

Texas Tough

Robert Perkinson

*Distrust all in whom the impulse to punish is strong.*¹

—FRIEDRICH NIETZSCHE

Freedom is the United States' founding creed. "Every spot of the old world is overrun with oppression," cried Thomas Paine, but America promises "asylum for the persecuted lovers of civil and religious liberty." Andrew Jackson later told his countrymen, "Providence has showered on this favored land blessings without number, and has chosen you as the guardians of freedom, to preserve it for the benefit of the human race." Subsequent presidents, in wartime and peace, have renewed this sacred charge, proclaiming freedom as America's supranational mission, its unifying cause. In his inaugural address, Barack Obama cast the tradition forward. "Let it be said by our children's children," he said, that "we carried forth that great gift of freedom and delivered it safely to future generations."²

America is "the land of the free," yet by one vital measure, it is less free than any other country on earth: it incarcerates a greater portion of its citizenry than any other, about 1 out of every 100 adults. With some 2.4 million persons under lock and key, the United States manages the largest penal system in the world, the grandest ever conceived by a democratic government.³ Just as slavery once stood as a glaring exception to the American promise, so does imprisonment more than two centuries after the birth of the republic.

The stated purpose of the U.S. prison colossus, which now outstrips

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the combined populations of Boston, Washington, and San Francisco, is to keep the public safe. Yet the majority of criminologists agree that the phenomenal expansion of incarceration has only modestly reduced crime, accounting for perhaps a quarter of the crime drop since the early 1990s.⁴ Even as the experts increasingly doubt the utility of incarceration, however, our society has come to rely on it as never before.

Imprisonment in the United States has achieved unprecedented scale. Combining law enforcement, courts, and prisons, the U.S. criminal justice system consumes \$212 billion a year and employs 2.4 million people, more than Wal-Mart and McDonald's combined, the nation's two largest private employers. There are more than eighteen hundred separate prisons in operation across the country—not counting local jails, juvenile lockups, and immigration facilities. Concrete and concertina wire have become integral features of the American landscape.⁵

Even as the use of incarceration has expanded exponentially, however, many Americans still don't know anyone who has been to prison. In middle- and upper-income, predominantly white neighborhoods, imprisonment remains a rare and shocking experience. According to the federal Bureau of Justice Statistics, only one in thirty-nine white men has ever been to prison, with the odds plummeting in the higher income brackets. Along the margins of American society, however—in poverty-blighted rural areas and struggling urban cores—imprisonment has become commonplace. One out of every six African American men has spent time in prison, one out of every thirteen Hispanics. If one takes a snapshot of those currently incarcerated, the socioeconomic indicators read more like a fact sheet from Afghanistan than the first world. Roughly half of today's prison inmates are functionally illiterate. Four out of five criminal defendants qualify as indigent before the courts.⁶

That prisons concentrate poverty and ignorance—in addition to rough and shady personalities—is nothing new. “It is well known that most of these individuals on whom the criminal law inflicts punishments, have been unfortunate before they became guilty,” noted Gustave de Beaumont and Alexis de Tocqueville in 1833. More surprising is that measurable inequities in criminal justice have widened over the past few decades, particularly across the barrier that has always divided Americans most intractably—race. A half century ago—before the Montgomery bus boycott, before the War on Poverty, and before the conservative reaction against the social experimentation of the 1960s—blacks in the United States were imprisoned at roughly four times the rate of whites. Today, a generation after the triumphs of the civil rights movement, African Americans are incarcerated at seven times the rate of whites, nearly double the

even after civil rights era,
the imprisonment of blacks
compared to whites doubled.

disparity measured before desegregation.⁷ Although two generations have passed since *Brown v. Board of Education*, African American men today go to prison at twice the rate they go to college.⁸

Almost no one would have predicted this dire state of affairs two generations ago. Had you proposed in 1965 to increase the U.S. prison expenditures forty-four-fold and widen racial disparities over the next forty years, even the hardest hard-liners would have scoffed. Toward the end of the civil rights era, in fact, most observers believed the country was moving in the opposite direction. Although "there is a long way to go," concluded the authors of a 1969 primer on constitutional rights, we are making "orderly progress" toward the day when "the poor man, the Negro, the suspect, and the defender of unpopular causes truly enjoy . . . equal protection under the law." Conventional prisons, many experts believed, were destined for obsolescence. As counseling and community corrections came to the fore, one of the country's leading criminologists, Norval Morris, advised criminal justice professions to begin "conscious planning" for "the decline and likely fall of the 'prison' as that term is now understood."⁹

We now know that Professor Morris and his colleagues were not just off the mark but off the map. But why? What, indeed, propelled a resurgence of the prison precisely at the moment of its predicted demise? When I began researching criminal justice in the 1990s, analysts of all stripes were struggling with this question. Law-and-order conservatives had the simplest answers. They argued that cultural hedonism and welfare dependency had gradually eroded family values, unleashing a frightful crime wave in the 1960s that was finally brought under control only by decisive government action.¹⁰ Critics of the crackdown, by contrast, have floated a raft of alternate explanations, from media-driven panic to a reduced tolerance for risk in late modernity.¹¹ Some have suggested that America's titanic penal system has reached the point of self-sustaining profitability, that a "prison-industrial complex" has emerged as a rival to the military-industrial complex first assailed by President Dwight Eisenhower in 1961.¹²

bullshit
racist
explanation.

In graduate school at Yale, I learned a great deal from this growing body of literature, but I felt increasingly dissatisfied. Many commentators agreed that race plays an important role in the justice system, but relatively few were making the entwined histories of criminal punishment and racial subjugation a central category of analysis.¹³ Fewer still carried the story further back than Barry Goldwater's 1964 presidential campaign, one of the first to make law and order a polarizing partisan issue.¹⁴ Almost no one was grappling seriously with the role of the American South, despite the region's leadership in extending sentences, building new prisons, and resurrecting bygone punishments like chain gangs and striped uniforms.¹⁵

I suspected that vital insights lay buried in these neglected areas, so

I focused my research on the history of crime and punishment in the South. I traveled to Florida, where venerable traditions like electrocution survived into the twenty-first century, then to Georgia, where I studied the rise and fall of the chain gang. In my mother's home state of Mississippi, I surveyed the legendary penal farm at Parchman. Next door in Louisiana, I conducted a round of interviews with inmates and guards at the Angola prison plantation. The more I read and the more people I spoke with, however, the more I realized that in the realm of punishment, all roads lead to Texas.

Why Texas? Because just as New York dominates finance and California the film industry, Texas reigns supreme in the punishment business. With 173,000 inmates and more than twice as many paid employees as Google, Texas's prison system is the largest in the United States, outstripping even California, which has an overall population 50 percent larger.¹⁶ By almost any measure, Texas stands out. The state's per capita imprisonment rate (691 per 100,000 residents) is second only to Louisiana's and three times higher than the Islamic Republic of Iran's.¹⁷ Although Texas ranks fiftieth among states in the amount of money it spends on indigent criminal defense, it ranks first in prison growth, first in for-profit imprisonment, first in supermax lockdown, first in total number of adults under criminal justice supervision, and a resounding first in executions. When it comes to imprisonment, writes Joseph Hallinan, a reporter for the *Wall Street Journal*, Texas is "where it's happening."¹⁸

Texas casts a long shadow in politics as well. Since World War II, the state has produced more presidents than any other, with the differences among them providing a measure of the nation's postwar journey. Born in Denison, Eisenhower embodied the cold war consensus. In the 1960s, Lyndon Johnson championed civil rights, social democracy, and preventative criminal justice, even as he shipwrecked his Great Society in Vietnam. LBJ's two Texas successors then led the country rightward: George H. W. Bush, who rode the specter of Willie Horton, a black rapist, to the White House and widened the war on drugs when he got there, and his son George W. Bush, who funneled more money into law enforcement and incarceration, both foreign and domestic, than any chief executive before him. By the early twenty-first century, Texas had come to exercise unrivaled leadership in the political arena, especially in criminal justice, where it pioneered all manner of punitive policies, from lethal injection to prison privatization. With political conservatism ascendant, Texas became the country's new bellwether state.¹⁹

To a large extent, Texas stands for the country as a whole. With its mythic history, multiracial population, and immense territory that stretches from

the South to the Southwest, Texas brings together vital threads of the American fabric. Its hardscrabble folk and wide-open spaces symbolize individual liberty. Yet this freedom has always traveled with a wrathful twin. Torn by social divisions and wracked by violent conflict—dramatized by the lynching of James Bird in 1998—Texas also signifies for many Americans intolerance, bigotry, and sanguinary justice.²⁰ In the film *Thelma and Louise*, when Susan Sarandon makes Geena Davis drive hundreds of miles out of the way to avoid the state, audiences are meant to understand that Texas is no place for free spirits on the run.

For both its punitive singularity and historical contradictions, Texas is a fruitful site to study criminal justice over the *longue durée*, from one period of pervasive unfreedom to another, from the age of slavery to the age of incarceration. From its inception, the state has served as a contentious testing ground for rival styles of penal discipline: corporal punishment versus Christian charity, exploitative field labor versus penitentiary-based confinement, retribution versus rehabilitation. A populist strain in Texas politics has inspired the most spirited penal reform movements in the South, from agrarian radicals who railed against forced labor to civil rights activists who assailed prison segregation. But an even stronger tradition of racial demagoguery and penny-pinching conservatism, combined with the intransigence of the state's prison guard establishment, has managed to beat back each of these challenges. In Texas justice, as in politics, left has always battled right, but the right has usually won. "It was one of the clichés . . . that we were dragging our state, kicking and screaming, into the twentieth century," recalls Ronnie Dugger, the founding editor of the *Texas Observer*, the state's liberal standard-bearer. "But lo and behold . . . Texas has dragged the United States back into the nineteenth."²¹

The product of this mismatched historical struggle is a uniquely harsh model of criminal justice, a regime of state-sanctioned punishment based on roughshod legal proceedings, racial subjugation, corporal punishment, and unpaid field labor that has persevered into the twenty-first century. Texas's plantations are "probably the best example of slavery remaining in the country," reported a national corrections expert in 1978.²² Twenty years later, when I first started visiting southern prisons, I reached the same conclusion. Nowhere else in turn-of-the-millennium America could one witness gangs of African American men filling cotton sacks under the watchful eyes of armed whites on horseback. Plantation prisons at Sugar Land, Huntsville, and elsewhere have preserved the lifeways of slavery in carceral amber.

For most of American history, Texas's implacable punishment traditions relegated it to the margins of penology, a field devoted—in theory if not

practice—to the “moral regeneration . . . of criminals.” In the late civil rights era, however, as rehabilitation programs faltered, crime rates soared, and a new breed of politician discovered that crime, especially black crime, galvanized white voters, Texas’s Lone Star became a guiding light. State after state began copying elements of what prison experts called the “Texas control model,” while politicians looked with new fondness on the state’s severe sentencing statutes. [Once dismissed as a “disgrace of Christian civilization,” Texas became the template for a more fearful and vengeful society.²³]

States followed the ways of Texas penal system.

Nationwide, tough new crime policies—far more than rising crime rates—fueled prodigious prison growth. Between 1965 and 2000, the U.S. prison population swelled by 600 percent, in Texas by 1,200 percent. Over the same period, sentences grew longer and early releases rarer. Prison education and counseling programs withered, while supermaxes and death rows sprang up from coast to coast. “We were building prisons so fast we couldn’t find wardens to run them,” a criminal justice professor at Sam Houston State University told me. “It was like mobilizing for world war.”²⁴ By the end of the century, the United States had embarked on an unprecedented experiment in mass incarceration, one that not only is changing the country’s approach to crime and punishment but is reworking the fabric of American society.

This book tells the story of this punitive revolution with Texas at its epicenter. Examining the interplay of race, crime, and politics over almost two centuries, it explains how a proud frontier republic forged in democratic revolt came to build one of the roughest penal regimes in American history. It shows how a uniquely calloused, racialized, and profit-driven style of punishment that developed on slavery’s frontier became a model for the nation in the post-civil rights era.

THESES ?

By analyzing the life and times of America’s harshest, largest penal system, *Texas Tough* proposes fresh ways of thinking about imprisonment and society. First it argues that the history of punishment in the United States is more of a southern story than has generally been realized. By the numbers, the South has long been the dominant player in criminal justice.²⁵ Open almost any book on the subject, however, and the states of the former Confederacy are scarcely mentioned—except perhaps to underline their particularity.²⁶ In the historiography of imprisonment scholars have hewed to a remarkably unitary story line, with the first northeastern penitentiaries—foreboding public institutions that were meant to restore wayward citizens to virtue through penitent solitude—imperfectly evolving into modern correctional bureaucracies, complete with psychological counseling and parole. Although historians vary widely in their

approaches and viewpoints, they have overwhelmingly replicated narratives of halting progress in pursuit of the rehabilitative ideal.²⁷

Until recently, this progressive, regionally restrictive version of history possessed a certain logic. Because prison managers, whatever their shortcomings, steadfastly claimed reformation as their goal, and because most rehabilitative innovations originated in the North, it seemed only logical for historians to thus focus their efforts.²⁸ Alas, now that the country's prison establishment has largely abandoned the cause of "moral regeneration," it is easier for us to detect southern roots. Over the last few decades, prisons have not become more humane, less racially divisive, less authoritarian, or even more supple in their exercise of power, as the dominant literature had led us to expect. Rather, American lockups have become harsher, more regimented, more racially divisive, and markedly less rehabilitative. They no longer aim to repair and redeem but to warehouse, avenge, and permanently differentiate convicted criminals from law-abiding citizens. Today's prisons operate less in the tradition of what the founding penologist Enoch Wines called "the reformatory idea" than in a retributive mode that has long been practiced and promoted in the South.²⁹

didn't happen actually now prisons evolved

To piece together a more complete genealogy of the modern prison, therefore, this book redirects the spotlight from the North, the birthplace of rehabilitative penology, to the South, the fountainhead of subjugationist discipline. In addition to tracing the evolution of social welfare and the gospel of redemption, it examines the development of labor control, racial division, and corporal debasement. The result is that two ancestral lines come into view: one reformatory, one retributive; one integrative, one exclusionary; one conceived in northern churches and the other on southern work farms. Over the course of American history, these rival traditions have contended for influence, and in the closing decades of the twentieth century, exclusion and revenge gained the upper hand. In short, this book posits that most historians have studied only half of the family tree. American prisons trace their lineage not only back to Pennsylvania penitentiaries but to Texas slave plantations.

This historical reorientation leads to the book's second principal argument: the evolution of the prison has had surprisingly little to do with crime and a great deal to do with America's troubled history of racial conflict and social stratification. Decoupling punishment from crime defies conventional wisdom; most citizens like to think that prisons keep predatory villains off the streets—and to a certain extent they do. Yet an examination of the historical record, as well as present-day statistics, reveals that state punishment has consistently served purposes beyond crime control.

dominion = control,
supreme
power

Indeed, the strong arm of the law has been regularly deployed not only to protect public safety but to preserve privilege, bolster political fortunes, and, most of all, to discipline those on the social margins, especially African Americans.

The notion that the law serves the powerful is probably as old as the law itself. A character in Plato's *Republic* asserted, "In every case the laws are made by the ruling party in its own interest."³⁰ Yet in the United States, where the highest court bears the inscription "Equal Justice Under Law," this basic critique is too often ignored. We tend to see justice even where dominion resides.

The history of Texas brings dominion into sharp focus. Although the Lone Star Republic was founded on the lofty principles of liberty and independence, its 1836 constitution codified an inviolable hierarchy of rights, barring all "Africans, the descendants of Africans, and Indians" from citizenship.³¹ After abolition, these rigid distinctions blurred, but a two-tiered legal framework persisted. During the protracted epoch of formal segregation, a variety of *de jure* and *de facto* controls ensured that African Americans, and to a significant extent Mexican Americans, rarely interacted with the legal system in any capacity other than defendant. For more than two-thirds of Texas history, the state's criminal justice institutions—from the Texas Rangers to the jury box to the prison farms—remained legally and rigidly stratified, guided more by the exigencies of white supremacy than equal justice.

Despite the historic victories of the civil rights movement—culminating with the election of the country's first black president in 2008—the criminal justice patterns set during slavery and segregation have not faded away. Rather, according to key statistical indicators on crime, arrest, conviction, imprisonment, and release, the United States is dispensing less equitable justice today than it was a generation ago. Even as segregationist barriers to equal opportunity and achievement have crumbled in the free world, we have fortified the racial divide in criminal justice. Denied a place in society at large, Jim Crow has moved behind bars.

This paradoxical resurgence of racial injustice in the face of racial progress has a troubling precedent. In the aftermath of the Civil War and Reconstruction, white conservatives regrouped and regained power in the states of the former Confederacy, largely through violence and intimidation. The result was a restoration of white supremacy, combined with peonage, convict leasing, and lynching, practices that delayed emancipation's promise of equal rights for a century. In the wake of the modern civil rights movement—or the "Second Reconstruction"—an analogous historic turn took place.³² In reaction against court-ordered integration, rising crime rates, and urban unrest, white conservatives, most effectively in

the South, again regrouped and returned to power, often by campaigning on the issue of law and order. The consequence, this book contends, was an explosion of racialized imprisonment and a retreat, once again, from liberty.

In addition to reexamining the dynamic between imprisonment and society, *Texas Tough* examines the prison itself as a peculiar species of "total institution."³³ The book wrestles with a question that has long puzzled students of the law and public policy: Why has the penitentiary failed so spectacularly to fulfill its founding objectives—to rehabilitate criminals and prevent crime—yet persisted so tenaciously as our primary sanction for serious lawbreaking? Why have prisons resisted every effort at reformation? After analyzing the trials and tribulations of northern and especially southern penal institutions over two centuries, I believe the answer resides both inside and outside the prison walls.

In the first place, it is important to recognize that the rehabilitative prison has failed, in part, because it was never allowed to succeed. Although politicians and prison managers have perennially trumpeted the cause of inmate reclamation, in practice they have more often prioritized cost savings, control, and political maneuvering. This is particularly true in Texas. Just as promising reform efforts got under way in the 1880s, 1910s, and 1920s, state leaders slashed the prison budget and demanded that convicts return to the fields, thus squashing innovations in their infancy. Prison reforms have repeatedly disappointed, therefore—in Texas and to a substantial extent in other states—largely because they haven't really been tried. Or even desired. Prisons have persisted, conversely, despite their putative failures, not because they effectively protect the public but because they excel in other, generally unspoken ways, at dispensing patronage, fortifying social hierarchies, enacting public vengeance, and symbolizing government resolve.

But this is only part of the story. By stepping into the shrouded world of the prison itself, this book will also show how convicts and staff—not just policy makers—have sabotaged efforts at reform and reconciliation, and how, in the process, they have extended penitential discipline. On the prisoner side, even cooperative inmates determined to "do their own time" find the daily deprivations and petty humiliations of prison life maddening. Many turn to scamming, smuggling, and, when opportunities arise, escaping and rioting—acts of defiance that occasionally jump-start reforms but more often infuriate prison managers and lawmakers.³⁴ In this way, insurgent convict politics has often undermined inmate welfare, inspiring not innovation but backlash. More subtly, by chafing against the depersonalizing regimentation of prison life—as almost all convicts

do—prisoners inadvertently validate the justice of their convictions. By breaking rules and lashing out, they mark themselves as criminal and further legitimate their incarceration.

The flip side of this corrosive dynamic plays out among the guards. Over time, even the most high-minded officers find the daily grind of prison work hardening. Charged to manage inmates who always seem to be working an angle, they come to think of their wards as untrustworthy and treacherous, as generic criminals rather than troubled individuals. Vested with near absolute authority over inmates, they come to wield power with confidence and sometimes capriciousness. Just as the kept inexorably slip into the role of contumacious convict, the keepers morph into hardhearted screws. "It gets to where there's not a whole lot of difference between the prisoners and the bosses," recalls an officer at the Ramsey farm, one of the state's oldest plantations. "See, [the Texas Department of Corrections] alters your mind. You live TDC. You work TDC. Your friends work at TDC. You were a bad ass and that's all there was to it."³⁵

Over time, this guard-prisoner dialectic has played a critical role in destabilizing prison environments and discrediting reform efforts. By herding together edgy individuals against their will and enacting daily rituals of subjection, even the best prisons tend to foster more conflict than cooperation. They tend to drive forward cycles of reform, rebellion, and retrenchment that have characterized prison history in Texas and beyond. Conceived to enforce the law and impose order on chaos, prisons, by their very nature, tend to become bastions of lawlessness. This is not to say that no prisons are better than others. Yet by assessing the wreckage of prison reform movements, we may conclude that the prison itself is more irredeemable than most of its inmates. [. . .]

To be sure, there is evidence of advancing technology and gradually improved living conditions within Texas's prisons. In the early days, convicts lived in fetid firetraps and labored through every daylight hour under the gun. Today, they are kept in comparably hygienic concrete structures with electric lighting and indoor plumbing. They have access—albeit restricted and contested access—to relatively modern medical facilities.³⁶ Although hoe squads still turn out at the older units, prisoners these days are as plagued by tedium as by toil. Perhaps the most reliable index of prison amelioration is the inmate death rate, which has dropped from 2 to 7 percent annually under leasing to 0.3 percent today—this despite longer sentences and a surge in executions.³⁷

Even in areas of obvious betterment, however, ambiguities remain. Take internal prison sanctions, which have become less physically painful but more prolonged. From the 1850s through the mid-1980s, prisoners

Texas prisons
got better in some
senses but not really.

Although prisoners aren't beat or forced to do labor inhumanly, they lost many rights to live as a person rather than animal.

writhed under the whip or got smacked upside the head, but they rarely spent more than thirty days in the hole; now, they might spend years there, even decades. As prison management has become more bureaucratic, another paradox has emerged. Inmates are less likely to be treated capriciously by staff, but they are also commensurably less likely to get treated favorably, less likely to exercise anything like personal autonomy. In the old days, even at the height of the exacting control model, strong, hard-working convicts could hunt, make spirits, gamble, and have sex with some impunity; the toughest or wildest could jockey for BT or bookkeeper positions. These days, prisoners are more apt to be treated equally: as bodies to contain and count. "Sure, they . . . worked you till you dropped, but when you got back to the building you could do whatever you wanted," recalls one prisoner a bit too fondly. Now "the guards perceive us as animals . . . and view the pods as livestock pens."³⁸ The most notable difference of all is that there are so many more pens.

This conflicted assessment of historical change runs against the American grain. Since John Winthrop proclaimed his Puritan settlement a "city on a hill," Americans have treated progress as a covenant. The notion that each generation will be richer than the last, that each adversity will be overcome by pluck and hard work is a national creed. Prisons, though, present a stark challenge to this manifest destiny. They are built in progress's name; their architects have promised to cure crime, to reclaim fallen citizens, and to supplant barbarism with humanitarian correction. But more often they have delivered everything they were built to overcome: lawlessness, cruelty, abomination. "Penal history is littered with unfulfilled promises, abandoned hopes, and discarded institutions," observes one historian.³⁹

This legacy of disappointment is most pronounced in the North, where the prison's virtues were promoted most rapturously. Benjamin Rush set the tone when he predicted that his "house of repentance" would unite "humanity, philosophy, and Christianity . . . to teach men that they are brethren; and to prevent their preying any longer upon each other." Southerners were always suspicious of such Panglossianism. They built prisons hesitantly in the nineteenth century and avidly in the twentieth but charged them with a more modest purpose: to punish criminals. In prison management, they emphasized subjection over salvation and, until recently, hard labor and white supremacy above all. From the beginning, southern progressives recoiled at this rejection of institutional idealism. They denounced southern penal institutions as "sources of disgrace" and tried to remake them in a northern image. When forward-thinking Texans built the Walls, for instance, they spoke of Auburn. When they opened the Gatesville reformatory, they invoked Elmira. When they dreamed up

the Austin penal colony, they referenced Thomas Mott Osborne at Sing Sing and Katherine Bement Davis at Bedford Hills. In bringing the *Ruiz* case to trial, civil rights activists believed they were nudging the state toward "community supervision," which Ramsey Clark called "the future of corrections."⁴⁰

To almost everyone's surprise, the opposite sort of geographic diffusion has taken place. After 180 years of failing to fulfill its founding promise—as crime rates reversed their historic decline and as the New Right clawed its way to power over the wounded body of civil rights—the northern prison became more southern rather than the other way around. In this unforeseen punitive turn, race has played a pivotal role. During the extended epoch of American penal innovation from the Revolution through the Great Society, northern penitentiaries overwhelmingly imprisoned whites. But as migration transformed these Yankee prisons into demographic facsimiles of their southern counterparts, Dixie-style management migrated north as well. Programs oriented toward social reintegration, like counseling and parole, remain on the books, but they have been eclipsed in recent years by sanctions that permanently differentiate criminals from free citizens: "real life" sentences, adult penalties for juveniles, and lifelong restrictions on exfelons.⁴¹ If northern prisons once gestured toward freedom and southern penal farms toward bondage, the whole Union is in alignment now, pointing back toward the eternal bifurcations of slavery.

About the only northern penological innovation that has truly flourished in recent years is what Charles Dickens once called "rigid, strict, and hopeless solitary confinement," the brainchild of Benjamin Rush. Modern-day supermaxes have achieved a technical mastery of isolation that Cherry Hill's warders could only have dreamed of but with none of the founders' idealism. Today, the country's most regimented lockups—high-tech überprisons like Pelican Bay in California, ADX Florence in Colorado, and Estelle High Security Unit in Texas—aspire not to "cure . . . the diseases of the mind," as Dr. Rush once dubiously envisioned, but to secure perfect discipline by excluding troublesome inmates from all human contact, by exiling them from the land of the living without actually extinguishing their breath.⁴²

This resurgence of hard-edged, permanently debasing punishment coincided with a renewal of southern political potency in the latter third of the twentieth century. Before secession, the South dominated American politics from the presidencies of George Washington to Zachary Taylor. Northerners and midwesterners commanded for a century thereafter, but since the mid-1960s a majority of presidents have been southerners, and the exceptions mostly southern-strategy sunbelters. Each of these

late-twentieth-century presidents, in his own way, pushed the country further away from the New Deal consensus. After the unlikely reign of Texas's most famous liberal, Lyndon Johnson, the social safety net frayed while the policeman's net widened; Keynesianism gave way to trickle down economics; the helping hand of government closed into a fist. Although regional distinctiveness is generally on the wane—with homogenization driven by interstates and the Internet—the North has become more southern over the past generation than the South has become northern. As we approach the sesquicentennial of the Civil War, it's not always clear which side came out on top.

One of the symptoms of "Dixie rising" is an uneven hardening of American race relations. Even with the disappearance of formal segregation and the election of an African American president, the United States by some measures, like family income and unemployment, is more separate and unequal today than it was at the end of the civil rights era. According to other indicators, there has been progress, but at an agonizing creep. At the present rate of convergence, for instance, the white-black poverty gap is expected to close in 2152.⁴³

Nowhere is the persistence of inequality more visible than in the criminal justice system, where the "color line" has widened into a moat.⁴⁴ Why this is and how it came about becomes clear over the long march of Texas history. From the very beginning, the territory's legal and criminal justice institutions were bound up with racial subjugation. According to the first constitution, basic rights were allocated by race. According to the first penal codes, so were criminal sanctions, with wayward whites sent to the penitentiary and blacks to the whipping post or gallows. In law enforcement, racial and labor repression took precedence over traditional crime fighting. The consequence was that nonwhite Texans between the 1830s and the 1960s had little say in crafting or enforcing the laws. They were nonetheless readily punished for disobeying them.

Within the penal system itself, Texas started out by copying from Auburn but soon fell back on a more familiar mode of forced labor. Every effort was made to extract wealth from convict bodies, most mercilessly from black ones. At times, Texas made concerted efforts to break with this "penology for profit": in the 1910s after the abolition of leasing and in the 1920s under the progressives. In each case, however, lawmakers failed to appropriate the necessary funds, largely because they could conceive of no other fate for Negro convicts than picking cotton or cutting cane. From 1867, when the governor signed the first convict lease, through 1983, when the Ruiz rulings began taking effect, Texas's prison plantations thus carried forth the lifeways of chattel slavery. They served

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certainly punished.

Penal codes based
on race, whites go
to jail while non-
get beaten/whipped.

Texas tried to change
from penology for profit
but didn't want Blacks
to have money so kept it.

as racially segregated bastions of a seemingly bygone era, one that, in the distorted mirror of late-twentieth-century conservatism, started to look not backward but ominously modern.

The civil rights movement—and its offshoot the prisoners' rights movement—presented a serious challenge to this divisive racial order. Despite significant victories in court and in the political arena, however, Texas's legal institutions continued dispensing unequal justice. As Jim Crow finally collapsed, criminal justice emerged as a final bulwark of "white man's government." Under assault from Washington, the judiciary, and the streets, Texas and other southern polities eventually yielded on integration. But as they did so, they set a higher premium on public order and law enforcement and began assembling an incarceration apparatus of unprecedented scale. Although such talk was no longer polite, tough-on-crime politicians at the end of the century started institutionalizing the viewpoint of Texas's antediluvian, arch-segregationist U.S. senator Joseph Bailey, who once remarked, "I want to treat the negro justly and generously as long as he behaves himself, and when he doesn't I want to drive him out of this country."⁴⁵

Prison proliferated in response to myriad variables, of course, among them crime, demographic shifts, and economic restructuring, especially at the bottom of the labor market. In Texas and the wider South, however (and subsequently elsewhere), prison growth proceeded according to a time line governed significantly by race relations. As Jim Crow acted out its death throes, imprisonment rallied. Between Redemption and the triumph of civil rights—that is to say, for ten decades of de jure segregation—Texas's imprisonment rate remained remarkably stable, never exceeding 200 per 100,000 residents. Between 1968 and 2005, however, the rate septupled. Over the same period—even as civil rights organizations and convict plaintiffs scored innumerable victories—Texas's prison population grew by 1,300 percent; its prison budget ballooned from \$20 million to \$2.6 billion.⁴⁶

This astounding growth has put people of all sorts behind bars—but not equally. While the white prisoner population has increased eightfold since 1968, the African American prisoner population has grown fourteenfold; the Mexican American prisoner population has jumped even faster, increasing twenty-five-fold.⁴⁷ The sobering consequence is that young African Americans and Latinos today are more likely to spend time in prison—and less likely to get out—than their parents or grandparents were before the civil rights movement. A black baby boy born just after World War II faced roughly a 10 percent chance of ending up in prison by his midthirties. If he were born in the late 1960s, by contrast, the odds had increased to 20 percent, with the likelihood climbing still higher from the 1980s.⁴⁸ By the turn

even though civil rights at victories, Texas prisons continued to grow in population + money used.

of the century, black Texans were being incarcerated at five times the rate of whites—a degree of racial disparity not seen since the early 1920s, when the KKK was the most powerful political force in the state.⁴⁹

Since Stephen Austin first cleared his domain of its native inhabitants and proclaimed it a “slave country,” almost everything about Texas has changed. Once dominated by subsistence farmers, the state became a cotton and then an oil kingdom. Today, it boasts the Texas Technology Corridor. Once overwhelmingly rural, it now hosts two of the five largest metropolitan areas in the United States; many Texans still don cowboy boots but rarely to ride horses.⁵⁰ Through it all—from the Texian Revolution to the Confederate insurrection to the first and second incarnations of the Klan to Massive Resistance and beyond—white supremacy has served as a mainstay of Texas politics. Over time, the language and methods have changed. But to an astonishing extent, the historic black-white divide (and to a somewhat lesser extent, the Anglo-Mexican divide) has stood fast, nowhere with greater prominence than in the prison system. Although the ghosts of the Confederacy have been, to a considerable extent, chased out of schools, lunch counters, and city buses, they continue to prowl Texas’s cell blocks with relentless fury.

While racism has laid down one disheartening line of continuity in Texas’s criminal justice history, crisis has another. Drop into the official archives at the start of any new management regime, and you will find uplifting reports of wrongs righted, problems fixed, and prisoners well treated. “The efficiency of the Superintendent . . . cannot be too highly appreciated,” beamed prison directors in 1855, as Huntsville’s textile mill went up. Thanks to “wholesome changes in management,” officials trumpeted at the start of the Cunningham lease, “the convicts [are] comfortably clad, well fed, . . . and well treated.” Even as the Texas control model flew off a cliff in the early 1980s, the attorney general and future governor Mark White was touting TDC as “one of the best in the nation.”⁵¹

Such is the ebullience of official reporting. Drop into the same archives a few months or years later, however, and you find promises broken, scandals erupting, and officials scurrying for the exits. At the Walls, it turned out, obstreperous prisoners in the 1850s were being branded and maimed. Under the Sugar King, independent investigators soon agreed, prisoners received “devilish treatment” and were driven to the point of death, as one newspaper put it, like “the galley slaves of Southern Europe.”⁵² Not long after Mark White heaped praise upon TDC, a vicious gang war broke out in the cell blocks. At every turn, Texas officials claimed they saw the light only to descend into darkness. The state’s prisons were constantly on the mend but needed ever more mending.

Treatment of prisoners I believe this is saying was brought to light, prison management administrators try to flee

Like their national counterparts—if less ecstatically—Texas prison officials always claimed they were nudging their institutions forward, that they were participants in a steady if frequently rough-going march from the pillory to the modern penitentiary, from savagery to civilization. In reality, however, prison history has been characterized less by advancement than corrosive cycle. From the birth of the penitentiary forward, prisons over the long haul have followed a distressingly predictable sequence: crisis begets reform; reform (plus cutbacks) unleashes unrest; unrest bleeds into disappointment; failure leads to rollback; retrenchment gives way to neglect, or worse, which finally generates crisis anew. Like a spin on the treadmill—an invention, incidentally, of the English penitentiary that was meant to underscore the futility of dishonorable labor—these historical loops have developed over and over again in Texas's prisons and elsewhere. What Nathaniel Hawthorne called the “black flower of civilized society,” it turns out, is a hearty perennial.⁵³ It resists every effort at beautification even as its ugliness inspires another.

Cycles of reform, rebellion, and retrenchment generate their own circles of blame—and there is plenty to go around. Corrupt administrators and guards, who gave themselves over to graft, sadism, or sexual predation, share some of it, as do irascible convicts, who responded to openness by filing a shank or running for the river. Texas's political leadership shoulders a greater share of responsibility for strangulating reform efforts in the 1880s, 1910s, 1920s, and 1980s. Such failings go a long way toward explaining the perpetual rupture and reinvention of the penitentiary, but history over the *longue durée* suggests that an incarnate agent is implicated as well—the prison itself.

Prisons are peculiar institutions. In all their forms, they lend themselves readily, almost inexorably, to trouble. This has partly to do with their purpose: to hold individuals involuntarily, to coerce them in confined spaces. It has partly to do with their demographic composition. Overwhelmingly, prisons herd together quick-tempered young men and contain them not just with walls but with haphazardly trained, inexperienced, and poorly paid personnel. These factors, combined with generally shoddy oversight, make prisons intrinsically difficult to manage, even for a day, even under the best of circumstances. Over time, they tend to get worse. In pursuit of order, they set in motion dialectical tensions between the kept and their keepers that often produce disorder.

One vital reason that prison environments tend toward deterioration is that they not only hold people but transform them. Most completely metamorphosed are their involuntary residents. Inmate initiates show up at the gates in all flavors, but over the course of depersonalizing initiation processes, they tend to develop characteristics institutionally selected for

survival: circumspection, canniness, coldness, and cruelty. On the surface, they become masters of sycophancy; underneath, they seethe. Although both retributive and rehabilitative prisons aspire to convert criminals into law-abiding subjects, they most successfully manufacture convicts. "The prison may have its monks," advises one, "but it breeds no penitents."⁵⁴

Although less completely, prison employees are remade by the prison experience as well. This was especially true in the old days, when officers hailed from similar backgrounds and more often lived on the units. But even today the unique qualities of the job—the rigid hierarchies, the geographic isolation, the forced intimacy mixed with contempt, the undercurrents of violence, the social stigma associated with prison work—foster staff insularity and individual transformation. During training, new boots learn to keep their distance from "offenders"—to use the currently favored nomenclature—to remain constantly vigilant, and to regard every interaction as potentially treacherous. Over time, as convicts test them, most guards develop a self-preserving callousness toward their charges, whom they come to regard as duplicitous, potentially dangerous, and deserving of their fate. "I'd rather work at a dog kennel," one veteran says, "they mind better."⁵⁵

Symbiotically, convicts react by hardening further; they come to view their keepers not as honorable gray-collar stiffes struggling to make their truck payments but as "a species of humanity coated with moral filth." On both sides of the bars, then, prisons nurture the sort of personality traits that forensic psychologists associate with one of the most dangerous diagnoses, psychopathy.⁵⁶ Prisons punish empathy and reward cold calculation. On most days, the resulting mistrust and mutual hostility floats through the tiers like a toxic miasma. At flash points—often during transitions from one management regime to another—it can easily ignite, as the history of prisons in Texas and almost everywhere else makes clear. Predicated on violent containment, to violence prisons regularly return.

From the earliest days, prison managers grappled with the Manichaean tensions that took root in their shrouded domains. Many of penology's most vaunted innovations—from indeterminate sentencing to the Mutual Welfare League to group counseling—were attempts to mitigate prison polarization, to win the grudging consent of the damned. When those, too, failed to produce docile inmates, prison professionals, as well as a growing cadre of prison sociologists, surrendered to a deeper skepticism. "In spite of the many ingenious programs to bring about modification of attitudes or reform," wrote Donald Clemmer, one of the leery forerunners, "the unseen environment in the prisoner's world, with few exceptions, continues to be charged with ideational content inimical to reform."⁵⁷

Such world weariness later undergirded the community corrections

and decarceration movements, but prison boosters like John DiIulio rejected such institutional pessimism. In his influential paean to the Texas control model, *Governing Prisons*, DiIulio ridiculed what he called the “sociological understanding” of prisons, and argued that stern, consistent, Texas-style discipline could make prisons “safe” and “civilized,” “no more likely to fail than . . . schools, armies, state hospitals, [or] regulatory agencies.”⁵⁸ History, though, contradicts the political scientist. Although certain well-honed management regimes, including the authoritarian control model, have demonstrated above-average stability and staying power, most prisons in most places have proven remarkably entropic, incubators of not just misery but mayhem. Even in the most effective administrations—those managed by Zebulon Brockway, Joseph Ragen, and George Beto—subsequent investigations and lawsuits revealed that much villainy was going on behind closed doors.

Not all prisons are alike, of course. Some are much safer, for both inmates and staff, as DiIulio rightly points out. Some are more restrictive, others less. In the highest-security lockups, danger virtually disappears, as does human contact. At the other end of the spectrum, some minimum-security, treatment-oriented facilities bear a striking resemblance to outside life; they can seem almost pleasant. The very best prisons may help some residents turn their lives around and prepare for successful reentry to free society. By and large and over the long haul, however, the prison as an institutional form has fostered more criminogenesis than moral regeneration, more debasement than redemption, more scandal than success. Were the prison, with its lengthy record, judged by the same standard as its inhabitants, it would surely be classified as a repeat offender, perhaps a candidate for the death penalty.

For most of American history, this recurrent bankruptcy of the prison—its unremitting racism, its soul-scarring cultural dynamics, its limitless capacity for depravity, its stunning inability, despite repeated overhauls, to reclaim criminals—had, for all its horrors, a comparably minimal impact. Reformers and their rivals designed and redesigned penitentiaries, entrusting them with utopian hopes or sealing within them their darkest fears. For all their philosophical portent, however, prisons touched few lives directly. In the early twentieth century, when Osborne shook up the field, the total U.S. prisoner population stood at 69,000, about the size of Wilkes-Barre, Pennsylvania, then the nation’s eighty-third largest city. By O. B. Ellis and Richard McGee’s day, the prison head count had grown to 178,000, but that still amounted to just one-tenth of one percent of the larger population.⁵⁹ From the invention of penal rehabilitation to the beginnings of its demise, prisons were peripheral institutions.

Not so today. In 2008, the U.S. prison and jail population exceeded 2.4 million, equivalent to the nation's fourth largest city, outdone only by New York, Los Angeles, and Chicago. In per capita terms, the incarceration rate has reached 788 per 100,000 residents, seven times above the historic norm; in Texas, the rate is 991 per 100,000. Across the country, one out of nine young African American men is currently in prison or jail, with a greater portion on parole or probation.⁶⁰ Once marginal, prisons have emerged as pillars of American government, core institutions in the management of an increasingly diverse society.

Even as prisons have extended their reach, however, most people have lost faith in their ability to promote public good. Once erected in grand architectural style and imbued with grand hopes, prisons today are spare concrete boxes with confused missions. The most compelling contemporary argument for their large-scale deployment is that they keep crime-prone individuals off the streets. This incapacitation effect, most criminologists agree, has contributed to perhaps a quarter of the decline in U.S. crime rates over the past decade. Because this sort of postconviction preventative detention costs so much and deprives so many of their liberty, however, few want to acknowledge incapacitation as the primary objective of incarceration; to do so seems too utilitarian, too contrary to the principle of individuated justice. Instead, alternative explanations continue bouncing around in the popcorn popper of public ideas, no matter how weakly buttered by evidence. There is the moral, frequently biblical, injunction to punish wrongdoing, although no one agrees on how much or for how long. There is the old canard, deterrence, which remains as unverifiable as ever (in truth, burglars rarely stop to consult sentencing statutes before breaking a window in search of the next score). There is the victims' rights rationale, an update of the ancient eye-for-an-eye credo. Even rehabilitation still gets invoked, although robustly funded, well-designed programs are fewer and further between. At TDCJ, the agency mission statement pledges to "promote positive change in offender behavior," though the administration makes no more effort than it ever did.⁶¹ The sum total of these cacophonous, often contradictory rationales for mass incarceration is incoherence. Prisons are among the country's most structurally solid and historically resilient institutions, but they operate on a shaky philosophical foundation.

With the mission uncertain, the results dubious, the headaches chronic, and the costs mounting, many policy makers at the start of a new century are beginning to ask themselves, Is there a better way?

This book doesn't detail specific alternatives but, as we come to the end of this rather sorrowful tale, it's worth pausing for a moment to consider

where we've been and where we might go from here. We have traveled far in these pages, from the Indian wars of Stephen Austin to the terror wars of George W. Bush, from the slave plantation to the supermax. Along the way, my hope is that readers have tucked away a few lessons. We have seen that inequitable societies produce unequal justice, that criminal justice has as much to do with subjection as safety, that good intentions can easily go awry (though not so quickly as bad ones), and that the modern prison owes as much to slave masters as to Quaker reformers. My hope is that these insights will help us contend with the challenges ahead.

As we peer into the fog at the end of this extended prison journey, it seems to me that three possible pathways present themselves. One option is to stay the retributive course. America's criminal justice juggernaut currently consumes more than \$200 billion a year and employs 2.4 million individuals to keep 7.3 million others under formal state supervision. Such might be the limit, but the United States is a rich country, and there's no reason to think that prosecutors and lawmakers can't keep filling new prisons as they've been doing for almost forty years.⁶²

Because of the incapacitation effect, further expansion would most likely continue to curtail crime, especially if greater numbers of young repeat offenders were kept locked up into middle age. To provide space for, say, much of the country's unemployed (assuming this as a natural stopping point) would require at least quadrupling the size of our current incarceration infrastructure. This might sound outlandish, but it's precisely what the United States did between 1985 and 2000.⁶³

There would be costs, of course, fundamental ones. Criminal justice expenditures would close in on the trillion-dollar mark, devouring money for schools, health care, and free-world infrastructure. America's tattered promise of equal citizenship would give way as incarceration rates for young African American men crept into majority territory. If the Confederacy at its peak held almost 4 million Americans in bondage, this new carceral Union would imprison twice as many; it would represent the Rebels' final vengeance. Increasingly, the United States would come to resemble not the social democracies it once defended in western Europe but their foes. Somewhere on this road toward an American gulag, Leviathan will slay liberty.

A more probable course, perhaps, if America's destiny is more democratic than authoritarian, is that policy makers will rediscover the "fond hope" of criminal rehabilitation. In the face of bulging budgets and persistently high recidivism rates, lawmakers may turn, as they have before, to prisoner education, job training, drug treatment, psychological counseling, parole, and aftercare. There are signs that the Obama administration,

state lawmakers, and even politicians in Texas are considering this approach, shifting resources from incarceration to research-based prevention and treatment programs.⁶⁴

But there is promise as well as peril along this well-trodden thoroughfare. Another round of penological innovation will alleviate suffering and may enhance public safety. On the other hand, if retooling proceeds without scaling back, if the criminal justice net widens rather than retracts, we may unleash further cycles of reform and reaction. On the backside of another reformatory romp, we could end up with a prison establishment even larger and more entrenched than the one we have now. *Leviathan* lurks down this path as well.

Finally, Americans may consider taking a road less traveled. More than four decades ago, in the closing days of the Great Society, Lyndon Johnson's crime commission suggested that the nation shift its mighty resources from punishing crime to preventing crime. "A country's most enduring protection against crime is to right the wrongs and cure the illnesses that tempt men to harm their neighbors," offered the final report.⁶⁵ In the political arena, the Katzenbach Commission's unwieldy policy recommendations were mocked by the rising right and soon forgotten. As we grapple with the formidable consequences of that mockery, however, we would do well to take another look.

Continuously fighting the "war against crime" in late-twentieth-century style—an approach that circles the wagons and opens fire against criminal enemies—is not the only way to deal with lawbreaking and seemingly intractable social problems. Instead, we could reinvigorate a rival, equally misnamed campaign of the same vintage, the War on Poverty. Its methods and even its goals are strangely foreign to us now—after four decades of the New Right counterrevolution—but they are worth rekindling, especially now that we know what their antitheses have wrought. Amid a broad democratic renewal of the sort that has swept through American society from time to time—during Reconstruction and the New Deal, for instance—we could embark on a long-neglected pursuit of justice, defined in social as well as individual terms. Rather than demanding order above all, we might prioritize hope and economic opportunity, especially in downtrodden neighborhoods that lack all three. In addition to securing the rights of crime victims, we might make amends for historic wrongs and finally, at long last, make good on the promise of equal citizenship. Rather than crafting a more punitive response to every infraction, we might provide a richer set of choices to the refractory. Rather than getting even, we might endeavor to minimize harm. Rather than clamping down, we might lift up. Such a redirection of public policy may not lead us to a "nation without prisons," as the most far-reaching reformers of the late

civil rights era hoped, but it would almost certainly lead toward a nation with many fewer.

Such an optimistic trajectory might seem unlikely. Lest we consign ourselves to overly modest dreams, however, let us remember that slavery and segregation, too, once promised to rule forever. Even the widely unpopular convict lease system took half a century to dismantle. Yet unforeseen historical developments, along with dedicated people working together—some bonded, some free—ultimately toppled these ignominious institutions. In the century that followed, prison reformers time and again prevailed over harsh regimes. In most cases, they created flawed institutions in their stead. Rather than harvesting regret alone, however, we can learn from their missed opportunities and partial successes. Only by taking honest stock of the full history of the prison can we plot our escape from it.