

THE COLONIAL LEGACY

In the seventeenth and eighteenth centuries, the American colonists, like the British themselves, shared a keen apprehension about criminal behavior. They included within the category an exceptionally wide range of conduct, incorporating what we would think of as sinful actions (idolatry, blasphemy, and witchcraft) along with social transgressions (theft, arson, and murder). But however much they worried about the extent of crime, they saw no prospect of eliminating it from their midst. From their perspective, crime reflected on the human condition and failings—men were born in sin—and not on any basic flaws in social order. As one clergyman informed his audience immediately before the public execution of a criminal, “The natural man defiles every step he takes, and the filth thereof redounds to himself.” Such sentiments confirmed that the criminal, like the poor, would always be with us, endemic to the society, and that citizens and magistrates were to cope with it as best they could.

What little effort colonial Americans spent in trying to analyze the sources of crime beyond the sinfulness of human nature went to a careful distinction between insiders and outsiders, town residents and nonresidents. Although anyone might commit a crime, the major source of the threat seemed to emanate from those who wandered from town to town, rogues and vagabonds as they were then called. Because the towns lacked formal mechanisms of law enforcement—police forces were an invention of nineteenth-century cities, and the militia was called on only to respond to major riots—the basic means for controlling crime was to regard with deep suspicion anyone who entered the town and to “warn out,” or banish, those who came without introductions (for example, a letter from the minister in the home community) or without artisanal skills and sufficient property to demonstrate respectability.

When crimes did occur, colonial towns, like their counterparts in England, meted out a wide range of punishments. The most popular sanctions included fines, whippings, mechanisms of shame (the stock and public cage), banishment, and of course, the gallows. What was not on the list was imprisonment. The local jails held men (and it was almost always men) going through the process of judgment, that is, those awaiting trial or convicted but not yet punished, or men who were in debt without having satisfied their obligations. Which one of the existing sanctions would be applied to a given offender depended almost as much on who he was as on the act that he had committed.

If the offender was a resident of the town, a person of means, and the crime was not a very serious one, the magistrates would levy a fine. If the townsman had no property, he might well end up on display in the stocks or public cage, to be sneered at or spit upon by his neighbors. In Massachusetts, for example, anyone guilty of drunkenness was fined five shillings; offenders unable to pay spent three hours in the stocks. If on the other hand the criminal was an outsider to the town, he would most often be whipped and then banished. In New York City, for example, the Mayor’s Court between 1733 and 1743 whipped and banished practically every nonresident guilty of theft.

The primary goal in dispensing one or another of these penalties was deterrence, in the hope that the punishment would serve to keep the offender from repeating the crime in this particular community. For a town resident to be displayed as an object of

CHAPTER FOUR

PERFECTING THE PRISON

United States, 1789–1865

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The history of the origins and development of the prison system in the United States confronts what appears to be an extraordinary paradox. In the 1820s and 1830s, when democratic principles were receiving their most enthusiastic endorsement, when the “common people” were participating fully in politics and electing Andrew Jackson their president, incarceration became the central feature of criminal justice. At the very moment that Americans began to pride themselves on the openness of their society, when the boundless frontier became the symbol of opportunity and equality, an idea developed: those convicted of crimes would be confined behind walls, in single cells, and would follow rigid and unyielding routines. As principles of freedom became more celebrated in the outside society, notions of total isolation, unquestioned obedience, and severe discipline became the hallmarks of the captive society. Indeed, to make the puzzle more intriguing, Jacksonian Americans took enormous pride in their prisons, were eager to show them off to European visitors, and boasted that the United States had ushered in a new era in the history of crime and punishment.

The European visitors, on the whole, tended to agree with this assessment. They came in numbers to tour the prisons—the typical itinerary of a visit to America included New England (with a stop at a textile factory), a western settlement (Cincinnati was a favorite), a plantation (to see slavery at work), and one of the new penitentiaries. And the visitors were distinguished, including such notables as Alexis de Tocqueville and Gustave de Beaumont from France. The purported purpose of Tocqueville’s tour of the United States in 1831 was to advise the French government on the American prison system. The unexpected spin-off from this mission was his classic analysis *Democracy in America*.

Why did Jacksonian Americans adopt a prison system? How did they organize it, and what routines did they impose? Why were they so delighted with it, and why did others flock to inspect their solutions? Answering these questions requires moving between the prison and the society, reckoning not only with crime and punishment but with ideas about social order, social disorder, and the destiny of a new republic.

derision before one's neighbors would be so embarrassing that the offender would mend his ways; to be whipped would be so painful that he would not repeat the offense. By the same token, banishment represented the town's effort to avoid the repetition of a crime by getting rid of the offender, even if it put an adjoining town at risk.

Magistrates in colonial America never considered the possibility of rehabilitation through punishment. Their aim was not to reform the offender but to frighten him into lawful behavior. Only when the crime was very grievous, as in the case of murder, did the idea of just deserts—the offender who deserves to be executed—enter into the calculus.

In all, criminal justice in the colonial period had a tenuous and haphazard character. To an exceptional degree, the efficacy of the punishment depended on the active complicity of the offender; the agencies of law enforcement were so weak and underdeveloped that the punitive and coercive aspects of the law bore an unusually heavy burden. What if the whipping did not discourage the culprit, or if he repeatedly ignored an order of expulsion? What if the offender considered the risk of a fine worth taking in his search for illegal returns, or if he lost all shame and embarrassment before his neighbors? Were these contingencies to occur, the only recourse for the colonists was to execute the offender. In effect, capital punishment had to compensate for all the weaknesses in the criminal justice system, which is why capital crimes were defined so very broadly. The Massachusetts assembly, for example, in 1736 ordered that a thief, on first conviction, be fined or whipped. The second time he was to pay treble damages, sit for an hour upon the gallows platform with a noose around his neck, and then be carted to the whipping post for thirty stripes. For the third offense, he was to be hung. The colonial system, then, vacillated between comparatively lenient and harsh punishments. Townspeople were let off with fines or some lashes—but the recidivist, whether a pickpocket, horse thief, or counterfeiter, might well find himself mounting the gallows.

REFORMING THE LAW

In the immediate aftermath of independence and nationhood, Americans repudiated their British legacy and, along with it, the British methods for dispensing criminal justice. Attracting the most republican scrutiny and disapproval were the numerous statutes that punished criminal behavior with execution. As Benjamin Rush, the Pennsylvania physician and signer of the Declaration of Independence, argued: "Capital punishments are the natural offspring of monarchical governments. . . . Kings consider their subjects as their property; no wonder, therefore, they shed their blood with as little emotion as men shed the blood of their sheep or cattle. But the principles of republican governments speak a very different language. . . . An execution in a republic is like a human sacrifice in religion." In fact, in a curious twist, the new Americans, embracing the ideas of such Enlightenment thinkers as Cesare Beccaria, blamed the codes themselves for the persistence of crime. "The severity of punishment itself emboldens men to commit the very wrongs it is supposed to prevent," Beccaria had insisted. "The countries and times most notorious for severity of penalties have always been those in which the bloodiest and most inhumane deeds were committed." The logic of the argument was particularly powerful to Americans. They looked back on the colonial period as a case in point: since British laws were so severe, juries had been loathe to convict anyone

except the most terrible of criminals. And once punishment lost its certainty, criminals were encouraged to pursue their misdeeds.

This analysis of past failure carried with it an answer through which the new nation would be able to reduce, perhaps even eliminate, crime. At the same time, adopting this solution would bring glory to a republican government and demonstrate its inherent moral superiority to other forms. Confident that his proposals would fulfill both these ends, Thomas Eddy, one of the leaders in this movement, insisted that New York had to revise its criminal codes. The state should no longer tolerate laws of "barbarous usages, corrupt society, and monarchical principles. . . . [that were so] imperfectly adopted to a new country, simple manners, and a popular form of government." As soon as it did so, punishment would become a certainty, and crime would disappear. In accordance with these views, most of the states amended their criminal punishment statutes. Pennsylvania in 1786 eliminated the death penalty for robbery and burglary and in 1794 restricted it to first-degree murder; in 1796 New York, New Jersey, and Virginia reduced their roster of capital crimes. Other states followed their example so that by 1820, practically all had abolished the death sentence except for the crime of first-degree murder or had strictly limited it to a handful of the most serious crimes.

As they enacted these reforms, the states immediately confronted the question of what punishment should substitute for execution. If they were not to hang the convicted criminal, what penalty should they impose? The answer was incarceration, to have the offender serve a term, a very long term, in prison. Pennsylvania led the way in turning the old Philadelphia jail at Walnut Street into a state prison. In 1796, New York appropriated funds to build the Newgate state prison in Greenwich Village. New Jersey completed its state penitentiary in 1797 and Virginia and Kentucky theirs in 1800. That same year, Massachusetts made an appropriation for the prison at Charlestown, and in short order Vermont, New Hampshire, and Maryland followed suit.

In this first burst of enthusiasm, Americans expected that a rational system of punishment that was at once certain and humane would dissuade all but a handful of offenders from a life in crime. Unlike their colonial predecessors, they did not locate the roots of deviancy in the corrupt nature of humankind or, in more practical terms, worry most about the dangerous outsider. They blamed British law and were confident that distinctively American statutes would inaugurate a new era. Although these ideas led immediately to the construction of the first prisons, the facilities themselves were not endowed with any special attributes. Incarceration was not the critical feature of the reformed system, and rehabilitation was not its expected goal. A repulsion from the gallows, rather than any faith in the powers of the penitentiary itself, spurred the construction. Americans were still thinking in terms of deterrence. What mattered most was the certainty of the punishment, not the internal routine or management of the prison.

By the beginnings of the 1820s, the faith in the efficacy of legal reform had declined. For one, statutory changes had no discernible impact on the level of crime. For another, the prisons had become the scene of rampant disorder, with escapes and riots commonplace. Prisoners lived together in large rooms and took their meals in one common dining area. They mingled freely, shared booty (which included alcohol), and had ample time to plot their escapes or to share the secrets of their trade. Institution life was

casual, undisciplined, and irregular. "Our favorite scheme of substituting a state prison for the gallows," concluded one New York lawyer, "is a prolific mother of crime. . . . Our state prisons as presently constituted, are grand demoralizers of our people." A few conservatives aside, no one wanted to go back to the gallows. But it was clear that the elimination of capital punishment would not eliminate crime and just as clear that something had to be done about organization of the prisons. The way Americans resolved this predicament brings us to the second and most critical stage in the history of American prisons.

REPUBLICAN THINKING

Over the period 1820–50, Jacksonian Americans, in marked contrast to their colonial predecessors, believed that crime was posing a fundamental threat to the stability and order of republican society. The idea of the prison was rooted in this perception, reflecting the fear that once stable social relationships were now in the process of unraveling, that social order and cohesion were in danger of collapsing. It became the task of the prison to do nothing less than ensure the future safety of the republic.

To judge by the numerous articles, pamphlets, and legislative reports that discussed the issues, Americans in the antebellum era were frankly puzzled by the persistence of crime. They were not surprised that it continued to plague Old World countries; where great disparities of wealth existed between classes, where the common people had no voice in government, and where laws were harsh, crime was the inevitable result. But the new republic had eliminated these evils—not only had the states reformed their criminal codes, but economic opportunity was widespread and a marked equality existed between the social classes. Why, then, should crime disturb this country? Why was it maintaining a place in the new society?

The answer that Jacksonian Americans arrived at suggests that their great pride in the openness of their society was qualified by a nagging fear that this very openness was producing disorder and disarray. As they viewed it, all of the institutions that had once stabilized the social order were declining in influence. The outstanding case in point was the family. Fathers were losing their authority to discipline children, either because they were devoting too much time to securing their own economic advancement or because the children quickly left home to try to make their own marks. As one group of concerned reformers concluded, "It is the confession of many convicts . . . that the course of vice which brought them to the prison commenced in disobedience to their parents, or in their parents' neglect."

What was true for the family was even more apparent in the church. Once the mainstay of the community, the church was now losing its authority. Worse yet, the schools were not able to fill the gap, for undisciplined youths ignored their lessons just as they did those of the family and church. All the while, of course, the community itself was losing its leverage. Americans were too much on the move—to the frontier, to the cities—to believe that neighbor could any longer influence neighbor.

From one angle of vision, all these developments were exciting. Here was a new society in which every man was free to follow his own inclinations, where inherited traditions counted for very little. But from another angle, all these changes were scary.

Could a society characterized by so much mobility, both social and geographic, cohere? Could it maintain stability amid all this motion? To judge by the incidence of crime, the answer might well be "no." Dorothea Dix, the most energetic and celebrated of all Jacksonian reformers, declared, "It is to the defects of our social organization, to the multiplied and multiplying temptations to crime that we chiefly owe the increase of evils doers."

Were these fears justified? Was the social crisis real or imagined? It may be that European countries were experiencing a degree of social disturbance more severe than anything found in the United States. But it is nearly impossible to calculate the actual rates of crime in antebellum America—the recording of crime statistics was as primitive as the policing mechanisms themselves. Nevertheless, the likelihood is that the preoccupation with crime had less to do with the real incidence of crime and more to do with general social attitudes about a society in change. Whatever the reality, there was a subjective vision of disorder. Indeed, it is this perspective that is most helpful in enabling us to understand the resulting form of the public response to crime. It is in the realm of perceptions that we will find the answers to why the country adopted the idea of the prison and devised so novel a routine for it.

The Rehabilitative Ideal

Americans in the pre-Civil War period moved on a variety of fronts to combat the disorder that they perceived around them. Over these years dozens of advice books, with titles like *The Father's Book* and *The Rollo Code of Morals*, instructed the family on how to raise an obedient child. At the same time, a generation of educators sought to make the school a more powerful force in students' lives, and clergymen organized Sunday school classes to reach out to the younger generation. In this same spirit, and with even greater intensity, Jacksonian reformers discovered the prison and attempted to make it an institution that would teach inmates the lessons of order and discipline. The prison would transform the deviant into a law-abiding citizen, that is, rehabilitate the offender.

It was a heady assignment requiring imagination and innovation, and American prison reformers were equal to the task. In the 1820s New York and Pennsylvania set out the models that soon spread throughout the country. New York devised the Auburn, or what became known as the congregate, system of penitentiary organization, implementing it first at Auburn State Prison and then at Ossining, better known as Sing Sing. Pennsylvania set out a rival plan, the separate system, at the Pittsburgh penitentiary and the Philadelphia prison.

In retrospect, the differences between the two plans do not seem very notable. Both, as we shall see, emphasized isolation, obedience, and a steady routine of labor. Nevertheless, their respective merits were the subject of a fierce debate. Every report from New York and from Pennsylvania penitentiaries constituted an explicit defense of its own organization and an attack on its opponent. The rival systems had their own fervent supporters drawn from the ranks of American reformers—Samuel Gridley Howe and Dorothea Dix, for example, preferred the Pennsylvania system, Mathew Carey and Louis Dwight the New York system—many of whom produced pamphlets leveling charges and rebutting countercharges about their arrangements. If the literature on

Auburn versus Pennsylvania never quite matched the outpouring of material on the pros and cons of slavery, it came remarkably close.

Under the Auburn plan, prisoners slept alone, one to a cell. They came together to eat and to work in the prison shops, but the rules prohibited all talking and even the exchanges of glances. The Pennsylvania system, on the other hand, confined prisoners to individual cells for the entire period of their confinement. They worked, ate, and slept in solitary confinement and were allowed to see only selected visitors.

For all their enmity, the advocates of Pennsylvania and Auburn were both committed to the rehabilitative potential of the prison and were both convinced that the routines imposed on the inmate would transform him into a law-abiding citizen. Reform, not deterrence, was now the aim of incarceration. The shared assumption was that since the convict was not innately depraved but had failed to be trained to obedience by family, church, school, or community, he could be redeemed by the well-ordered routine of the prison. The penitentiary would succeed precisely where other community institutions had failed. Just as the defects in the social environment had led the inmate into crime, the disciplined and disciplining environment of the institution would lead him out of it.

To fulfill this mandate, prison reformers focused their attention on the divisions of time and space within the facilities. One of the most influential of the reform associations, the Boston Prison Discipline Society, deemed architecture one of the most important of the moral sciences. "There are," the society observed, "principles in architecture, by the observance of which great moral changes can be more easily produced among the most abandoned of our race. . . . Other things being equal, the prospect of improvement in morals, depends, in some degree, upon the construction of buildings."

In fact, the reformers hoped that the solutions that they devised to prison design problems would be relevant to the wider society. With no ironies intended, they talked about the penitentiary as serving as a model for the family and the school. The prison was nothing less than "a grand theatre for the trial of all new plans in hygiene and education." Or as one prison chaplain insisted: "Could we all be put on prison fare, for the space of two or three generations, the world would ultimately be the better for it. . . . As it is, taking this world and the next together . . . the prison has the advantage." It was no wonder, then, that Tocqueville and Beaumont came away convinced that reformers had been caught up in "the monomania of the penitentiary system," which to the reformers seemed to be "a remedy for all the evils of society."

And it was no wonder, then, that Auburn and Pennsylvania supporters defended their positions so staunchly. With the stakes so high and with results almost entirely dependent on the internal design of the prison, every element in prison organization assumed overwhelming importance. Intense partisanship was inevitable when the right program would reform the criminal and reorder the society and the wrong one would encourage vice and crime.

The Pennsylvania camp saw itself as purist, taking the idea of reform through isolation to its logical conclusion. It separated inmates from each other—to the point of placing hoods over the heads of newcomers so that as they walked to their cells they would not see or be seen by anyone. Over the course of their sentence, they were given

nothing to read except the Bible and were prevented from corresponding with friends and family; they were given work to do in their cells (spinning wool was one common activity), in the expectation that they would learn steady habits and discipline. In this way, they would be released to the community cured of vice and idleness, ready to take their places as law-abiding citizens.

From the perspective of Pennsylvania supporters, the Auburn plan was an incomplete and inconsistent version of their own superior plan. Auburn tempted the prisoners—prohibiting conversation but placing them next to each other at meals and at work. Inevitably, guards would be forced to punish those prisoners who broke the silence, giving the congregate institutions an atmosphere of cruelty and corruption. Pennsylvania, by contrast, would be humane, secure, ordered, and ultimately, successful.

For its part, the Auburn school responded not by defending its own compromises (which was not easy to do) but by finding flaws in the Pennsylvania arrangements. Supporters argued that Pennsylvania was impractical, citing the difficulty of feeding and employing hundreds of inmates in the individual cells. They contended that the walls at the Pennsylvania prisons were not thick enough to prevent conversation, a claim that prompted a rebuttal from Pennsylvania, which stated that the walls were indeed thick enough; in short order, pamphlets were pouring out that analyzed the measurements of prison walls and the layout of pipes. Auburn proponents also insisted that total isolation was so unnatural that it literally drove prisoners mad. Perhaps most important, they maintained, altogether accurately, that Auburn was considerably less expensive to build and maintain and that prison labor in congregate workshops would bring greater returns to the state. Why bother to incur the greater costs when Auburn could do the job of reform as well as Pennsylvania?

The Prison System

The very intensity of the debate, as well as the shared premise that criminals could be rehabilitated, made prison reform a central concern for state legislatures in the antebellum period. One after the other they appropriated the considerable funds necessary to construct or renovate penitentiaries. In the late 1820s, Connecticut built a state prison at Wethersfield, Massachusetts reorganized its prison at Charlestown, and Maryland erected a new facility at Baltimore. In the 1830s, New Jersey, Ohio, and Michigan constructed their state prisons, and in the 1840s, so did Indiana, Wisconsin, and Minnesota.

Almost all the states adopted the Auburn plan, eager to realize the rehabilitative influence of the prison without incurring the greater costs required by the Pennsylvania system. But the fact that they were prudent in terms of their expenditures should not suggest that the ideology of rehabilitation was any the less important. An amazingly diverse group of constituents lined up in support of such an expensive and complex undertaking. Without appreciating the larger goals of the project, one cannot understand the extent of the investment in the prison and the degree of enthusiasm for it. If the incapacitation of the inmate had been the exclusive concern, it would have been unnecessary to invest so extravagantly in prisons or to organize such elaborate and disciplined routines. To punish the criminal through service on some form of a chain gang would have been considerably cheaper and more efficient.

To be sure, there were naysayers to the idea of the prison. Some critics did not want to see the burden of taxation increased, and others were convinced that the only punishment that criminals respected was capital punishment. But a shared sense of crisis and emergency overrode these objections. Too much was at stake to postpone action; something had to be done lest republican order be subverted. In other words, the prison captured support, and dollars, because of its very grandeur, its promise to reform the deviant.

The decision to build prisons was reserved to the separate states, but nowhere does it appear to have sparked political confrontations between supporters and opponents. The consensus was broad, undoubtedly because the idea of the asylum had something for everyone. There were those who supported it because they thought that juries would not hesitate to convict the guilty if jury members knew that a prison sentence, not the gallows, awaited the convicted; others, probably the majority, advocated confinement because of its rehabilitative potential. The appeal of the prison was so diffused through the society that to identify proponents with a party or regional label belies the nature of the coalition as well as its motives. Nor will it do to identify them, as some historians have done, with an emerging commercial or manufacturing class. Clearly, those who invented the prison and were its most avid enthusiasts were people of property, those with social standing in the society. But their leadership—and their ideas on punishment—reflected their general education and their concern for the future of the republic as much as their economic interests. Moreover, their fear of disorder was far more a fear of moral dissoluteness than of class warfare; it was the weakened authority of the family and the community, not the aggressive demands of a submerged laboring class, that frightened them. Accordingly, their solutions, as exemplified in the prison routine, looked more to individual reformation (in a secular sense) than to the needs for a compliant and disciplined labor force in the new factories.

As Americans began to build and administer the prisons, they learned that although the idea of isolation and the general orientation maxims produced by advocates for the Auburn and Pennsylvania systems did provide a general scheme to follow, running a prison on a daily basis also required solving a large number of specific, and important, details. For example, what should prisoners be forced to wear? How should they be moved from place to place? How should the prison maintain internal security, and how should it discipline the refractory prisoner?

These questions were particularly difficult to answer because Americans were embarking on a new venture. "Reform in prison discipline was an experiment," one participant in the process noted. Americans "had no model prison to visit; no pioneers in the march of reform, to warn them of errors or guide them to truth." The English experience could have provided guidance in resolving these issues, but both because of their own insularity and because of their dislike of things foreign, officials were not well informed about developments there. For example, Jeremy Bentham's 1791 design for the panopticon was almost unknown in the United States, although his emphasis on the need for the segregation, employment, and surveillance of the criminal offender was consistent with the aims of American prisons. In the end, the Americans' intellectual debt to England was not great. Few Americans read Bentham, and even fewer took him seriously. (One should also remember that Bentham had a genius for spinning off

ideas and trying, almost desperately, to give them a practical bent, but there was always something fantastic about his schemes, and the English prison that might be thought to represent his ideas, Pentonville, did not open until 1842.) In effect, Americans contrived their own homegrown solutions.

Perhaps the most distinctive feature of American prisons in the pre-Civil War decades, and certainly the element that European visitors most frequently commented on, was the silence that pervaded the institutions. The injunction to isolate the inmate, an idea that ran through both the Auburn and the Pennsylvania plans, was rigidly and effectively translated into practice. As Tocqueville and Beaumont noted after their visit to Auburn in 1831, "Everything passes in the most profound silence, and nothing is heard in the whole prison but the steps of those who march, or sounds proceeding from the workshops." After the inmates returned to their cells, "the silence within these vast walls" was "that of death." The two wrote, "We felt as if we had traversed catacombs; there were a thousand living beings, and yet it was a desert solitude." As would be expected, they found that the same conditions held at Pennsylvania: "It is uncontested that this perfect isolation secures the prison from all fatal contamination."

Officials were able to maintain the rule of silence in part because in the period 1820–50, overcrowding was not a problem. Given the promise of reform, legislatures readily appropriated the funds for construction, and when more cells were needed, they made the funds available. Perhaps even more important, prison wardens and guards were fully prepared to punish, and harshly punish, any inmate who broke the rules. Sing Sing was particularly well-known for the severity of its discipline, for which it made no apologies. A prison, as one of the assistant wardens told the New York legislature in 1834, "should not be governed in a manner as to induce rogues to consider it as a comfortable home. They must be *made to submit* to its rules, and this by the most energetic means; corporeal punishments for transgression, which to be effectual must be certain, and inflicted with as little delay as possible."

Other institutions were also more intent on securing obedience than on inflicting cruel and unusual punishments. The whip was commonplace in the prisons of New York, Massachusetts, and Ohio; Pennsylvania tied an iron gag on disobedient inmates, and Maine had recourse to the ball and chain. The rehabilitative ideal certainly helped to legitimate the severity of the correctional schemes. A state investigation in Pennsylvania unhesitatingly justified the iron gag because convicts were "men of idle habits, vicious propensities, and depraved passions," and because obedience was the necessary first step to reformation. "Only relax the reins of discipline," commented one prison chaplain, "and a chaplain's labors would be of no more use here than in a drunken mob." Since the end of rehabilitation was so significant, any and all means of securing it were justified.

The prisons enforced not only rules of silence but also regular labor, and the inmate who shirked his tasks would quickly find himself the object of harsh discipline. Most facilities compelled the men to work eight to ten hours a day, a routine that was to serve to inculcate habits of diligence even as it brought the state a financial return on its prison investment. In New York, for example, convicts were up at five o'clock to work two hours before breakfast; they then went back to work for three hours and forty-five minutes, had a lunch break, and returned to work for another four hours and

forty-five minutes. The only limitations on the length of the work week were a respect for a Christian Sunday and the absence of artificial lighting.

Translating the ideas of silence, labor, and discipline into the prison routine inspired prison officials to adopt quasi-military models. At almost every possible point, they imposed regimentation. Thus, convicts did not saunter from place to place but went in close order and single file, each looking over the shoulder of the man in front, faces inclined to the right, feet moving in unison, in lockstep. In fact, the lockstep became the trademark of American prisons in these years (and thereafter as well, as attested to by 1930s prison movies). It was a curious combination of march and shuffle, the march aiming to impose discipline, the shuffle trying to make certain that the men did not become too prideful. With the prisoners' heads pointed to the right, guards could make certain that no one carried on a conversation.

The daily routine also followed a military model. At the sound of a horn or bell, the guards opened the cells, and the prisoners stepped onto the deck and then in lockstep went into the yard. In formation they emptied their night pails, which they then washed; they took a few more steps and placed the pails on a rack to dry. They then moved in lockstep to the shops and worked at their tasks while sitting in rows on long benches. When the bell rang for mealtime, they grouped again in single file, passed into the kitchen, picked up their rations (the rules ordered them not to break step), and continued either to their cells (in some institutions) or to a common mess hall (in others), where they ate their meals while, by regulation, sitting erect with their backs straight. At the bell they stood, reentered formation, and in lockstep returned to their shops or cells.

The same commitment to regimentation dictated that inmates wear uniforms, not elegant ones of course but ones made of crude and simple design, with stripes (to keep the men humble and to increase the likelihood of recapture in case of escape). In keeping with a commitment to military regimentation, the convicts' hair was cut short, and the cells were sparsely furnished with a cot, a pail, and tin utensils. Indeed, the military model extended to the prison guards, who wore uniforms, were mustered at specific hours, and kept watch like sentries. The wardens, who often came to their positions after military service, issued regulations commanding the guards to act in a "gentlemanly manner," as though they were officers, and to avoid laughter, ribaldry, or unnecessary conversation while on duty. Guards, as Sing Sing's rules announced, "were to require from the convicts the greatest deference, and never suffer them to approach but in respectful manner; they [were] not to allow them the least degree of familiarity, nor exercise any towards them; they should be extremely careful to *command* as well as to compel their respect."

These characteristics were apparent in the architectural design of the prison. Most of the facilities looked like medieval fortresses, monumental, as befit so noble an experiment. The thick walls and turrets were assurances that the prison was secure, even as it promised to promote isolation and separation. The buildings themselves were long and low slung, symmetrically arranged with evenly spaced windows, all very regular and methodical. Thus in appearance and in routine, these were institutions that would inculcate fixity and order.

The internal and external design of the prison suggests some affinity between these

institutions and the new factories that were simultaneously transforming the manufacturing sectors of the American economy. In appearance and routine, the prison and the factory did bear a resemblance. Both emphasized regularity and punctuality. Indeed, starting from this observation, a number of historians have located the origins of the prison in the new economic order. They acknowledge the depth of anxiety and insecurity in Jacksonian America about social order and the fate of the new republic, but the source of these fears they locate not in the imbalance between inherited ideas on social order and new realities but in the emergence of separate and hostile social classes, the factory owners and their associates on the one hand and the workers on the other. In this interpretation, the purpose of the prison was to segregate the working class from the criminal element so as to make certain that lawlessness did not pervade the lower ranks. Thus, by instilling order in its inmates, the prison was, in effect, helping to guarantee discipline and regularity in those who arrived each morning at the factory gate. They would understand that there was no alternative to wage-earning, that an effort to ignore or violate the precepts of the new industrial order was futile. They would line up at the sound of the bell in the factory yard or line up at the bell in the prison yard.

Although this vision may have persuaded some citizens to favor the prison solution, it would be erroneous to maintain that the inspiration for the prison is to be found in the organization and needs of the factory. More was at stake than owners bringing discipline to their workers. Surely the manufacturing enterprises had sources of recruitment broad enough to ignore the determined felon, and the prison was hardly in a position to be a purveyor of values to the laboring classes. In fact, in the United States, the prison spread not only through the Northeast—where factories were springing up—but also through the Midwest and the West—where industrial development was still decades away. It seems far more likely, as the historian Michael Ignatieff has concluded, that to the degree that prisons and factories resembled each other, it was "because both public order authorities and employers shared the same universe of assumptions about the regulation of the body and the ordering of time."

REFORM GONE AWRY

From its moment of origin, the American prison never lacked for critics, for the system had a harshness to it that was unmistakable and dismaying. Charles Dickens, on his 1842 tour of the United States, went to Philadelphia expressly to see the prison and found it "cruel and wrong." Its intentions, he conceded, were humane and reformatory. But its designers, he was convinced, did not know what it was that they were doing. He noted: "I believe that very few men are capable of estimating the immense amount of torture and agony that this dreadful punishment, prolonged for years, inflicts upon the sufferers. . . . I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body." Concluded Dickens, "Those who have undergone this punishment must pass into society again morally unhealthy and diseased."

Tocqueville and Beaumont were more measured in their summary judgments. "We have no doubt," they wrote, "but that the habits of order to which the prisoner is subjected for several years, influence very considerably his moral conduct after his return

to society. . . . Perhaps, leaving prison he is not an honest man, but he has contracted honest habits. . . . Between Auburn and Pennsylvania, they preferred Pennsylvania. "The Philadelphia system produces more honest men, and that of New York more obedient citizens." But these points notwithstanding, the prisons that they visited did not fit with the America that they saw. "While society in the United States gives the example of the most extended liberty, the prisons of the same country offer the spectacle of the most complete despotism. The citizens subject to the law are protected by it; they cease to be free when they become wicked."

With the passage of time, whatever saving graces these visitors could find in the prison system weakened. At least for the period 1820–50, the founders could justifiably claim that the institutions were faithful to reform principles in enforcing the congregate and separate systems. Whatever reservations one might have had about the validity, or even the humanity, of either of the plans, there was a genuine correspondence between the ideal and the real, between blueprint and actuality. However, by the 1860s, and even more obviously by the 1870s and 1880s, the unique arrangements of the Auburn and Pennsylvania plans had disappeared.

Prisons in the post–Civil War era became modern, that is, characterized by overcrowding, brutality, and disorder. Nevertheless, they continued to occupy the central place in criminal punishment. Massive walls enclosed prison space, and heavy gates swung open to admit a steady stream of convicts.

There can be no question of the dimension of the decline. The most thorough account of the nation's prisons in the post–Civil War era was the 1867 report of E. C. Wines and Theodore Dwight to the New York legislature, and their findings were unambiguous: "There is no longer a state prison in America in which the reformation of the convicts is the one supreme object of the discipline." By this standard they noted, "There is not a prison system in the United States which . . . would not be found wanting."

As legislative reports in New York itself made unmistakably clear, the state's own prisons were no exception to this rule. Already in 1852 an investigation had found that the prisons did serve to incapacitate the offender, preventing him from committing crimes during his stay. "But if the object is to make him a better member of society so that he may safely again mingle with it . . . that purpose cannot be answered by matters as they now stand." Twenty years later, another commission found conditions still worse. Not only were cruel punishments pervasive throughout the state prisons (it was not uncommon to hang convicts by their thumbs), but so also was corruption (inmates regularly bribed guards to get a more favorable work assignment).

Overcrowding was everywhere the rule of the day. By 1866 even the institution most famed for keeping only one prisoner to a cell, the Pennsylvania penitentiary at Philadelphia, had so many inmates to hold that separation was no longer possible. Wines and Dwight estimated that nationwide roughly one-third of all prisoners were double celled. And as isolation broke down, the opportunities for prisoner unrest increased, which prompted wardens and guards to become all the more harsh in their discipline of inmates. But why did the system at once fail to live up to its original ideals, and why did this failure not have any impact on its longevity? Why did the reform impulse fade without uprooting the prison from the criminal justice system?

Part of the answer rests in the original reform design for the prison. The doctrine of rehabilitation through obedience and discipline was particularly susceptible to abuse. In the name of reform, wardens had the excuse to mete out the most severe punishment while still believing that they were doing more than satisfying their own convenience. By the same token, it was too easy to succumb to the belief that incarceration in and of itself would accomplish reform, that all wardens had to do was to confine the inmate and the result would be beneficial. In other words, the rhetoric of the reform program continued to cloak the prison with the mantle of legitimacy long after the reality of reform had disappeared.

Part of the answer too rests in the nature of the prison population. The Jacksonian reformers had presumed that inmates would not be hardened criminals but "good boys gone bad," who after a period of corrective training would go on their way, not to return again. In fact, the prisons came to hold a very diverse group of inmates, not so much the petty embezzler as the recidivist and the murderer—and indeed, since the latter had longer sentences, inevitably the prison became the holding ground for the toughest of criminals. For example, of the 839 convicts who served time in the Connecticut state prison between 1828 and 1840, 60 percent were guilty of crimes of violence: they were burglars and robbers (343), murderers and attempted murderers (78), rapists (42), and arsonists and escaped inmates (45). And by all accounts, the Connecticut experience was typical of other state prisons before the Civil War. Inmates in the 1860s and 1870s were an even more hardened group—manslaughter, murder, robbery, and rape were what brought men to prison.

This development reflected not only the (understandable) decision of judges to send the toughest cases to prison—they used jails or suspended sentences for the more minor offenders—but also the structure of the sentencing process itself, more specifically, the very long sentences meted out in the United States to offenders. (To this day, American sentences and actual time served are two to three times longer than European ones.) As formulated in the 1790s, the prison sentence was to substitute confinement for execution, and although no records survive that tell us how legislators initially equated crime with time, it seems likely that their reckonings went from the top down. If murder once brought death, it now brought thirty years. And if murder was worth life, then robbery should bring ten or fifteen years; rape, twelve or fourteen; assault, seven or nine; and burglary six or seven. The very long sentences carried over into the Jacksonian period on the grounds that rehabilitation took time; a felon might well require a decade of confinement in order to acquire the habits of discipline.

Such sentencing practices filled the prisons with the most serious offenders and set off a mutually reinforcing series of considerations, all of which made rehabilitation less relevant to the actual administration of the prison. For one, guards and wardens inevitably became cynical about the idea of reform, trotting it out only at convenient times and places. For another, when serious offenders were crowded together within a prison, wardens and guards had the incentive, and in their eyes the justification, to increase again and again the severity of prison discipline. For still another, as legislators and citizens came to understand the nature of the prison population, they became more satisfied to let the operation be essentially custodial. Why spend money to ensure single cells for this kind of criminal?

All of these changes were reinforced by one more critical development in the 1850s and 1860s: an increasing number of prison inmates were drawn from new immigrant groups, specifically from the Irish. Between 1830 and 1835, 20 percent of the inmates at Auburn had been born outside the United States; the comparable figure from Pennsylvania was 18 percent. In the 1850s, the percentage of foreign-born in New York prisons rose to 32 percent, by 1860 to 44 percent. In 1860, in Massachusetts immigrants were 40 percent of the prison population, in Illinois 46 percent. And all of these percentages swelled in the 1870s and again thereafter. State legislators, with little sympathy for the immigrant, saw even less reason to invest in making the prisons anything but custodial. As bad as conditions were, they seemed good enough for the Irish.

THINKING ABOUT PRISONS: SOCIAL CONTROL VERSUS REFORM

An interpretation that locates the origins of the prison in a profound uneasiness about the fragility of the social order is often characterized as part of a school of "social control." But the label is ill-suited, obfuscating more than it clarifies. The term itself comes from sociological studies in the 1920s and 1930s. Theorists like George Herbert Mead and E. A. Ross used it to promote a sharper appreciation of the role of subjective and qualitative values in binding social groups together. Rather than assuming that the good order of the society rested on the regulatory authority of the prison or the police, they sought to link social stability to shared values and principles. Social order became the product not of fiat and force but of ideas and sympathy. Accordingly, they were concerned with other institutions of social control: the family, the church, and the school. In fact, they searched so broadly for the elements instilling social harmony that they conceived of social control in a manner that made it indistinguishable from socialization. They found social control everywhere and applauded its presence.

In the 1950s, the meaning of the term changed, actually reversing itself. Social control became synonymous not with persuasion but with the imposition of state or class authority over the lower classes. Social control was equated with repression and coercion, with the formal and informal mechanisms that were intended to compel order and obedience. It was with this negative connotation that social control first came to the attention of historians.

When historians first used social control to think about the prison, the concept served a highly useful function. It helped to stimulate a series of novel questions and served as a necessary corrective to the prevailing idea that the prison was best understood as a "reform." Until then, the origins of incarceration had been interpreted as the triumph of humane impulses. Good-hearted citizens and generous philanthropists had been appalled at the condition of jails, at the use of corporeal and capital punishment, and had invented the prison to introduce a less cruel and more benevolent mode of punishment. But the difficulty was that, by simply describing the innovation as a reform, historians assumed that the prison was a logical step in the progress of humanity; they failed to ask why the prison was invented in the 1820s and 1830s and why it adopted its special attributes. Indeed, the subsequent history of the prison becomes much more difficult to explain if one thinks only in terms of progressive sentiments. By the 1950s, the prisons were anything but humanitarian, so an interpretative framework

that focuses narrowly on the spirit of benevolence does not help us to understand changes in the prison and its continuing centrality to the system of punishment. To view the degeneration of the prison as a series of incremental changes that unexpectedly and unpredictably produced a horror show is to avoid the challenge of historical analysis. To insist on the moral purity of state intervention and paternalism, to absolve the prison administrators of all responsibility for the decline (on the grounds that human institutions are inevitably fallible), is to sidestep the important historical questions. Why did the state and would-be reformers fail to recognize the fallibility of their creations? Why, even decades later, did proponents of the prison maintain their positions and continue to legitimate the practice of confinement even in the face of declension? In this sense, the idea of social control was liberating, encouraging a group of historians to start investigating the purposes, benign or not so benign, that a purported reform might fulfill.

But now that these questions have been asked, and answered, using the term "social control" has little value. It is not always evident whether the term is being invoked as a statement of fact (this organization or institution is charged to maintain social order), or whether it is being invoked as a proposition (this is an organization that attempted to buttress the social order by coercing or deceiving the lower classes). "Social control" may be used as the equivalent of the formal exercise of state power—meaning that the police are agents of social control and are duty-bound to maintain public order—or it may be used in a more sweeping, if ill-defined manner, to make it a weapon (secret?) in the arsenal of the ruling class. In all events, the term in present usage neither advances knowledge nor clarifies subtle differences.

As one looks back on the origins of the prison, there should be no doubt that humanitarian impulses had an important place in its history. However irresistible the urge to make rigid dichotomies in historical interpretations, no one would want to dismiss considerations of humanity or denigrate the benevolent impulses of reformers. The pre-prison modes of punishment (as chapters one, two, and three make eminently clear) were brutal, whether the practice was torture and executions or sentences of transportation. The accounts of the convict origins of Australia are replete with heart-breaking stories of what it meant to men and women, often guilty of no more than petty thievery, to be separated forever from spouses, children, and relatives.

Nevertheless, benevolent motives take us only part of the way to understanding the origins of prisons. No matter how empathetic one may be to the reformers' impulse to find a substitute for garroting the condemned, the fundamental question still remains: why invent a system of incarceration, why substitute confinement in segregated spaces and design a routine of bell-ringing punctuality and steady labor? Why channel the impulse to do good into creating something as strange as the prison, a system that, over 150 years later, can still prompt an inmate to want to meet the man who dreamed it all up, convinced that he must have been born on Mars?

Should the prison be judged an advance when compared with the practices it replaced? Was it not an improvement over the gallows and the whip? Even this seemingly self-evident judgment, however, must be qualified, for the prison extended its reach and brought into its orbit many who would have been spared punishment in an earlier era. It is likely that some among the deviant suffered less because of the prison, but some may have suffered more; a number of prisoners who previously would have been

shamed before their neighbors and then left to resume their lives instead spent years in a cell. The calculus of benefits and losses is too exquisite to render an unambiguous verdict.

Finally, is the history of the prison relevant to our understanding of the present and our imagination of the future? Are there lessons that we should draw from the record? Clearly, the past is no predictor of the future, and the fact that prisons failed to deliver on their promise is no warrant to find that they have outlived their usefulness and should now be abandoned. At the same time, we would be foolhardy not to raise our level of skepticism. We cannot afford to forget that designs that promise the most grandiose results often legitimate the most unsatisfactory methods. In light of this history, the burden of proof falls on those who would claim that confinement can serve all ends, benefiting both the inmate and the society.

Bibliographic Note

This chapter draws on my own work in the history of the prison: *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, rev. ed. (Boston: Little, Brown, 1990), and *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (Boston: Little, Brown, 1980). For a fuller discussion of my ideas and those of others on the issue of social control, see Stanley Cohen and Andrew Scull, eds., *Social Control and the State* (New York: St. Martin's Press, 1983).

The two rightfully famous reports by European visitors are Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and Its Application in France* (reprint, Carbondale: Southern Illinois Press, 1964), quotations in the text from pp. 79, 90, and Charles Dickens, *American Notes* (London: MacDonald and Sons, 1850), quotations from pp. 129, 142.

On public executions, see Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York: Oxford University Press, 1989).

Other accounts of the pre-Civil War penitentiary include the following: W. David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York* (Ithaca: Cornell University Press, 1965); Negley K. Teeters, *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773-1835* (Philadelphia, 1955); Negley K. Teeters and John D. Shearer, *The Prison at Cherry Hill: The Separate System of Penal Discipline, 1829-1913* (New York, 1957); and Blake McKeivey, *American Prisons: A History of Good Intentions* (Montclair, N.J.: Patterson Smith, 1977).

For other antebellum efforts to control the deviant, see Paul S. Boyer, *Urban Masses and Moral Order in America, 1820-1920* (Cambridge: Harvard University Press, 1978), and John R. Sutton, *Stubborn Children: Controlling Delinquency in the United States, 1640-1981* (Berkeley: University of California Press, 1988).