contingent crisis, and without assuming a hyper-idealist, all-triumphant humanitarian crusade. (Ignatieff, 1983, p. 77)

In examining the history of U.S. imprisonment, the criminologist must not only find a path between explanation based on agency and structure, but also must appreciate geographical differences and socioeconomic variation in the treatment of many groups within American society. In the South, for example, not only slavery but subsequent practices like convict leasing, chain gangs, and prison farms shaped the historical

development of state and local penal systems in ways unlike the Quakers of Philadelphia. The internal variation was, moreover, not limited to a North-South divide. Rather, within each geographical area and state, a number of prison systems and penal practices coexisted uneasily for many years. Whereas convict leasing is typically associated with the Southern states, prisoners all over the country labored for private enterprise. Likewise, even when housed and fed by the state, many, particularly in the West, in places like Arizona, New Mexico, and Montana, worked at building roads and other tasks more typically associated with the convict labor of the South.

Just as today when we must differentiate between federal, state, and local institutions, the British Emissary William Crawford observed in 1834 “three distinct” kinds of prisons in the U.S. First, “County Gaols” confined people before trial as well as convicts whose sentences did not exceed one year, and in some states, two years, imprisonment. These prisons, he declared, fell “under the care of the Sheriffs and magistrates of the respective districts” and were mirrored by the Town Gaols, which “appropriated to the same descriptions of prisoners committed within local jurisdictions, and subjected to the municipal authorities.” It was the third class of establishment, “erected at the expense of the State for the confinement of criminals convicted of the higher classes of offences, who are sentenced to various periods, in some cases for life, and in none for less than one year” (Crawford, 1834, p. 3) that primarily interested Crawford. Yet local and county jails, at least in the South, were crucial for the development of the later system of incarceration as they provided much of the labor force for convict leasing and chain gangs.³

Colonial Justice

Criminal law and punishment played a key role in the early colonies as the first settlers sought to regulate life, commerce, and property in the New World. The Puritans brought with them a stern moral worldview, along with a commitment to some of the more sanguinary laws of England (Erikson, 1969; Smith, 1961). Court records and descriptions of punitive practices from this period provide a rich seam of analysis for anyone interested in understanding the texture of social life in Colonial America. They also allow a glimpse of power relations, morality, and of the abiding power of religious zealots. Accounts, such as those from the colony of

New Haven, which were transcribed by the Connecticut state librarian in 1857, depict a world shaped by superstition and fear, where confession and capital punishment were thought necessary to rebalance the moral order. To pluck but one example, we may consider the case of George Spencer: Found guilty of “abominable filthyness” [i.e., bestiality] with a sow, Spencer was charged for his crime primarily due to his apparent resemblance to a stillborn piglet “brought forth” from a sow he had acquired (Hoadly, 1857, pp. 62–63). According to the records, the case arose from the following set of circumstances:⁴

[On] The 14th of February, 1641, John Wakeman a planter and member of this church acquainted the magistrates thatt a sow of his which he had lately bourght of Henry Browning, then with pigge, had now brought among divers living and rightly shaped pigs one prodigious monstter, which he then brought with him to be viewed and considered. The monster was come to the full growth as the other piggs for ought could be discerned, butt brought forth dead. Itt had no haire on the whole body, the skin was very tender, and of a reddish white collour like a childs; the head most straing, itt had butt one eye in the midle of the face, and thatt large and open, like some blemished eye of a man; over the eye, in the bottome of the forehead which was like a childes, a thing of flesh grew forth and hung downe, itt was hollow, and like a mans instrument of generation. A nose, moouth and chinne deformed, butt nott much unlike a childs, the neck and eares had allso such resemblance. This monster being after opened and compared with a pig of the same farrow, there was an apararnt difference in all the inwards. (Hoadly, 1857, pp. 62–63)

Though initially unsure how to interpret this “monster,” John Wakeman was soon guided by the “hand of God” in his wife’s “speritt,” who

. . . sadly expecting, though she knew nott why, some strange accedent in thatt sows pigging, and a strange impression was allso upon many thatt saw the monster, (therein guided by the neare resemblance of the eye,) that one George Spencer, late servant to the said Henry Browning, had beene actor in unnatureall and abombinable filthyness with the sow . . . (Hoadly, 1857, pp. 62–63)

The ostensible reason for the suspicion of “Goodwife Wakeman” and others lay, then, solely in his appearance, as the record makes clear. He

“hath butt one eye for use, the other hath (as itt is called) a pearle in itt, is whitish & deformed, and his deformed eye being beheld and compared together with the eye of the monster, seamed to be as like as the eye in the glass to the eye in the face” (Hoadly, 1857, pp. 62–63).

This case, so strange to the modern eye, occupied the courts of New Haven and Massachusetts for some months in 1642. Held in prison while under interrogation and awaiting his execution, George was frequently questioned by representatives of the church, the magistracy, and fellow inmates. Although he allegedly confessed to another prisoner, Spencer denied his guilt when in the dock. Yet, his testimony was not enough to save either himself or his co-accused—the unfortunate sow. Instead, prior to being hanged, Spencer was forced to witness the sow “slaine in his sight, being run through with a sworde” (Hoadly, 1857, p. 72).

In addition to the strange crimes for which individuals could be punished, justice in the Colonial period also diverged broadly from modern conceptions in terms of the place of the prison in society. Colonial jails fulfilled a number of divergent tasks, most notably holding a range of parties in any legal conflict, including the accused and key witnesses. As historian Mark Kann puts it, jails

... housed debtors, less to punish them than to pry open their purses, and served as detention centers for vagrants, prostitutes, runaway servants and slaves, disobedient apprentices, juvenile delinquents, and the insane as well as prisoners of war, political prisoners, and religious offenders. Some jails also housed inmates’ families. (Kann, 2005, p. 123)

Perhaps not surprisingly, in light of this diverse population for which they were responsible, prisons in this period were far removed from the total confinement we expect in our penal institutions today. Rather, inmates were visited frequently by friends and intimates, who brought food and drink. The transcript from New Haven includes a number of descriptions of such meetings, particularly when they involved excessive alcohol (see, for example, Hoadly, 1857, pp. 107–108). In one case, heard at the court at New Haven on 5 April 1644, nine men were found guilty of “a drunken disorderly meeting at the prison on a Lords day att night, where they drunke 3 bottles of sack containing 3 quarts, and 2 quarts of strong water besides” (Hoadly, 1857, p. 133). For this activity, the men were each fined “according to the quallity and aggravation of his offence” (Hoadly, 1857, p. 133).

Throughout the early modern period, prisoners had to pay for the discomfort of being confined.⁵ Records from the Essex County witch trials in the late 17th century include a detailed account from the Salem jailkeeper William Daunton for 1692–1693, noting the costs of feeding those accused of witchcraft. One poignant entry reads, “Sarah Good 6 weekes, and for her child Dorih. Good, 1 mo. Dyet 1:01:03.” The document includes a 19th-century annotation by “Dr Frank A. Gardner, Antiquarian,” which adds that “Sarah Good was executed on Gallows Hill, July 19th, 1692.” No mention is made of what happened to her child.

Jailers apparently had some difficulty extracting money from prisoners, which, given the unreliable nature of their wages from the state, could leave them in financial difficulty themselves.⁶ Daunton’s list, for instance, comprises part of a bill to the state for outstanding pay. Promised 5 pounds per annum, over a nine-year period he received only 23 shillings. Presumably to get around such problems, inmates at the New Haven jail were charged: “a whole yeares rate be forthwith payd within 6 weekes at the most, [a]nd the constant yearly rates to goe on in their halfe yeares course, according [to the] formr order, notwithstanding” (Hoadly, 1857, p. 83). Perhaps because of these costs, and in response to the harsh conditions within jail and the heavy and brutal punishments that awaited inmates, prison escapes seem to have occurred relatively frequently.

By the 1720s, every small town was likely to have a place, sometimes only a single room, hut, or cage, where a runaway slave, convict, or felon could be held until a decision was made about their future. Larger towns and cities had more than one jail, where men and women, adults and children were pent up together in considerable discomfort and in grave danger to their health. There, straw was the only bedding, food was supplied irregularly, and exercise in the open air was usually forbidden. The jail keeper might live on the premises in an annex, or in a house nearby. Such places of confinement were not designed and were not meant to hold people for long. Punishments were generally inflicted on the body. Flogging, branding, and mutilation were common. The stocks and the pillory were also in use, although these were rarely used against free settlers. The slave or the servant could be flogged to death by his owner or employer, almost with impunity.

Under the influence of Enlightenment thinking, conditions in Colonial jails came to be seen as manifestly unjust. Early prison reformers, among them the Quakers of Pennsylvania, understood not only the limits of corporal punishment as a means of altering criminal sensibility but

also the evils of congregate living in unregulated detention. The Walnut Street Jail existed long before it became the site of the first American penitentiary in 1790. It was established by an act passed on February 26, 1773, by Richard Penn. The first prisoners were taken there in January 1776, including 105 who had previously been held in “. . . the old stone jail on High street, which had served the Philadelphia area since 1723” (Skidmore, 1948, p. 168). Despite some improvements in the material fabric of the prisoners’ life, the prison was frequently rocked by disturbances, escapes, and illness. The wholesale reforms of the penitentiary still awaited.

The War of Independence (1775–1783)

During the War of Independence, both the British and continental armies made use of a variety of structures to hold prisoners of war. Existing jails and prisons, including Walnut Street Jail in Philadelphia, along with converted warehouses, tents, guardrooms in forts, and ships were put to use. Conditions in most of these prisons were atrocious, and the death rates high. Unlike today, there were no uniformly accepted guidelines dictating treatment of enemy soldiers, and both sides were loath to exchange prisoners in case they would restock their opponent’s army. In a letter to General Gage of the British forces published in Philadelphia by the Continental Congress on September 29, 1775, George Washington decried the treatment of American troops:

I understand that the officers engaged in the cause of liberty and their country, who by the fortune of war have fallen into your hands, have been thrown indiscriminately into a common jail, appropriated for felons—that no consideration has been had for those of the most respectable rank, when languishing with wounds and sickness—that some of them have been even amputated, in this unworthy situation.

On the other side of the hostilities, Captain John Ferdinand Dalziel Smith of the Queen’s Rangers met a similar fate. Despite avoiding the ignominy of being clapped in “a very large pair of irons,” he could not escape the harshness of confinement:

I was thrown into a room in the criminal apartment, the door constantly locked, nor person, even in the gaol, allowed to speak to me, in a cold vaulted room, without bed, blanket, or straw, chair or table, obliged to lie on the bare floor, with a log of wood under my head, in the middle of a severe winter, and sometimes three days without a drop of water or any kind of drink. (Smith, 1778, p. 16)

While the ire of both commentators appears to have been roused by the practice of holding soldiers in a “common jail,” the real danger of incarceration for troops would have been, as it usually was for most offenders, too, infection, inadequate medical care, or death. Thus, according to a 19th-century account, when a prisoner was first brought on deck HMS *Jersey* moored off Brooklyn, “he was searched for money and weapons, but allowed to retain his clothes and bedding. He was then ordered down in the hold, where he found perhaps a thousand human beings, generally covered with rags and filth, their faces pale with disease and emaciated with hunger and anxiety” (Ellett, 1876, p. 118). Those who perished on board such brigs were either buried in shallow graves alongside Brooklyn Harbor or, on occasion, merely dumped in the river.

Likewise, smallpox was rife in the prison ships used by the British in South Carolina. Although the surgeons were permitted to inoculate captured American troops,

... the wretched objects were still confined on board of the prison-ships, and fed on salt provisions, without the least medical aid, or any proper kinds of nourishment. The effect that naturally followed, was a Small-Pox with a fever of the putrid type; and such as survived the Small-Pox, a putrid dysentery—and, from these causes, the deaths of at least one hundred and fifty of the unhappy victims. (Fayssoux, 1785, reproduced in Gibbes, 1853, p. 118)

Such conditions, Surgeon General Fayssoux suggests, were not the result of poor management, but rather constituted a deliberate attempt by the British to encourage defection of American soldiers to join their ranks. By refusing to provide adequate clothing or food, and by housing prisoners of war in overcrowded, filthy conditions, it was hoped that “their patience would be exhausted and enlistment would ensue.” When this strategy failed, the British deputy commissary announced that

... they should be put on board of the prison-ships, where they could not expect anything more but to perish miserably; and that the rations hitherto allowed for the support of their wives and children, from that day should be withheld; the consequences of which would be, they must starve in the streets. (Fayssoux, 1785, as recorded in Gibbes, 1853, p. 120)

The Americans similarly tried to persuade captured British soldiers to join their cause, despite warnings from figures as eminent as Benjamin Franklin over the unreliability of this tactic, given that some former British

soldiers betrayed their new colleagues in battle (Franklin, as reproduced in Sparks, 1829; Cogliano, 1998).

On both sides, the prison was used as an ongoing site of the war itself and of a more generalized brutality toward and suppression of the opposition. In so doing, it played an important part in articulating the nation state as well as, more subtly and more diversely, a vision of national identity. Imprisonment is, by nature, an articulation of state power, since only the state has the right to incarcerate an individual—even when it hands over the practicalities of confinement to a private organization. For the Continental troops, in other words, imprisoning British soldiers was more than simply a pragmatic response to an enemy, it was also a powerful statement of American sovereignty. So too, the British practice of transferring (or in contemporary parlance, perhaps, “rendering”) American prisoners to be tried in England made clear its sovereign identity.

All told, some 2,400 individuals were sent back to Britain, many of whom were captured on the high seas.⁷ They were sent, for the most part, to Plymouth, England, to stand trial for high treason. Here they were held first in prison hulks before being transferred to the local Plymouth jail (Herbert, 1847). Those soldiers who withstood the rigors of smallpox, starvation, or despair were usually found guilty by the British courts and sentenced to prison terms in England.

By placing their opponents in prison, British and American forces labeled them as criminal rather than recognizing them as legitimate foreign combatants. By trying them in England, the British clearly sought to reestablish the authority of the motherland; Americans, this practice averred, had to answer to the British nation-state. Such strategies, however, were only partially successful. Standards of decency—as George Washington’s letter made clear—bristled against disrespectful treatment of high-ranking opponents, and indeed, many were released from captivity, often in organized exchanges of prisoners. So too, despite the overweening power of England, studies suggest that many of the American prisoners in Plymouth rejected the authority of Britain, expressing instead a nascent form of national identity and pride as “Americans.” Songs and diaries from this time record patriotic impulses as well as organized resistance (Rediker, 1996; Cogliano, 1998). On July 4, 1778, for example, one prisoner by the name of Charles Herbert crowed, “This morning when we were let out, we all hoisted the American flag upon our hats . . . [at] one o’clock . . . we then drew up thirteen divisions [for the thirteen colonies], and each division gave three cheers, till at least we all cheered together . . . We kept our colors hoisted till sunset . . .” (Herbert, cited in Cogliano, 1998, p. 27).

Tellingly, evidence suggests that the American-born prisoners and their burgeoning sense of national identity divided, at least in part, along race lines. Though records do not divulge the number of Black prisoners taken by the British, historian Francis Cogliano recounts a general hostility and suspicion toward the Black prisoners. On April 26, 1778, for instance, one of the White prisoners, Charles Herbert, wrote in his diary that two Black men had been accused of informing to the British and were violently whipped by the White prisoners. Two days later, he wrote, “all the negroes were taken out of this prison, and put into a separate building” (Herbert, cited in Cogliano, 1998, p. 34). Likewise, Cogliano asserts, a greater number of Black prisoners than White sought release from captivity by joining the Royal Navy, suggesting that their affective ties to an American national identity were only loosely felt. While other sources estimate at 20,000 those Black slaves who joined the British on the promise of manumission (Moskos, 1973), such accounts provide a tantalizing glimpse of the racialized nature of American national identity, which was to become so profound, both in the country’s prisons as well as in its Civil War.

After the 1783 Treaty of Paris, the newly independent American colonies sought to rationalize the tangle of British models, which had until then informed Colonial legislation and places of punishment. British convicts—who had previously been transported to serve out the terms of their sentences—were no longer welcome. A new Constitution, adopted in 1787, was ratified in each state by June, 1788. The following year, work on a Bill of Rights was hastened when news of the French Revolution arrived. Among the many salutary tales told about revolutionary Paris was that of the storming of the Bastille prison in the center of the city, which was considered to represent the excesses of the Ancien Régime. Less admired, perhaps, were the later attacks on Paris prisons and the slaughter of many of their inmates (Bosworth, 2001). American prisons, overcrowded as a result of the trade depression, which had followed the War of Independence, also periodically stirred waves of anger among the populace. Penal codes began to shed capital punishment for offenses other than murder. Branding and mutilation of the body became outmoded. Flogging remained. Race and slavery emerged as the big questions that the newly enlightened Founding Fathers had to ponder.

Prisons, Slavery, and the Antebellum South

Notwithstanding the ongoing deployment of prison ships today, and the growing salience of prisons as tools of war, the fate of the prisoners of war

in the American Revolution is rarely remarked on today in the prisons literature. In contrast, the enduring effect of slavery has been given more attention (Oshinsky, 1997). Within criminology, work by sociologist Loïc Wacquant (2000, 2001a, 2001b, 2002), has been influential, particularly his schematic view of “successive” “peculiar institutions,” where he traces a direct line from slavery, through segregation, Jim Crow “justice,” and the ghetto to contemporary practices of “mass imprisonment.” More broadly, other writers like Jeanne Flavin (2007, 2008) uncover engrained brutality in a whole host of criminal justice, health, and welfare policies targeted at black women. In Flavin’s view, “The contemporary struggle over black women’s reproductive rights bears a disturbing resemblance to that which took place under slavery, marked as it is by racist stereotyping, paternalism, and insidious forms of control” (Flavin, 2007, p. 95).

Prisons in the South served as an important adjunct to slavery, just as slavery was, in states like Virginia, used as a punishment for “free blacks.” Whereas most accounts of slavery have focused on the summary “justice” meted out to slaves by their owners, it is notable that prisons, too, played an important role in controlling slave labor. They were used as holding pens for slaves awaiting sale, as well as places of confinement for runaway and “unruly” slaves. Not only did “hotels, taverns and inns occasionally maintain small jails to contain their customers’ human property” (Kann, 2005, p. 204), but prisons (typically county jails) were commonly used to keep slaves awaiting sale. Prisons also held slaves awaiting or undergoing trial (Randolph, 1722; Williams, 1883; Sommerville, 1995). As William Crawford observed in a footnote in his report to the English House of Commons on American Penitentiaries:

In the Slave States, particularly, the county gaols are truly deplorable. It is the practice to commit a slave to the common gaol whenever it suits the convenience of the owner. Slaves apprehended in endeavouring to escape are also here imprisoned until claimed, or sold to pay the charges incurred by their re-capture and maintenance. In addition to these classes are to be found, with scarcely any means of separation, persons committed for trial, convicts sentenced for minor offences, men, women and children . . . these places of confinement exhibit scenes of great depravity, wretchedness and oppression. (Crawford, 1834, pp. 22–23)

Moreover, Crawford asserted, the number of slaves behind bars was not of little regard. Instead, he claimed,

Occasionally the number of slaves in custody exceeds all other classes of prisoners. Of eighty-eight prisoners whom I found in the gaol at Baltimore

seventy-two were slaves, committed not for any offence, but merely for security until they could be sold. They consisted of individuals of all ages, from the old man of seventy to the infant at the breast. Here they were exposed to view previous to sale. (Crawford, 1834, p. 24)

Some states, like Virginia, developed complex procedures to deal with runaway slaves, which not only relied on the prison, but also demonstrated deep interconnections between places of confinement and other social institutions. Thus, the 1722 Act for Amending the Act Concerning Slaves and Servants, drafted by John Randolph, required the law-abiding population to commit to the county jail “every Negro or other person who shall be taken up and brought before any Justice of the Peace and cannot speak English or thro’ obstinancy will not declare the name of his or her owner” (Randolph, 1722, p. 3). On imprisonment, it was incumbent on the local sheriff to publicize

a full description of such Runaway and his cloathing . . . to the clerk or reader of each church or chappell in his county every which church or chappel is hereby required to make publication thereby by setting up the same in some open and convenient place near the said church or chappel on every Lords day during the space of two months from the date thereof. (Randolph, 1722, p. 4)

If the slave was not reclaimed within a two-month period, the law further dictated “the said Runaway to be delivered to the next constable to be by him conveyed to the next Constable and so from Constable to Constable to the public gaol of this Colony” (Randolph, 1722, p. 5). Eventually the jailer was entitled to sell the labor of the slave, providing that he should

cause a Strong Iron Collar to be put on the neck of such Negro or Runaway with the letters (PG) stamped thereon . . . and that he would agree to deliver the slave to his rightful owner (following payment for costs incurred) should that owner ever claim his property back. (Randolph, 1722, p. 7)

Slaves accused of crime were rarely sentenced to a term of imprisonment, receiving instead immediate corporal or capital punishment.⁸ While the likelihood of a slave receiving real justice under such process was not great, some evidence suggests that, on occasion, slaves were found innocent by the courts, particularly if they had supporters within the local White community, or if the “reliability” of their accuser could be successfully impugned. This latter issue was of particular relevance in rape cases involving White working-class women, who themselves often inhabited liminal, and so, vulnerable positions in the social hierarchy (Sommerville, 1995). In this regard, historically informed scholarship suggests, prisons and the broader

justice system played dynamic roles in the construction not only of race but also of the gender order (Messerschmidt, 2007; Young & Spencer, 2007).

Southern prisons upheld the “peculiar institution” not merely by confining recaptured slaves or individuals awaiting sale, but also by confining those (Whites) accused of fomenting abolitionism. One such person, Lewis W. Paine (1852), published an account of his years in a Georgia prison, where he was incarcerated for helping a slave escape. Despite legal safeguards, which, according to Paine, in the state of Georgia held that the jailer would provide each prisoner “two pounds of bread, one and a-half pounds of beef, or one pound of pork, with a sufficiency of water, all good and wholesome provisions,” while in the County Jail awaiting trial Paine reported being fed “on the coarsest food, the fattest outside of bacon; and the corn bread often contained the print of other teeth than mine” (Paine, 1852, p. 53). Overall conditions were so poor, he wrote, that “even if I had belonged to the family of swine, it would have been hardly just, even to the nature of a hog, that I should be left to wallow in filth, and kept forever in a pent-up sty, without a breath of fresh air!” (Paine, 1852, p. 60). Despite his hopes of improvement, in his first year of confinement, conditions were also poor in the state prison. “There was a great deal of fault found about our clothes. We never got a vest, never but one pair of socks, and sometimes none at all, and never our cotton jackets” (Paine, 1852, pp. 77–78). The warden also failed to provide the prisoners with any blankets. Though matters improved somewhat in his second year, following the appointment of a new warden, most of Paine’s book is study of deprivation and mistreatment.

Similar accounts of hard prison conditions, such as George Thompson’s 1855 book *Narrative of the arrest, trial, conviction, imprisonment, treatment, observations, reflections and deliverance of Work, Burr, and Thompson, who suffered an unjust and cruel imprisonment in Missouri Penitentiary for attempting to aid some slaves to liberty*, are common. Notable for having been condemned by a jury containing Mark Twain’s father, John Clemens, Thompson and his colleagues were sentenced to 12 years hard labor in Jefferson Penitentiary, Missouri. Though none ultimately stayed for the duration of his sentence, being pardoned after four years, all suffered serious health problems. In addition to describing daily prison life, Thompson also depicts in some detail the involvement of private, mercantile interests in incarceration, well before the period of Reconstruction, which is usually associated with the practice of convict leasing. Inmates at Palmyra, as those in Auburn penitentiary in New York State, worked for a whole range of private businesses, both within and outside the prison walls. Unlike Auburn,

however, which was run by the state, Palmyra was sold to the highest bidder. Thompson, who happened to be resident when the lease of the institution changed hands, claimed that the new warden, who took control on February 16, 1843, paid the hefty sum of “fifty thousand dollars, for the use and profits of the prison for ten years” (Thompson, 1855, p. 207).

Religious Reform in the North

By far the best known aspect of the history of U.S. imprisonment in the late 18th and 19th century concerns the work of the Quakers in Pennsylvania (Meranze, 1996; Okun, 2002). Champions of solitary confinement, classification, and religious instruction, they are usually viewed as the progenitors of modern American prisons. The early penitentiaries, however, were not without their problems too. “On the first night of the Walnut Street Jail’s reopening as a penitentiary,” in 1790, historian Rebecca McLennan (2008, p. 43) reports, “The convicts very nearly succeeded in perpetrating a mass escape.” In this same institution, “convicts routinely succeeded in enforcing the customary working man’s ‘rights,’ including that of ‘Blue Monday,’ laying down tools and ceasing work in flagrant violation of the penitentiary’s rules” (McLennan, 2008, p. 44). In 1799, one year after inmates at Walnut Street Jail had razed a number of workshops to the ground, an account published by Patrick Lyon, who stood accused of robbing the Bank of Pennsylvania, suggested that many of the reformist goals had been derailed. The promised order was upended by sickness and filth. So too, attempts at work and education had come to little, inmates were bullied by staff, and inadequately fed and clothed:

I was thrown into an unwholesome prison, where the Yellow fever raged with forcible degree of malignity, there being at the time between twenty and thirty cases of that ravaging disorder then in prison; several of the keepers died . . . during which time, being six weekes under close confinement, and without a bed; I have been twenty-four hours without a morsel to eat, or a drop of water to drink, besides the extreme danger I ran in losing my life, but that terrible, calamitous, and tremendous disorder, nominated the Yellow fever . . . At length, suffering three months of imprisonment, eight weeks of which I was in one pair of stockings; being denied every necessary communication with my friends, and held on suspicion without an oath, (or any ground for an oath), against me. (Lyon, 1799, p. 58)⁹

The yellow fever struck Philadelphia and Walnut Street Jail in particular, again, in 1820. So, too, prisoners repeatedly complained about their living

conditions, ensuring that mutinies remained a common part of the confinement experience. In his mid-19th-century account of his life, for example, newspaperman John Binns described a particularly dramatic example of such events that occurred in 1820, when

... the prisoners, in their place of worship, had, on signal given by the clapping of hands, seized and gagged the clergyman and every person in the church, save only the prisoners, many of whom in the conspiracy had come prepared with hammers, hatchets, pickaxes, &c., to break out the wall of the church, on Sixth Street . . . as soon as a few stones were knocked out of the wall, some of the prisoners squeezed their way out, and a few, I think not more than three or four, made their escape. (Binns, 1854, pp. 277–278)

The crowds, who later historians estimate at 400 to 500, were only subdued by the “civil and military authorities” who “fired down upon the most riotous of the prisoners” (Binns, 1854, p. 278).

Notwithstanding its manifold internal problems, Walnut Street Jail is fondly remembered as the “cradle of the American penitentiary” (Teeters, 1955) and the source of modern penal architecture and administration that reached its apogee at another penal establishment also located in the city of Philadelphia, the Eastern State Penitentiary. Established by an act of the General Assembly of Pennsylvania in March 1821, the Penitentiary, which was not completed until 1829, reflected advanced thinking about prison reform at the time and was specifically designed to hold “two hundred and fifty prisoners, on the principle of solitary confinement of the convict” (*An Act to Provide for the Erection of a State Penitentiary within the City and County of Philadelphia*, as cited in Schmid, 2003, p. 549).

Unlike prisons today, which increasingly resemble one another as states and the federal government utilize the same designs, Eastern State Penitentiary was lavishly decorated by its architect John Haviland.¹⁰ Constructed on a radial plan, Eastern State Penitentiary was a technological marvel of the time, with central heating and water in each cell. According to one impressed visitor, it was “one of the largest buildings in the United States, occupying ten acres of ground,” complete with thirty-foot-high walls, towers and a “great gateway . . . twenty-seven feet high and fifteen feet wide . . . filled by a massive wrought iron portcullis, and double oaken gates” (Myers, 1849, pp. 442–443). Coming in at a final cost of \$780,000, it was also the most expensive building of its day (Schmid, 2003; see also Johnson, 1994; Dolan, 2007).

Such extravagance by the state legislature, though not without its critics, signaled the seriousness of, and social cachet accorded to, penal reform at

the time. Prisons were thought to embody not just the brute strength of the state's rulers, but their wisdom and humanity, too. Elaborate buildings, fitted out with new technologies, pointed to a commitment to the social experiment of reformers and a profound optimism—some might say utopianism (Okun, 2002)—underpinning the penal project. Such institutions not only embodied a particular power configuration but articulated a vision of the nation state in which order, capital, and the sovereign reigned.

As they had with Walnut Street Jail, observers came to Philadelphia from all over the country and beyond to study the Eastern State Penitentiary and its effects. Such figures as Alexis de Tocqueville, Gustave de Beaumont (1833), and William Crawford (1834)—who were among its fans—and Charles Dickens (1996) who was not, brought the debate over solitary confinement, religious instruction, and prison labor to an international stage. Other less luminary figures also wrote of the establishment in their travel accounts of the American version of the grand tour (see, for example, Myers, 1849, pp. 442–444; Kilbride, 2005). Along with Niagara Falls, Eastern State Penitentiary was, for some years, one of the most visited sites in America (Schmid, 2003).

William Crawford, sent out by British government to examine American prisons, was among those who were deeply impressed by Eastern State Penitentiary. His report gave considerable detail about the penitentiary, from an account of its architecture to his musings on the impact of solitary confinement. Describing the appearance of the building, for example, Crawford wrote:

The penitentiary is situated about a mile from the city of Philadelphia. The site occupies about twelve acres. It is built of stone and surrounded by a wall thirty feet in height. Every room is vaulted and fire-proof. At each angle of the boundary wall is a tower for the purpose of overlooking the establishment. In the centre is a circular building, or observatory, from which several corridors radiate: they are under complete inspection. The cells are ranged on each side of the corridors in the wall of which is a small aperture and iron door to each cell: through this aperture the meals of the prisoner are handed to him without his seeing the officer, and he may at all times be thus inspected without his knowledge . . . (Crawford, 1834, p. 10)

Struck by its technological innovations, he reported admiringly that “a privy is constructed in each cell in such a manner as to preserve the purity of the atmosphere, and prevent the possibility of communication from cell to cell. Heated air is conducted by flues from stoves under the corridors.” Somewhere beneath the glowing phrases, he depicted a world controlled to

the finest degree, where even during exercise its inmates were kept from contact with each other; "Prisoners are not allowed to walk at the same time in adjoining yards; and when in the yards are inspected by a watchman placed for that purpose in the tower of the observatory" (Crawford, 1834, p. 10).

Unlike its critics, many of whom, like Dickens, believed that total sensory deprivation was cruel and unusual and impeded reform, Crawford approved of total solitary confinement. According to him, "Solitary imprisonment is not only an exemplary punishment but a powerful agent in the formation of morals. It inevitably tends to arrest the progress of corruption . . . The mind becomes open to the best impressions and prepared for the reception of those truths and consolations which Christianity can alone impart" (Crawford, 1834, p. 12).

Notwithstanding such praise, it was to be the regime of another penitentiary, in Auburn, New York, one that eschewed total solitary confinement, which would be adopted across the country and beyond. There, inmates were held in solitary cells overnight, working together in silence during the day in a range of workshops and, from 1824, in a prison factory. Ever loyal to the solitary system, Crawford was quick to criticize Auburn for its reliance on corporal punishment. "It is true," he wrote,

. . . that the dominion of the lash produces instantaneous and unqualified submission [at Auburn], but this obedience is but of a temporary nature. It imparts no valuable feeling and presents no motive that is calculated to deter eventually from the commission of crime and amend the moral character. (Crawford, 1834, p. 19)

Auburn, indeed, became associated with excessively harsh methods of punishment. The principal keeper, Captain Elam Lynds, a former soldier, ruled the institution with an iron fist. Guards were encouraged to use a variety of corporal punishments such as irons, stocks, the "Crown," or the yoke. Whereas the first two are self-explanatory, the Crown was peculiar to Auburn. Described in *Harper's Weekly* as "a simple helmet of metal, which is worn over the head," it was seen as "rather a badge of disgrace than a method of torture" (*Harper's Weekly*, 1858, p. 809). The yoke, in contrast, was designed to hurt. It was a "bar of five to six feet in length, with a staple at either end to fasten the wrists, and one in the centre to encircle the neck. . . . The pain of the yoke depends on its weight and on the length of time it is worn. They usually vary from thirty-four to forty pounds" (*Harper's Weekly*, 1858, p. 809).

Above all, prison guards used the whip on the inmates, male and female. After one died following a particularly vicious flogging in 1845,

Auburn adopted the “shower-bath” as a means of enforcing discipline. Used extensively throughout mental institutions in Europe and America, this technique was described in some detail in 1858 in *Harper’s Weekly* after it, too, led to the death of a black prisoner named More. According to the article, entitled “Torture and Homicide in an American State Prison,” there was some variation in the mechanism of the shower-bath. “At Auburn,” the author reported, the prisoner

... sits in a chair which reminds one of the old “stocks.” His legs and arms are pinioned: his neck fits into a sort of dish, which closes tightly around his throat. As soon as he is fastened therein, a cloth is put into the dish to prevent the water escaping too fast. The string is then pulled, and the stream falls. If the convict does not keep his head well erect, with his mouth as high above water as his position will allow, he will suffocate. Indeed his attitude and the machine are such that he feels perpetually in imminent danger of suffocation.¹¹ (*Harper’s Weekly*, 1858, p. 809)

The unfortunate More, the article claimed, was subjected to this technique utilizing icy water for upwards of thirty minutes in midwinter (*Harper’s Weekly*, 1858).

Despite such sadism, it was Auburn that ultimately won out as the favored model penitentiary due, primarily, to its financial success. Even Crawford grudgingly acknowledged that “the labour performed at Auburn is considerable” (Crawford, 1834, p. 16). Listing the work in which inmates were employed, most having been contracted out to private businesses who paid the state per diem amounts per prisoner, he noted: “stone-cutters, smiths, blacksmiths, carpenters, tool-makers, coopers, cabinet-makers, machinists, turners, saddletree-makers, comb-makers, button-makers, weavers, check-weavers, bed-tick weavers, sattinet weavers, tailors [and] shoemakers” (Crawford, 1834, p. 16).

Notwithstanding the considerable differences between these two early penitentiaries, the institutions were united by some common practices. As at Eastern State Penitentiary, for example, the prisoners of Auburn were under constant and invisible observation, even when at work. “A wooden partition, forming a narrow passage, runs down the side of every workshop,” Crawford recalled, “. . . by means of small apertures made in the boards, the operations of the convicts can at all times be conveniently inspected, without exciting their observation” (Crawford, 1834, p. 17). Likewise, although they worked in groups, they were prohibited from speaking to one another. Similarly, if not the architectural marvel of Eastern State Penitentiary, Auburn

was still a popular destination for tourists, who for a mere 25 cents could visit. One such tourist, young Thomas Mott Osborne, was later to play an important role in reforming the worst excesses of the physical discipline upon which Auburn relied. In his case at least, the visit had an enormous effect. Reminiscing many years later, he asserted that

no incident of childhood made a more vivid impression on me. The dark, scowling faces bent over their tasks; the hideous striped clothing, which carried with it an unexplainable sense of shame; the ugly close cropped heads and shaven faces; the horrible sinuous lines of outcast humanity crawling along in the dreadful lockstep; the whole thing aroused such terror in my imagination that I never recovered from the painful impression. (Osborne, 1916, p. 1)

The Civil War

Three decades after the musings of Crawford and his contemporaries on the penitentiary, prisons in America were thrust into a new role when, during the Civil War, they held many thousands of men from both sides (Sanders, 2005). Though initially both sides sought to exchange those taken prisoner in battle, numbers, and failures in communication, soon necessitated the erection of prison camps. As in the American Revolutionary War, the imprisonment involved was characterized, on both sides, by great brutality and high mortality rates. Elmira Prison, in New York, for example—a location later to be associated with the reformist work of Zebulon Brockway in the 1876 establishment of a reformatory for young male offenders—was, from April 1864 to July 1865, the place where numerous soldiers from the South died. Elmira Prison Camp, officially known as Camp Chemung, confined over 12,000 Confederate soldiers. One in four of these men died, a death rate much the same as its more notorious Confederate counterpart at Andersonville (Gray, 2001; Horigan, 2002).

Curiously, no hint of the severe conditions can be found in the 1865 *Harper's Weekly* description of "The Camp of Rebel Prisoners at Elmira." The prisoners of war, it said,

... are confined in a space of some twenty acres of ground, with a broad river running in the rear, and high walls on every side. Here about 10,000 of the rebel soldiers who have been made prisoners of war are kept in safe custody, lodging in the wooden huts or in the canvas tents. . . . Sentries are posted all round on the walls, in such a position that they can have a clear view of every thing within the camp, while the movements of the sentries themselves can not be watched by the prisoners. At night the whole place is lighted up with kerosene-oil lamps. (*Harper's Weekly*, 1865, p. 230)

More than that, even, the author continued, "The prisoners at Elmira are well fed and clothed, and there is an efficient medical staff to attend to the sick. They amuse themselves with reading and writing, or making toys and other small articles for sale"¹² (*Harper's Weekly*, 1865, p. 230). Indeed, as at other times and places of institutionalized and state-sanctioned brutality, the problems of Elmira seem to have been willfully ignored. Instead, as in other 19th-century prisons, locals and tourists happily paid to view the confined at Elmira, handing over 10 cents per person to various competing tourist entrepreneurs for the privilege (Gray, 2001).

More notorious than Elmira, Camp Sumter, Georgia, also known as Andersonville, saw the deaths of 225 guards, an unknown number of Black workers, and around 13,000 Union soldiers (Davis, 2007). After the war, its camp commandant, General Henry Wirz, was executed for deliberately maltreating and killing prisoners, though some historians have argued since that the high mortality, at times more than 100 per day, was caused by such mundane factors as insufficient food and medical supplies. The death toll was also, as in the American War of Independence, aggravated by a failure on both sides to exchange prisoners.

At its most crowded, Andersonville held as many as 32,000 prisoners. Altogether, 41,000 men passed through it. The original structure was built on a site of 16.5 acres in 1863 by slaves, and then extended by captive soldiers (Snedden, 1864–1865, p. 14). One firsthand account of Andersonville, written by a 20-year-old Union soldier, John Ransom (1963), described the prison worsening dramatically over time as the prison filled up and the guards became more brutal. Whereas when he arrived on March 15, 1864, he wrote excitedly that rations "consisted of nearly a quart of corn meal, half a pound of beef and some salt. This is splendid" (Ransom, 1963, p. 53), just over one month later, on April 30, those same rations had become "Very small . . . Not more than one quarter what we want to eat and that of the poorest quality" (Ransom, 1963, p. 71). On May 13, he penned a depressing picture of his fellow prisoners: ". . . many have long hair, which, being never combed, is matted together and full of vermin. With sunken eyes, blackened countenances from pitch pine smoke, rags and disease, the men look sickening. The air reeks with nastiness, and it is wonder that we live at all. When will relief come to us?" (Ransom, 1963, pp. 78–79).

In addition to these two massive and notorious prisons, both the Union and the Confederate Army ran many other smaller institutions, pressing all kinds of edifices into use as needed. According to Civil War historian Glenn Robins (2007), for instance, the Confederate authorities ran 32 ". . . principal places for the confinement of Union prisoners" (Robins,

2007, p. 117) in addition to other smaller, temporary sites. Sixteen of these camps were located in the Deep South. On the Union side, Confederate soldiers were held in Point Lookout, Maryland, and in the Old Capital Prison in Washington, D.C., often before being transported farther north to Elmira. On the Confederate side, too, soldiers like John Ransom were funneled through all kinds of places before arriving at Andersonville. As the Union troops ventured farther south, they created new prisons to maintain order, even on occasion, as in Alexandria, Virginia, converting former slave pens to such use.

By now, most of the temporary prisons deployed in this conflict are long forgotten, in favor of more cozily heroic battle sites, favored “heritage” resorts. The graves at Chemung have become part of a National War cemetery, while Camp Sumter is both a National Historic Site under the guardianship of the National Park Service and the location of the National Prisoner of War Memorial and Museum. Such “consecrated sites” were crucial to the recasting of the Civil War conflict in the late 19th and early 20th centuries as one of “tragic fratricide.” This rhetorical move not only marginalized the everyday nature of imprisonment in this conflict, but, according to some critics, also covered up the salience of race and inequality in the original conflict; both factors conveniently excised from the myth of national identity (Novkov, 2008; Blight, 2001). The attention given to these institutions overlooks the distinct nature and policies that characterized many of the other institutions, in particular, the racial and class makeup of those imprisoned vis-à-vis those who were exchanged (Robins, 2007).

Reconstruction and Beyond

Although the Southern slave states had leased their penitentiaries to private individuals well before the onset of the Civil War and prisoners there, and in the North, had labored for private profit, the involvement of capital reached new heights in the era of Reconstruction. So, too, did prisoner resistance to enforced labor, with the number of “mutinies” reported in the media escalating dramatically between 1879 and 1892 (McLennan, 2008). Complicating matters still further, many of the Southern penitentiaries had been destroyed during hostilities. In any case, they were not sufficient to house the growing number of convicts, most of whom were former slaves convicted for petty offenses. In the North, decommissioned Union soldiers soon filled the penitentiaries, making up to 90 percent of new entries in some establishments, according to recent estimates

(McLennan, 2008, p. 140). Such former soldiers raised a number of problems for penal administrators, claiming as they did a debt of honor from the state for having defended it. The former slaves were less problematic, as the criminal justice system all too easily replaced slavery, often putting Blacks to work in former plantations.

Despite the range of issues characterizing prisons from this period, it is above all associated with the practice of convict leasing, a penal strategy that, despite being practiced in some form all over the country, became particularly associated with the South, where poor Whites, together with former slaves, were put to work to rebuild the shattered infrastructure and businesses. The brutality of convict leasing was legion, rivaling slavery in its sadism and violence. Under this strategy, according to Frederick Douglass—himself a former slave—convicts were

... leased in bulk in their respective states, to whoever has the political ring, and that party, by paying a small sum to the state, sublets them in gangs to R.R.s [railroads] and other corporations, and to plantations. The State throws off the entire responsibility of caring for her convicts, and turns them over into the hands of the lessee, whose only interest in them is, to secure for himself, what profit he can for their labor. (Douglass, n.d., p. 5)

High mortality and escape rates testify to conditions where women, men, and children toiled for no pay, as do the regular anxious accounts in the newspapers and parliamentary debates of the time (*Augusta Chronicle*, 1874; Cable, 1884; *Washington Post*, 1923; Mancini, 1996). Women were not separated from men, and, as usual, faced a double burden of sexual violence and its result: pregnancy. In one example provided by Douglass, for example, a female convict who had served 14 years gave birth to seven children during her sentence. When queried on this matter, a lessee “testified that ‘such irregularities as bastard children occur as long as women were guarded by men.’” His opinion, as recorded by Douglass, nonetheless “was that not much could be gained by separating women from men” (Douglass, p. 20).

In the mid-1990s, historians began to pay more attention to the penal strategies pursued in the South after the war (see, for example, Lichtenstein, 1993, 1995; Oshinsky, 1997; Myers, 1998; Curtin, 2000). They provided detailed and sickening descriptions of the violence of the lease system, as well as of the chain gangs and prison farms that ultimately replaced them. More important, they offered an analytical framework for understanding these strategies and their implication for the later development of punishment in this part of the country.

As Alex Lichtenstein (1993) pointed out:

The chain gang consisting primarily of black convicts working the roads of the Deep South embodied the brutality of southern race relations, the repressive aspect of southern labor relations, and the moral and economic backwardness of the region in general. But when it originated, the penal road gang was regarded as a quintessential southern Progressive reform and as an example of penal humanitarianism, state-sponsored economic modernization and efficiency, and racial moderation. (Lichtenstein, 1993, pp. 85–86)

Though convict leasing did not completely disappear from the South until well into the 20th century, the precise demise of the practice is surprisingly contested. Concerns about it, in regard to both its brutality and its negative impact on the wages and conditions of free labor, were voiced in some parts of the South as early as 1890, when a constitutional convention in Mississippi called for its abolition (Zimmerman, 1951).

Yet neither of the solutions, chain gangs or prison farms, seems significantly better to the modern eye. Both continued the racialized governance of the South, and both relied extensively on corporal punishment. Prison farms like Angola and Parchman, both in the Mississippi River Delta, were run like former slave plantations, complete with armed White officers on horseback and armed trusty prisoners. Both strategies were “defended as being appropriate to southern conditions because blacks were perceived as suited to the heavy, unskilled labor [they] required and the discipline of coerced outdoor labor was perceived as beneficial to blacks” (Lichtenstein, 1993, p. 106). Despite the supposed progressivism of each approach, however, documents from the time describe conditions of extreme brutality not far removed from convict leasing (Burns, 1932). Indeed, according to Alex Lichtenstein’s (1993) summary of media accounts from the time, as late as the end of the 1940s, convicts on the chain gang:

... continued to labor, eat, and sleep with chains riveted around their ankles. Work was done under the gun from sunup to sundown, shoveling dirt at fourteen shovelfuls a minute. Food was bug infested, rotten, and unvarying; rest was taken in unwashed bedding, often in wheeled cages nine feet wide by twenty feet long containing eighteen beds. Medical treatment and bathing facilities were unsanitary, if available at all. And above all, corporal punishment and outright torture—casual blows from rifle butts or clubs, whipping with a leather strap, confinement in a sweatbox under the southern sun, and hanging from stocks or bars—was meted out for the most insignificant transgressions, particularly to African Americans who were the majority of chain-gang prisoners. (Lichtenstein, 1993, p. 93)

Such practices highlight the uninterrupted line that connects slavery to modern practices.

Women's Prisons

If men in early U.S. prisons endured harsh conditions, particularly in the Southern states, those few White women who were incarcerated were doubly affected, while Black women suffered even more. Until the 1980s, however, little was known about the history of women's imprisonment in the U.S. or elsewhere. It was not until the impact of second-wave feminism trickled down to history and criminology that scholars looked into women's experiences (Rafter, 1983, 1985; Freedman, 1981; Butler, 1997; Dodge, 2002). Notwithstanding the influence of 19th-century female reformers like Elizabeth Fry and Dorothea Dix, most accounts of the historical development of imprisonment told only the story of men.

Yet, women were, from the earliest times, sentenced to periods of confinement. Though their numbers were small, their presence can be found in the historical record in a number of ways. Crawford's report to the House of Commons, for example, included detailed plans of the main U.S. penitentiaries and prisons, some of which, like the plan for Auburn, indicate separate women's wings (Crawford, 1834). Some of the firsthand accounts written by men record the treatment of women held in the prison with them (Thompson, 1855). Finally, there are a few examples of memoirs by female prisoners and a few more by female visitors and those who worked with women in prison (Carson, 1838; Perkins, 1839; Dix, 1845; Kirby, 1887). From the early 19th century, female prisoners also were increasingly discussed in the print media.¹³

In his lengthy account of his four years spent in a Missouri prison, George Thompson briefly described treatment meted out to three female convicts. The sexual violence they each encountered makes for unpleasant reading. It was clearly something that Thompson himself condemned and that, according to his testimony, also disturbed some of the other prisoners. Moreover, his account makes clear the different levels of institutional protection the women were accorded, depending on their race and offense. The first woman, whose case he describes in some length, was sentenced to five years imprisonment for killing her husband. Initially put to work in the warden's house, she fell pregnant. Abused by the warden's wife, presumably in retaliation for having been the object of her husband's sexual interest, the woman was forced to give birth assisted only by a male prisoner, nor were any clothes provided for the child. She and her child were released when the woman was pardoned after completing

almost two years of her sentence (Thompson, 1835). The next woman Thompson describes “was put in a cell and rivetted fast” rather than employed outside the prison. According to Thompson’s account, “Often in the night have we been awakened by her groans and screams for help. After a time the door was unfastened, and the guard could go there whenever they chose” (Thompson, 1835, p. 287). This woman was pardoned after about six months. Naturally, the worst treatment was meted out to the only “colored” woman. Unlike the previous two she was placed in a cell with men and clothed in a prison uniform. She was also forced to work alongside male prisoners and, when in her cell, the door was left unlocked “so that any prisoners could visit her, or any guard by night.” When assessing her fate, Thompson writes bitterly, “Now *why* is she treated in this manner? ‘O! she is nothing but a *nigger!* And what respect is paid to a ‘*nigger’s*’ purity in a slave state?” (Thompson, 1835, p. 288).

In contrast to Thompson’s detailed evidence, Dorothea Dix included only two pages on women in her mid-century account of U.S. prisons, suggesting both their small numbers and her relative lack of interest in their plight. Summarizing the situation across a number of states, she observed that

... very few, usually no women convicts, are found in the State prisons in Maine, New-Hampshire, and Vermont. In Massachusetts these are not committed to the State prison, but are sent to the Houses of Correction, severally in Middlesex, Essex, and Suffolk counties; in the other counties they are sometimes detained in the jails. (Dix, 1845, p. 107)

In most of the states she described, women were under the care of a matron within a men’s prison, and were eligible for varying amounts of work and activity. In Connecticut prison, for instance, she found 20 women

... under the supervision of an excellent matron. Unfortunately the present discipline of this prison affords for the women no period but Sundays for instruction, except in mechanical labors. In New-York all the women state convicts are sent to a prison at Sing Sing; these average about 72, and are under the direction of a matron, who, with her assistants, are much interested in the improvements of those under their charge. New-Jersey has but two women-convicts, and no matron. The Eastern Penitentiary has 20 women-convicts. This department I have often visited, and always found in order; neatness and good behaviour appear to be the rule and practice of the prison; the exceptions being very rare. The matron is vigilant, and fills her station in a manner to secure respect and confidence. The women are chiefly employed in making and repairing apparel, and have full time for the use of books, and the lessons which are assigned weekly by the ladies who visit the prison to give instruction. (Dix, 1845, p. 107)

That historical literature that does consider 19th-century women's imprisonment tends to prioritize the influence of figures like Dorothea Dix and, before her, Elizabeth Fry, while stressing the paternalism and oppression of the existing system (Rafter, 1981; Freedman, 1980; Butler, 1997). Most also point to the violence many incarcerated women experienced. There were, however, some who challenged these models, such as Eliza Farnham at Sing Sing Women's Prison. Though only matron for a relatively brief period of time from 1844 to 1847, Farnham, in a move prescient of later penal "scientists" and reformers, rejected much of the religious cant of her day and sought to educate the women in her charge. Influenced by a particular strand of phrenology, which proposed that criminal tendencies could be reduced through education, Farnham expanded the prison library, and, most radically, read the women novels. Combining activities of the mind with instruction in traditional middle-class feminine skills such as needlework and flower arranging, she even relaxed the rule of silence and allowed the women to converse with one another.

Farnham's measures were at best controversial. Following the escape of three women under her watch, the rule of silence was reinstated, and Farnham soon resigned. Nonetheless, as a recent article by Janet Floyd (2006) argues, Farnham was not alone in pursuing innovative techniques, but rather was representative of a small group of reform-minded female penologists. Such figures, who included Farnham's deputy Georgiana Bruce; Margaret Fuller, who was a journalist at the left-wing New York publication *The Tribune*; as well as Abby Hopper Gibbons, the first president of the Women's Prison Association, were instrumental in drawing public attention to the plight of female offenders. Ultimately, the work of such women led to the creation of the first reformatory for young women in New York. However, their victories turned out to be bittersweet. As Chapter 2 shall describe in more detail, from a situation of neglect in the 18th and 19th centuries (when most were left to languish in men's prisons) women prisoners in the early 20th century came to be the targets of considerable discipline and intervention.

Debating Imprisonment

One of the striking aspects of the first century of U.S. imprisonment was the vigor with which the prison was debated. Publications from (White and male) former convicts are easy to come by (Harris, 1862; Paine, 1852; Thompson, 1855), while individual reports of concerned citizens and those employed by the state to investigate conditions abound (Crawford, 1834; Dix, 1845). When read in conjunction with related accounts by

travelers and diarists (Abdy, 1835; Alexander, 1833), and even alongside more fictional narratives, it seems that prisons and punishment occupied the attention of significant parts of society in ways that are no longer the case. One stark indicator of their attraction to the general public can be found in the records of paying visitors at state penitentiaries like Auburn. According to Dorothea Dix, who, like most reformers, opposed this practice, “visitors’ fees at Auburn, in 1842, were \$1692.75, and, in 1845, \$1942.75,—making \$3635.50; at 25 cents each, we have for two years, at one prison, of paying visitors alone, 14542 persons”¹⁴ (Dix, 1845, p. 43).

The implications and effect of such public attention and concern are hard to fathom. On the one hand, they suggest that imprisonment and other forms of punishment like the chain gang provided a public spectacle right through the 19th century. They also show that incarceration remained a contentious topic. When we confine our analysis to prisons in the North, the debate primarily rested on concerns about the efficacy and impact of segregation, as endless documents were produced in favor of and against the Philadelphia and Auburn systems. Texts on the South, largely reflecting the religious and political views of their authors, were more directly critical of the violence of imprisonment and its related mechanisms of social control in leasing and chain gangs.

More recently, a growing number of scholars from a range of disciplines have revisited these early discussions to explain the enthusiasm of the American colonies for adopting particular kinds of punishment and incarceration (Meranze, 1996; McLennan, 2008; Kann, 2005).¹⁵ Such work presents a range of related accounts of American “exceptionalism,” which may shed some light on the current manifestation of “mass incarceration.” Mark Kann (2005), for instance, relates the punitive orientation of many of the early colonies to the particular political and philosophical notions of “liberty” that lie at the heart of U.S. culture and its Constitution. In a related fashion, Michael Meranze (1996) argues that the penitentiary reflected the aims and limitations of American liberal democracy, in particular that of the individualization of responsibility. Somewhat differently, Anne M. Butler (1997) relates penal policies to the gendered nature of social order on the Western frontier, while Rebecca McLennan (2008) traces the outline of organized labor and political parties in penal policies.

Given the variety of imprisonment in this early period, it seems most likely that its legitimacy and explanation rested on a range of beliefs. Although the reforms famously initiated by the Quakers—first in the

Walnut Street Jail and then extended and developed in the Eastern State Penitentiary and the Auburn Penitentiary—were not the only source of inspiration for imprisonment in the U.S., their form became dominant by the end of the 19th century. Even in the Southern states, where convict leasing and chain gangs were the preferred methods of punishment for Blacks, states did, ultimately, rebuild their penitentiaries. Such institutions, like their counterparts in the North, ostensibly sought to reform their inhabitants through labor and religion.

What the South suggests most clearly is that central to any justification of imprisonment lies an acceptance, even an outright demand, that some people either cannot be redeemed or are not worthy of redemption. Commentators in the North referred to them as “incurable” or “feebleminded,” whereas in the South the racial and socioeconomic conditions for membership in this group were never in doubt. The debate, ultimately, was not whether there should be imprisonment, but merely for whom and in what fashion.

CONCLUSION

The early history of imprisonment in the United States is typically represented as one of gradual and then thoroughgoing reform. Throughout the 19th century, here and in Europe, “regular diets replaced the fitful provision of food in 18th-century institutions; uniforms replaced rags and personal clothing; prisoners received regular medical attention, and new hygienic rituals (head shaving, entrance examination and bath)” (Ignatieff, 1983, p. 80) did away with the worst of health problems in many establishments. Practices that are now central to incarceration the world over, such as cellular confinement, solitary confinement, education, and prison labor, were all instigated at this time. Such practices not only materially improved prisoners’ lives, but also made their confinement more palatable to an increasingly squeamish public. As scholars of punishment from Emile Durkheim to David Garland have demonstrated, the legitimacy or viability of punitive responses stands or falls, at least in part, on public sensibilities. Conditions that were thought appropriate in the 1600s, with the often irrational and violent ends meted out to petty offenders, ultimately became distasteful to many in the 1700s.

However, the history of imprisonment, in the U.S. as elsewhere, is not a Whig story of improvements in humanitarianism. As William Crawford was at pains to point out to his audience back in Britain, the

prisons of the early 19th century in America furnished practical solutions to a country in need of low-cost labor. In the South and the North, prisoners were put to work, not so much for their personal benefit or moral development, but for the private individuals who leased their labor. This system, though initially restricted to penal institutions, ultimately spread into the community through convict leasing.

Accounts of imprisonment through the 17th, 18th, and 19th centuries also underline another role of the prison in nation-building. Whether they acted as the safeguards of Puritan and Colonial morality by holding those like George Spencer, accused of violating sexual and moral norms, or whether they were sites of appalling suffering for those from opposing sides in the Revolutionary and Civil Wars, U.S. prisons provided a vision of the nation. For the South, likewise, the use of prisons to house slaves awaiting sale suggests their connection with a view of Southern exceptionalism.

As part of nation-building, and in a manner that resonates eerily with contemporary U.S. policies, prisons were also central to war. More or less at the same time that, in Europe, John Howard was publishing *The State of the Prisons* and in Philadelphia the first Quakers were examining alternative modes of dealing humanely with criminals, vast numbers of Continental and King's soldiers were being held in desperate conditions across a range of penal establishments. Likewise, during the Civil War, prisons were utilized to hold soldiers from both sides in parlous conditions, where many died.

The vast number of local and more celebrated visitors make clear that prisons at this time were also sources of national pride and international interest. Much as it is today, the 19th-century American model of punishment was exported all over the world. Such policy transfer, as those in power today would also have us believe, revealed the superiority of American exceptionalism and democracy.

What such history suggests is that at any one time the prison is fulfilling a variety of social, legal, and ethical tasks. It is an institution that is simultaneously local and real and one that is constituted by and constitutive of larger debates about race, nationalism, gender, justice, and so on. That some of these goals and many of these debates are contradictory is telling. The explanation of imprisonment is, in short, complex, and in its variety rests the institution's ability to persevere. In Chapter 2, I shall examine a shorter period when, even though no wars raged on American soil,

U.S. citizens fought a series of battles in Europe and Asia, to see whether the justifications for incarceration became any more straightforward.

NOTES

1. According to Lownes, the men were “. . . clothed in woollen jackets, waistcoats, and trowsers in winter, and linen in summer, shirts, shoes, &c. The orderly prisoners, who by their industry can earn a sufficiency for this purpose, are allowed a better suit to attend public worship. . . . The women are dressed in plain, short gowns, of woollen in winter, and linen in summer. Most of the clothing . . . is spun, woven, and made up in the house” (Lownes, 1794, p. 11).

2. For instance, other penal establishments were, however briefly, enormously influential in public discussions of crime and punishment. Though today we mainly celebrate Auburn and Eastern State Penitentiary, both Newgate and Alleghany represented important alternatives at the time.

3. Crawford was quick to point out that the state prisons were notable not only for the relatively long sentences of their confined population, but also because they were the only establishments “under the immediate control of a certain number of Inspectors who are generally paid for their services, and are appointed by, and removable at the pleasure of, the Legislature of Governor of the State” (Crawford, 1834, p. 3). In most states, such inspectors have long since been abandoned.

4. It is worth copying the details of this particular case at some length in order to give a sense of the different set of assumptions under which courts were operating at the time. Such viewpoints also clearly shaped the specific role of the prison. While I have kept the original spellings used in the 19th-century transcription of the case, I have removed, for clarity, its use of superscript letters and shortenings.

5. Recently, some states in the U.S., including California, have seen a return of sorts to this practice, with offenders offered the option of paying for better jail conditions and permission to bring in certain personal items, including cell phones and personal music devices. Short-term prisoners serving under these conditions may also have non-prison-issued food brought to them by family members.

6. It would take over a century for reformers in Pennsylvania to discontinue “this injurious custom [of gaol fees], attended with such a variety of evil consequences.” In that state, the Keeper was to be “compensated in a more eligible and permanent manner, by a yearly salary . . . for himself and clerk; and as a stimulous to a proper attention to the *employment of the prisoners*, allowed five per cent on the proceeds of their labour” (Lownes, 1794, p. 5).

7. Eventually, most of these individuals returned to the United States under a series of prisoner exchanges in the late 1770s. Others were set free from prison early if they agreed to serve in the British navy (Prelinger, 1975).

8. Typically, before slaves were executed, they were valued first so that their owners could be compensated by the courts. In a letter dated May 12, 1763, one Archibald Campbell informed a slave owner that “your negro Charles has been . . . convicted of breaking open a store and is to suffer Death next week. The court have judged him worth £100. I think you are well quit of such a rogue” (MSS 2C 152a1, Virginia Historical Society State Archives).

9. A number of inmates and the male warden of the Walnut Street Jail died during this outbreak of yellow fever. The warden was replaced by his wife, who thereby became the first female warden in the U.S.

10. Haviland also designed the elaborate Halls of Justice, more commonly known as the Tombs, in New York City, “. . . reportedly modeled after an Egyptian mausoleum found in John Stevens’s popular travelogue *Stevens’ Travels*” (Gilfoyle, 2003, p. 526).

11. The resonance of this “disciplinary” technique and the contemporary method referred to euphemistically as “waterboarding,” which has occurred in CIA prisons and at Guantánamo Bay, is striking and worth noting.

12. Some of these objects can be viewed at the Museum of the Confederacy, which holds numerous such items from Elmira and elsewhere in its prisoner of war art collection. www.moc.org.

13. Near the end of the century, for example, on August 31, 1884, a short entry in *The New York Times* quotes a Mr. Dwyer, referred to as an “olde stager” in the “the Tombs squad,” as claiming that the city’s “Tombs court was opened in 1838 and this is the first day since the opening that there has not been a female prisoner in the pen. From fifty-odd we have got down to a cipher. What will happen next?” (*The New York Times*, 1884, p. 7).

14. According to Dix, ideally, “none but official visitors, and persons who visit prison for some definite objects connected with the administration of these establishments, and such of the relatives or friends of the prisoner, as by law have the liberty to be admitted, ought to be received. All who go to gratify a mere curiosity, to see the place, and to see how the prisoners look, should be excluded. The effect of this indiscriminate exposure upon the prisoner is bad, or, if it does not injure him, it only proves that he is so hardened in guilt, and so debased, that in being made a spectacle for the gratification of the thoughtless and the curious, he is willing his degradation should be as public as his life has been debased” (Dix, 1845, p. 10).

15. Still other historical studies exist that focus on individual states and facilities within the U.S., describing their development and justification (see, for example, Keith Edgerton’s [2004] analysis of punishment in Montana, and Taylor William Banks’s [1993] study of Mississippi).