

**ARE PRISONS
OBSOLETE?**

Angela Y. Davis

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Introduction—Prison Reform or Prison Abolition?

In most parts of the world, it is taken for granted that whoever is convicted of a serious crime will be sent to prison. In some countries—including the United States—where capital punishment has not yet been abolished, a small but significant number of people are sentenced to death for what are considered especially grave crimes. Many people are familiar with the campaign to abolish the death penalty. In fact, it has already been abolished in most countries. Even the staunchest advocates of capital punishment acknowledge the fact that the death penalty faces serious challenges. Few people find life without the death penalty difficult to imagine.

On the other hand, the prison is considered an inevitable and permanent feature of our social lives. Most people are quite surprised to hear that the prison abolition movement also has a long history—one that dates back to the historical appearance of the prison as the main form of punishment. In fact, the most natural reaction is to assume that prison activists—even those who consciously refer to themselves as “antiprison activists”—are simply trying to ameliorate prison conditions or perhaps to reform the prison in more fundamental ways. In most circles prison abolition is simply unthinkable and implausible. Prison abolitionists are dis-

missed as utopians and idealists whose ideas are at best unrealistic and impracticable, and, at worst, mystifying and foolish. This is a measure of how difficult it is to envision a social order that does not rely on the threat of sequestering people in dreadful places designed to separate them from their communities and families. The prison is considered so "natural" that it is extremely hard to imagine life without it.

It is my hope that this book will encourage readers to question their own assumptions about the prison. Many people have already reached the conclusion that the death penalty is an outmoded form of punishment that violates basic principles of human rights. It is time, I believe, to encourage similar conversations about the prison. During my own career as an antiprison activist I have seen the population of U.S. prisons increase with such rapidity that many people in black, Latino, and Native American communities now have a far greater chance of going to prison than of getting a decent education. When many young people decide to join the military service in order to avoid the inevitability of a stint in prison, it should cause us to wonder whether we should not try to introduce better alternatives.

The question of whether the prison has become an obsolete institution has become especially urgent in light of the fact that more than two million people (out of a world total of nine million) now inhabit U.S. prisons, jails, youth facilities, and immigrant detention centers. Are we willing to relegate ever larger numbers of people from racially oppressed communities to an isolated existence marked by authoritarian regimes, violence, disease, and technologies of seclusion that produce severe mental instability? According to a recent study, there may be twice as many people suffering from mental illness who are in jails and prisons than there are in all psychiatric hospitals in the United States combined.¹

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When I first became involved in antiprison activism during the late 1960s, I was astounded to learn that there were then close to two hundred thousand people in prison. Had anyone told me that in three decades ten times as many people would be locked away in cages, I would have been absolutely incredulous. I imagine that I would have responded something like this: "As racist and undemocratic as this country may be remember, during that period, the demands of the Civil Rights movement had not yet been consolidated. I do not believe that the U.S. government will be able to lock up so many people without producing powerful public resistance. No, this will never happen, not unless this country plunges into fascism." That might have been my reaction thirty years ago. The reality is that we were called upon to inaugurate the twenty-first century by accepting the fact that two million people—a group larger than the population of many countries—are living their lives in places like Sing Sing, Leavenworth, San Quentin, and Alderson Federal Reformatory for Women. The gravity of these numbers becomes even more apparent when we consider that the U.S. population in general is less than five percent of the world's total, whereas more than twenty percent of the world's combined prison population can be claimed by the United States. In Elliott Currie's words, "[t]he prison has become a looming presence in our society to an extent unparalleled in our history or that of any other industrial democracy. Short of major wars, mass incarceration has been the most thoroughly implemented government social program of our time."²

In thinking about the possible obsolescence of the prison, we should ask how it is that so many people could end up in prison without major debates regarding the efficacy of incarceration. When the drive to produce more prisons and incar-

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cerate ever larger numbers of people occurred in the 1980s during what is known as the Reagan era, politicians argued that “tough on crime” stances—including certain imprisonment and longer sentences—would keep communities free of crime. However, the practice of mass incarceration during that period had little or no effect on official crime rates. In fact, the most obvious pattern was that larger prison populations led not to safer communities, but, rather, to even larger prison populations. Each new prison spawned yet another new prison. And as the U.S. prison system expanded, so did corporate involvement in construction, provision of goods and services, and use of prison labor. Because of the extent to which prison building and operation began to attract vast amounts of capital—from the construction industry to food and health care provision—in a way that recalled the emergence of the military industrial complex, we began to refer to a “prison industrial complex.”³

Consider the case of California, whose landscape has been thoroughly prisonized over the last twenty years. The first state prison in California was San Quentin, which opened in 1852.⁴ Folsom, another well-known institution, opened in 1880. Between 1880 and 1933, when a facility for women was opened in Tehachapi, there was not a single new prison constructed. In 1952, the California Institution for Women opened and Tehachapi became a new prison for men. In all, between 1852 and 1955, nine prisons were constructed in California. Between 1962 and 1965, two camps were established, along with the California Rehabilitation Center. Not a single prison opened during the second half of the sixties, nor during the entire decade of the 1970s.

However, a massive project of prison construction was initiated during the 1980s—that is, during the years of the Reagan presidency. Nine prisons, including the Northern California

Facility for Women, were opened between 1984 and 1989. Recall that it had taken more than a hundred years to build the first nine California prisons. In less than a single decade, the number of California prisons doubled. And during the 1990s, twelve new prisons were opened, including two more for women. In 1995 the Valley State Prison for Women was opened. According to its mission statement, it “provides 1,980 women’s beds for California’s overcrowded prison system.” However, in 2002, there were 3,570 prisoners⁵ and the other two women’s prisons were equally overcrowded.

There are now thirty-three prisons, thirty-eight camps, sixteen community correctional facilities, and five tiny prisoner mother facilities in California. In 2002 there were 157,979 people incarcerated in these institutions, including approximately twenty thousand people whom the state holds for immigration violations. The racial composition of this prison population is revealing. Latinos, who are now in the majority, account for 35.2 percent; African-Americans 30 percent; and white prisoners 29.2 percent.⁶ There are now more women in prison in the state of California than there were in the entire country in the early 1970s. In fact, California can claim the largest women’s prison in the world, Valley State Prison for Women, with its more than thirty-five hundred inhabitants. Located in the same town as Valley State and literally across the street is the second-largest women’s prison in the world—Central California Women’s Facility—whose population in 2002 also hovered around thirty-five hundred.⁷

If you look at a map of California depicting the location of the thirty-three state prisons, you will see that the only area that is not heavily populated by prisons is the area north of Sacramento. Still, there are two prisons in the town of Susanville, and Pelican Bay, one of the state’s notorious super-maximum security prisons, is near the Oregon border.

California artist Sandow Birk was inspired by the colonizing of the landscape by prisons to produce a series of thirty-three landscape paintings of these institutions and their surroundings. They are collected in his book *Incarcerated: Visions of California in the Twenty-first Century*.⁸

I present this brief narrative of the prisonization of the California landscape in order to allow readers to grasp how easy it was to produce a massive system of incarceration with the implicit consent of the public. Why were people so quick to assume that locking away an increasingly large proportion of the U.S. population would help those who live in the free world feel safer and more secure? This question can be formulated in more general terms. Why do prisons tend to make people think that their own rights and liberties are more secure than they would be if prisons did not exist? What other reasons might there have been for the rapidity with which prisons began to colonize the California landscape?

Geographer Ruth Gilmore describes the expansion of prisons in California as "a geographical solution to socio-economic problems."⁹ Her analysis of the prison industrial complex in California describes these developments as a response to surpluses of capital, land, labor, and state capacity.

California's new prisons are sited on devalued rural land, most, in fact on formerly irrigated agricultural acres The State bought land sold by big landowners. And the State assured the small, depressed towns now shadowed by prisons that the new, recession-proof, non-polluting industry would jump-start local redevelopment.¹⁰

But, as Gilmore points out, neither the jobs nor the more general economic revitalization promised by prisons has

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occurred. At the same time, this promise of progress helps us to understand why the legislature and California's voters decided to approve the construction of all these new prisons. People wanted to believe that prisons would not only reduce crime, they would also provide jobs and stimulate economic development in out-of-the-way places.

At bottom, there is one fundamental question: Why do we take prison for granted? While a relatively small proportion of the population has ever directly experienced life inside prison, this is not true in poor black and Latino communities. Neither is it true for Native Americans or for certain Asian-American communities. But even among those people who must regrettably accept prison sentences—especially young people—as an ordinary dimension of community life, it is hardly acceptable to engage in serious public discussions about prison life or radical alternatives to prison. It is as if prison were an inevitable fact of life, like birth and death.

On the whole, people tend to take prisons for granted. It is difficult to imagine life without them. At the same time, there is reluctance to face the realities hidden within them, a fear of thinking about what happens inside them. Thus, the prison is present in our lives and, at the same time, it is absent from our lives. To think about this simultaneous presence and absence is to begin to acknowledge the part played by ideology in shaping the way we interact with our social surroundings. We take prisons for granted but are often afraid to face the realities they produce. After all, no one wants to go to prison. Because it would be too agonizing to cope with the possibility that anyone, including ourselves, could become a prisoner, we tend to think of the prison as disconnected from our own lives. This is even true for some of us, women as well as men, who have already experienced imprisonment.

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We thus think about imprisonment as a fate reserved for others, a fate reserved for the “evildoers,” to use a term recently popularized by George W. Bush. Because of the persistent power of racism, “criminals” and “evildoers” are, in the collective imagination, fantasized as people of color. The prison therefore functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers. This is the ideological work that the prison performs—it relieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism.

What, for example, do we miss if we try to think about prison expansion without addressing larger economic developments? We live in an era of migrating corporations. In order to escape organized labor in this country—and thus higher wages, benefits, and so on—corporations roam the world in search of nations providing cheap labor pools. This corporate migration thus leaves entire communities in shambles. Huge numbers of people lose jobs and prospects for future jobs. Because the economic base of these communities is destroyed, education and other surviving social services are profoundly affected. This process turns the men, women, and children who live in these damaged communities into perfect candidates for prison.

In the meantime, corporations associated with the punishment industry reap profits from the system that manages prisoners and acquire a clear stake in the continued growth of prison populations. Put simply, this is the era of the prison industrial complex. The prison has become a black hole into which the detritus of contemporary capitalism is deposited. Mass imprisonment generates profits as it devours social

wealth, and thus it tends to reproduce the very conditions that lead people to prison. There are thus real and often quite complicated connections between the deindustrialization of the economy—a process that reached its peak during the 1980s—and the rise of mass imprisonment, which also began to spiral during the Reagan-Bush era. However, the demand for more prisons was represented to the public in simplistic terms. More prisons were needed because there was more crime. Yet many scholars have demonstrated that by the time the prison construction boom began, official crime statistics were already falling. Moreover, draconian drug laws were being enacted, and “three-strikes” provisions were on the agendas of many states.

In order to understand the proliferation of prisons and the rise of the prison industrial complex, it might be helpful to think further about the reasons we so easily take prisons for granted. In California, as we have seen, almost two-thirds of existing prisons were opened during the eighties and nineties. Why was there no great outcry? Why was there such an obvious level of comfort with the prospect of many new prisons? A partial answer to this question has to do with the way we consume media images of the prison, even as the realities of imprisonment are hidden from almost all who have not had the misfortune of doing time. Cultural critic Gina Dent has pointed out that our sense of familiarity with the prison comes in part from representations of prisons in film and other visual media.

The history of visually linked to the prison is also a main reinforcement of the institution of the prison as a naturalized part of our social landscape. The history of film has always been wedded to the representation of incarceration. Thomas Edison's

first films (dating back to the 1901 reenactment presented as newsreel, *Execution of Czolgosz with Panorama of Auburn Prison*) included footage of the darkest recesses of the prison. Thus, the prison is wedded to our experience of visibility, creating also a sense of its permanence as an institution. We also have a constant flow of Hollywood prison films, in fact a genre.¹¹

Some of the most well known prison films are: *I Want to Live*, *Papillon*, *Cool Hand Luke*, and *Escape from Alcatraz*. It also bears mentioning that television programming has become increasingly saturated with images of prisons. Some recent documentaries include the A&E series *The Big House*, which consists of programs on San Quentin, Alcatraz, Leavenworth, and Alderson Federal Reformatory for Women. The long-running HBO program *Oz* has managed to persuade many viewers that they know exactly what goes on in male maximum-security prisons.

But even those who do not consciously decide to watch a documentary or dramatic program on the topic of prisons inevitably consume prison images, whether they choose to or not, by the simple fact of watching movies or TV. It is virtually impossible to avoid consuming images of prison. In 1997, I was myself quite astonished to find, when I interviewed women in three Cuban prisons, that most of them narrated their prior awareness of prisons—that is, before they were actually incarcerated—as coming from the many Hollywood films they had seen. The prison is one of the most important features of our image environment. This has caused us to take the existence of prisons for granted. The prison has become a key ingredient of our common sense. It is there, all around us. We do not question whether it should

exist. It has become so much a part of our lives that it requires a great feat of the imagination to envision life beyond the prison.

This is not to dismiss the profound changes that have occurred in the way public conversations about the prison are conducted. Ten years ago, even as the drive to expand the prison system reached its zenith, there were very few critiques of this process available to the public. In fact, most people had no idea about the immensity of this expansion. This was the period during which internal changes—in part through the application of new technologies—led the U.S. prison system in a much more repressive direction. Whereas previous classifications had been confined to low, medium, and maximum security, a new category was invented—that of the super-maximum security prison, or the supermax. The turn toward increased repression in a prison system, distinguished from the beginning of its history by its repressive regimes, caused some journalists, public intellectuals, and progressive agencies to oppose the growing reliance on prisons to solve social problems that are actually exacerbated by mass incarceration.

In 1990, the Washington-based Sentencing Project published a study of U.S. populations in prison and jail, and on parole and probation, which concluded that one in four black men between the ages of twenty and twenty-nine were among these numbers.¹² Five years later, a second study revealed that this percentage had soared to almost one in three (32.2 percent). Moreover, more than one in ten Latino men in this same age range were in jail or prison, or on probation or parole. The second study also revealed that the group experiencing the greatest increase was black women, whose imprisonment increased by seventy-eight percent.¹³ According to the Bureau of Justice Statistics, African-

Americans as a whole now represent the majority of state and federal prisoners, with a total of 803,400 black inmates—118,600 more than the total number of white inmates.¹⁴ During the late 1990s major articles on prison expansion appeared in *Newsweek*, *Harper's*, *Emerge*, and *Atlantic Monthly*. Even Colin Powell raised the question of the rising number of black men in prison when he spoke at the 2000 Republican National Convention, which declared George W. Bush its presidential candidate.

Over the last few years the previous absence of critical positions on prison expansion in the political arena has given way to proposals for prison reform. While public discourse has become more flexible, the emphasis is almost inevitably on generating the changes that will produce a *better* prison system. In other words, the increased flexibility that has allowed for critical discussion of the problems associated with the expansion of prisons also restricts this discussion to the question of prison reform.

As important as some reforms may be—the elimination of sexual abuse and medical neglect in women's prison, for example—frameworks that rely exclusively on reforms help to produce the stultifying idea that nothing lies beyond the prison. Debates about strategies of decarceration, which should be the focal point of our conversations on the prison crisis, tend to be marginalized when reform takes the center stage. The most immediate question today is how to prevent the further expansion of prison populations and how to bring as many imprisoned women and men as possible back into what prisoners call "the free world." How can we move to decriminalize drug use and the trade in sexual services? How can we take seriously strategies of restorative rather than exclusively punitive justice? Effective alternatives involve both transformation of the techniques for addressing

"crime" and of the social and economic conditions that track so many children from poor communities, and especially communities of color, into the juvenile system and then on to prison. The most difficult and urgent challenge today is that of creatively exploring new terrains of justice, where the prison no longer serves as our major anchor.

Slavery, Civil Rights, and Abolitionist Perspectives Toward Prison

"Advocates of incarceration . . . hoped that the penitentiary would *rehabilitate* its inmates. Whereas philosophers perceived a ceaseless state of war between chattel slaves and their masters, criminologists hoped to negotiate a peace treaty of sorts within the prison walls. Yet herein lurked a paradox: if the penitentiary's internal regime resembled that of the plantation so closely that the two were often loosely equated, how could the prison possibly function to rehabilitate criminals?"

—Adam Jay Hirsch,¹⁵

The prison is not the only institution that has posed complex challenges to the people who have lived with it and have become so inured to its presence that they could not conceive of society without it. Within the history of the United States the system of slavery immediately comes to mind. Although as early as the American Revolution antislavery advocates promoted the elimination of African bondage, it took almost a century to achieve the abolition of the "peculiar institution." White antislavery abolitionists such as John Brown and William Lloyd Garrison were represented in the

dominant media of the period as extremists and fanatics. When Frederick Douglass embarked on his career as an anti-slavery orator, white people—even those who were passionate abolitionists—refused to believe that a black slave could display such intelligence. The belief in the permanence of slavery was so widespread that even white abolitionists found it difficult to imagine black people as equals.

It took a long and violent civil war in order to legally disestablish the "peculiar institution." Even though the Thirteenth Amendment to the U.S. Constitution outlawed involuntary servitude, white supremacy continued to be embraced by vast numbers of people and became deeply inscribed in new institutions. One of these post-slavery institutions was lynching, which was widely accepted for many decades thereafter. Thanks to the work of figures such as Ida B. Wells, an antilynching campaign was gradually legitimized during the first half of the twentieth century. The NAACP, an organization that continues to conduct legal challenges against discrimination, evolved from these efforts to abolish lynching.

Segregation ruled the South until it was outlawed a century after the abolition of slavery. Many people who lived under Jim Crow could not envision a legal system defined by racial equality. When the governor of Alabama personally attempted to prevent Arthurine Lucy from enrolling in the University of Alabama, his stance represented the inability to imagine black and white people ever peaceably living and studying together. "Segregation today, segregation tomorrow, segregation forever" are the most well known words of this politician, who was forced to repudiate them some years later when segregation had proved far more vulnerable than he could have imagined.

Although government, corporations, and the dominant

media try to represent racism as an unfortunate aberration of the past that has been relegated to the graveyard of U.S. history, it continues to profoundly influence contemporary structures, attitudes, and behaviors. Nevertheless, anyone who would dare to call for the reintroduction of slavery, the organization of lynch mobs, or the reestablishment of legal segregation would be summarily dismissed. But it should be remembered that the ancestors of many of today's most ardent liberals could not have imagined life without slavery, life without lynching, or life without segregation. The 2001 World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerances held in Durban, South Africa, divulged the immensity of the global task of eliminating racism. There may be many disagreements regarding what counts as racism and what are the most effective strategies to eliminate it. However, especially with the downfall of the apartheid regime in South Africa, there is a global consensus that racism should not define the future of the planet.

I have referred to these historical examples of efforts to dismantle racist institutions because they have considerable relevance to our discussion of prisons and prison abolition. It is true that slavery, lynching, and segregation acquired such a stalwart ideological quality that many, if not most, could not foresee their decline and collapse. Slavery, lynching, and segregation are certainly compelling examples of social institutions that, like the prison, were once considered to be as everlasting as the sun. Yet, in the case of all three examples, we can point to movements that assumed the radical stance of announcing the obsolescence of these institutions. It may help us gain perspective on the prison if we try to imagine how strange and discomfiting the debates about the obsolescence of slavery must have been to those who took the "peculiar institution" for granted—and especially to those

who reaped direct benefits from this dreadful system of racist exploitation. And even though there was widespread resistance among black slaves, there were even some among them who assumed that they and their progeny would be always subjected to the tyranny of slavery.

I have introduced three abolition campaigns that were eventually more or less successful to make the point that social circumstances transform and popular attitudes shift, in part in response to organized social movements. But I have also evoked these historical campaigns because they all targeted some expression of racism. U.S. chattel slavery was a system of forced labor that relied on racist ideas and beliefs to justify the relegation of people of African descent to the legal status of property. Lynching was an extralegal institution that surrendered thousands of African-American lives to the violence of ruthless racist mobs. Under segregation, black people were legally declared second-class citizens, for whom voting, job, education, and housing rights were drastically curtailed, if they were available at all.

What is the relationship between these historical expressions of racism and the role of the prison system today? Exploring such connections may offer us a different perspective on the current state of the punishment industry. If we are already persuaded that racism should not be allowed to define the planet's future and if we can successfully argue that prisons are racist institutions, this may lead us to take seriously the prospect of declaring prisons obsolete.

For the moment I am concentrating on the history of antiblack racism in order to make the point that the prison reveals congealed forms of antiblack racism that operate in clandestine ways. In other words, they are rarely recognized as racist. But there are other racialized histories that have affected the development of the U.S. punishment system as

well—the histories of Latinos, Native Americans, and Asian-Americans. These racisms also congeal and combine in the prison. Because we are so accustomed to talking about race in terms of black and white, we often fail to recognize and contest expressions of racism that target people of color who are not black. Consider the mass arrests and detention of people of Middle Eastern, South Asian, or Muslim heritage in the aftermath of the September 11, 2001 attacks on the Pentagon and World Trade Center.

This leads us to two important questions: Are prisons racist institutions? Is racism so deeply entrenched in the institution of the prison that it is not possible to eliminate one without eliminating the other? These are questions that we should keep in mind as we examine the historical links between U.S. slavery and the early penitentiary system. The penitentiary as an institution that simultaneously punished and rehabilitated its inhabitants was a new system of punishment that first made its appearance in the United States around the time of the American Revolution. This new system was based on the replacement of capital and corporal punishment by incarceration.

Imprisonment itself was new neither to the United States nor to the world, but until the creation of this new institution called the penitentiary, it served as a prelude to punishment. People who were to be subjected to some form of corporal punishment were detained in prison until the execution of the punishment. With the penitentiary, incarceration became the punishment itself. As is indicated in the designation “penitentiary,” imprisonment was regarded as rehabilitative and the penitentiary prison was devised to provide convicts with the conditions for reflecting on their crimes and, through penitence, for reshaping their habits and even their souls. Although some antislavery advocates spoke out

against this new system of punishment during the revolutionary period, the penitentiary was generally viewed as a progressive reform, linked to the larger campaign for the rights of citizens.

In many ways, the penitentiary was a vast improvement over the many forms of capital and corporal punishment inherited from the English. However, the contention that prisoners would refashion themselves if only given the opportunity to reflect and labor in solitude and silence disregarded the impact of authoritarian regimes of living and work. Indeed, there were significant similarities between slavery and the penitentiary prison. Historian Adam Jay Hirsch has pointed out:

One may perceive in the penitentiary many reflections of chattel slavery as it was practiced in the South. Both institutions subordinated their subjects to the will of others. Like Southern slaves, prison inmates followed a daily routine specified by their superiors. Both institutions reduced their subjects to dependence on others for the supply of basic human services such as food and shelter. Both isolated their subjects from the general population by confining them to a fixed habitat. And both frequently coerced their subjects to work, often for longer hours and for less compensation than free laborers.¹⁶

As Hirsch has observed, both institutions deployed similar forms of punishment, and prison regulations were, in fact, very similar to the Slave Codes—the laws that deprived enslaved human beings of virtually all rights. Moreover, both prisoners and slaves were considered to have pronounced proclivities to crime. People sentenced to the penitentiary in

the North, white and black alike, were popularly represented as having a strong kinship to enslaved black people.¹⁷

The ideologies governing slavery and those governing punishment were profoundly linked during the earliest period of U.S. history. While free people could be legally sentenced to punishment by hard labor, such a sentence would in no way change the conditions of existence already experienced by slaves. Thus, as Hirsch further reveals, Thomas Jefferson, who supported the sentencing of convicted people to hard labor on road and water projects, also pointed out that he would exclude slaves from this sort of punishment. Since slaves already performed hard labor, sentencing them to penal labor would not mark a difference in their condition. Jefferson suggested banishment to other countries instead.¹⁸

Particularly in the United States, race has always played a central role in constructing presumptions of criminality. After the abolition of slavery, former slave states passed new legislation revising the Slave Codes in order to regulate the behavior of free blacks in ways similar to those that had existed during slavery. The new Black Codes proscribed a range of actions—such as vagrancy, absence from work, breach of job contracts, the possession of firearms, and insulting gestures or acts—that were criminalized only when the person charged was black. With the passage of the Thirteenth Amendment to the Constitution, slavery and involuntary servitude were putatively abolished. However, there was a significant exception. In the wording of the amendment, slavery and involuntary servitude were abolished “except as a punishment for crime, whereof the party shall have been duly convicted.” According to the Black Codes, there were crimes defined by state law for which only black people could be “duly convicted.” Thus, former

slaves, who had recently been extricated from a condition of hard labor for life, could be legally sentenced to penal servitude.

In the immediate aftermath of slavery, the southern states hastened to develop a criminal justice system that could legally restrict the possibilities of freedom for newly released slaves. Black people became the prime targets of a developing convict lease system, referred to by many as a reincarnation of slavery. The Mississippi Black Codes, for example, declared vagrant “anyone/who was guilty of theft, had run away [from a job, apparently], was drunk, was wanton in conduct or speech, had neglected job or family, handled money carelessly, and . . . all other idle and disorderly persons.”¹⁹ Thus, vagrancy was coded as a black crime, one punishable by incarceration and forced labor, sometimes on the very plantations that previously had thrived on slave labor.

Mary Ellen Curtin’s study of Alabama prisoners during the decades following emancipation discloses that before the four hundred thousand black slaves in that state were set free, ninety-nine percent of prisoners in Alabama’s penitentiaries were white. As a consequence of the shifts provoked by the institution of the Black Codes, within a short period of time, the overwhelming majority of Alabama’s convicts were black.²⁰ She further observes:

Although the vast majority of Alabama’s antebellum prisoners were white, the popular perception was that the South’s true criminals were its black slaves. During the 1870s the growing number of black prisoners in the South further buttressed the belief that African Americans were inherently criminal and, in particular, prone to larceny.²¹

In 1883, Frederick Douglass had already written about the South's tendency to "impute crime to color."²² When a particularly egregious crime was committed, he noted, not only was guilt frequently assigned to a black person regardless of the perpetrator's race, but white men sometimes sought to escape punishment by disguising themselves as black. Douglass would later recount one such incident that took place in Granger County, Tennessee, in which a man who appeared to be black was shot while committing a robbery. The wounded man, however, was discovered to be a respectable white citizen who had colored his face black.

The above example from Douglass demonstrates how whiteness, in the words of legal scholar Cheryl Harris, operates as property.²³ According to Harris, the fact that white identity was possessed as property meant that rights, liberties, and self-identity were affirmed for white people, while being denied to black people. The latter's only access to whiteness was through "passing." Douglass's comments indicate how this property interest in whiteness was easily reversed in schemes to deny black people their rights to due process. Interestingly, cases similar to the one Douglass discusses above emerged in the United States during the 1990s: in Boston, Charles Stuart murdered his pregnant wife and attempted to blame an anonymous black man, and in Union, South Carolina, Susan Smith killed her children and claimed they had been abducted by a black carjacker. The racialization of crime—the tendency to "impute crime to color," to use Frederick Douglass's words—did not wither away as the country became increasingly removed from slavery. Proof that crime continues to be imputed to color resides in the many evocations of "racial profiling" in our time. That it is possible to be targeted by the police for no other reason than the color of one's skin is not mere specu-

lation. Police departments in major urban areas have admitted the existence of formal procedures designed to maximize the numbers of African-Americans and Latinos arrested—even in the absence of probable cause. In the aftermath of the September 11 attacks, vast numbers of people of Middle Eastern and South Asian heritage were arrested and detained by the police agency known as Immigration and Naturalization Services (INS). The INS is the federal agency that claims the largest number of armed agents, even more than the FBI.²⁴

During the post-slavery era, as black people were integrated into southern penal systems—and as the penal system became a system of penal servitude—the punishments associated with slavery became further incorporated into the penal system. "Whipping," as Matthew Mancini has observed, "was the preeminent form of punishment under slavery; and the lash, along with the chain, became the very emblem of servitude for slaves and prisoners."²⁵ As indicated above, black people were imprisoned under the laws assembled in the various Black Codes of the southern states, which, because they were rearticulations of the Slave Codes, tended to racialize penalty and link it closely with previous regimes of slavery. The expansion of the convict lease system and the county chain gang meant that the antebellum criminal justice system, which focused far more intensely on black people than on whites, defined southern criminal justice largely as a means of controlling black labor. According to Mancini:

Among the multifarious debilitating legacies of slavery was the conviction that blacks could only labor in a certain way—the way experience had shown them to have labored in the past: in gangs,

subjected to constant supervision, and under the discipline of the lash. Since these were the requisites of slavery, and since slaves were blacks, Southern whites almost universally concluded that blacks could not work unless subjected to such intense surveillance and discipline.²⁶

Scholars who have studied the convict lease system point out that in many important respects, convict leasing was far worse than slavery, an insight that can be gleaned from titles such as *One Dies, Get Another* (by Mancini), *Worse Than Slavery* (David Oshinsky's work on Parchman Prison),²⁷ and *Twice the Work of Free Labor* (Alex Lichtenstein's examination of the political economy of convict leasing).²⁸ Slave owners may have been concerned for the survival of individual slaves, who, after all, represented significant investments. Convicts, on the other hand, were leased not as individuals, but as a group, and they could be worked literally to death without affecting the profitability of a convict crew.

According to descriptions by contemporaries, the conditions under which leased convicts and county chain gangs lived were far worse than those under which black people had lived as slaves. The records of Mississippi plantations in the Yazoo Delta during the late 1880s indicate that

the prisoners ate and slept on bare ground, without blankets or mattresses, and often without clothes. They were punished for "slow hoeing" (ten lashes), "sorry planting" (five lashes), and "being light with cotton" (five lashes). Some who attempted to escape were whipped "till the blood ran down their legs"; others had a metal spur riveted to their feet. Convicts dropped from exhaustion, pneumonia,

malaria, frostbite, consumption, sunstroke, dysentery, gunshot wounds, and "shackle poisoning" (the constant rubbing of chains and leg irons against bare flesh).²⁹

The appalling treatment to which convicts were subjected under the lease system recapitulated and further extended the regimes of slavery. If, as Adam Jay Hirsch contends, the early incarnations of the U.S. penitentiary in the North tended to mirror the institution of slavery in many important respects, the post-Civil War evolution of the punishment system was in very literal ways the continuation of a slave system, which was no longer legal in the "free" world. The population of convicts, whose racial composition was dramatically transformed by the abolition of slavery, could be subjected to such intense exploitation and to such horrendous modes of punishment precisely because they continued to be perceived as slaves.

Historian Mary Ann Curtin has observed that many scholars who have acknowledged the deeply entrenched racism of the post-Civil War structures of punishment in the South have failed to identify the extent to which racism colored common-sense understandings of the circumstances surrounding the wholesale criminalization of black communities. Even antiracist historians, she contends, do not go far enough in examining the ways in which black people were made into criminals. They point out—and this, she says, is indeed partially true—that in the aftermath of emancipation, large numbers of black people were forced by their new social situation to steal in order to survive. It was the transformation of petty thievery into a felony that relegated substantial numbers of black people to the "involuntary servitude" legalized by the Thirteenth Amendment. What Curtin suggests is that these

charges of theft were frequently fabricated outright. They "also served as subterfuge for political revenge. After emancipation the courtroom became an ideal place to exact racial retribution."³⁰ In this sense, the work of the criminal justice system was intimately related to the extralegal work of lynching.

Alex Lichtenstein, whose study focuses on the role of the convict lease system in forging a new labor force for the South, identifies the lease system, along with the new Jim Crow laws, as the central institution in the development of a racial state.

New South capitalists in Georgia and elsewhere were able to use the state to recruit and discipline a convict labor force, and thus were able to develop their states' resources without creating a wage labor force, and without undermining planters' control of black labor. In fact, quite the opposite: the penal system could be used as a powerful sanction against rural blacks who challenged the racial order upon which agricultural labor control relied.³¹

Lichtenstein discloses, for example, the extent to which the building of Georgia railroads during the nineteenth century relied on black convict labor. He further reminds us that as we drive down the most famous street in Atlanta—Peachtree Street—we ride on the backs of convicts: "[T]he renowned Peachtree Street and the rest of Atlanta's well-paved roads and modern transportation infrastructure, which helped cement its place as the commercial hub of the modern South, were originally laid by convicts."³²

Lichtenstein's major argument is that the convict lease was not an irrational regression; it was not primarily a throwback to precapitalist modes of production. Rather, it

was a most efficient and most rational deployment of racist strategies to swiftly achieve industrialization in the South. In this sense, he argues, "convict labor was in many ways in the vanguard of the region's first tentative, ambivalent, steps toward modernity."³³

Those of us who have had the opportunity to visit nineteenth-century mansions that were originally constructed on slave plantations are rarely content with an aesthetic appraisal of these structures, no matter how beautiful they may be. Sufficient visual imagery of toiling black slaves circulate enough in our environment for us to imagine the brutality that hides just beneath the surface of these wondrous mansions. We have learned how to recognize the role of slave labor, as well as the racism it embodied. But black convict labor remains a hidden dimension of our history. It is extremely unsettling to think of modern, industrialized urban areas as having been originally produced under the racist labor conditions of penal servitude that are often described by historians as even worse than slavery.

I grew up in the city of Birmingham, Alabama. Because of its mines—coal and iron ore—and its steel mills that remained active until the deindustrialization process of the 1980s, it was widely known as "the Pittsburgh of the South." The fathers of many of my friends worked in these mines and mills. It is only recently that I have learned that the black miners and steelworkers I knew during my childhood inherited their place in Birmingham's industrial development from black convicts forced to do this work under the lease system. As Curtin observes,

Many ex-prisoners became miners because Alabama used prison labor extensively in its coalmines. By 1888 all of Alabama's able male prisoners were leased

to two major mining companies: the Tennessee Coal and Iron Company (TCI) and Sloss Iron and Steel Company. For a charge of up to \$18.50 per month per man, these corporations "leased," or rented prison laborers and worked them in coalmines.³⁴

Learning about this little-acknowledged dimension of black and labor history has caused me to reevaluate my own childhood experiences.

One of the many ruses racism achieves is the virtual erasure of historical contributions by people of color. Here we have a penal system that was racist in many respects—discriminatory arrests and sentences, conditions of work, modes of punishment—together with the racist erasure of the significant contributions made by black convicts as a result of racist coercion. Just as it is difficult to imagine how much is owed to convicts relegated to penal servitude during the nineteenth and twentieth centuries, we find it difficult today to feel a connection with the prisoners who produce a rising number of commodities that we take for granted in our daily lives. In the state of California, public colleges and universities are provided with furniture produced by prisoners, the vast majority of whom are Latino and black.

There are aspects of our history that we need to interrogate and rethink, the recognition of which may help us to adopt more complicated, critical postures toward the present and the future. I have focused on the work of a few scholars whose work urges us to raise questions about the past, present, and future. Curtin, for example, is not simply content with offering us the possibility of reexamining the place of mining and steelwork in the lives of black people in Alabama. She also uses her research to urge us to think about the uncanny parallels between the convict lease sys-

tem in the nineteenth century and prison privatization in the twenty-first.

In the late nineteenth century, coal companies wished to keep their skilled prison laborers for as long as they could, leading to denials of "short time." Today, a slightly different economic incentive can lead to similar consequences. CCA [Corrections Corporation of America] is paid per prisoner. If the supply dries up, or too many are released too early, their profits are affected. . . . Longer prison terms mean greater profits, but the larger point is that the profit motive promotes the expansion of imprisonment.³⁵

The persistence of the prison as the main form of punishment, with its racist and sexist dimensions, has created this historical continuity between the nineteenth- and early-twentieth-century convict lease system and the privatized prison business today. While the convict lease system was legally abolished, its structures of exploitation have reemerged in the patterns of privatization, and more generally, in the wide-ranging corporatization of punishment that has produced a prison industrial complex. If the prison continues to dominate the landscape of punishment throughout this century and into the next, what might await coming generations of impoverished African-Americans, Latinos, Native Americans, and Asian-Americans? Given the parallels between the prison and slavery, a productive exercise might consist in speculating about what the present might look like if slavery or its successor, the convict lease system, had not been abolished.

To be sure, I am not suggesting that the abolition of slav-

erty and the lease system has produced an era of equality and justice. On the contrary, racism surreptitiously defines social and economic structures in ways that are difficult to identify and thus are much more damaging. In some states, for example, more than one-third of black men have been labeled felons. In Alabama and Florida, once a felon, always a felon, which entails the loss of status as a rights-bearing citizen. One of the grave consequences of the powerful reach of the prison was the 2000 (s)election of George W. Bush as president. If only the black men and women denied the right to vote because of an actual or presumed felony record had been allowed to cast their ballots, Bush would not be in the White House today. And perhaps we would not be dealing with the awful costs of the War on Terrorism declared during the first year of his administration. If not for his election, the people of Iraq might not have suffered death, destruction, and environmental poisoning by U.S. military forces.

As appalling as the current political situation may be, imagine what our lives might have become if we were still grappling with the institution of slavery—or the convict lease system or racial segregation. But we do not have to speculate about living with the consequences of the prison. There is more than enough evidence in the lives of men and women who have been claimed by ever more repressive institutions and who are denied access to their families, their communities, to educational opportunities, to productive and creative work, to physical and mental recreation. And there is even more compelling evidence about the damage wrought by the expansion of the prison system in the schools located in poor communities of color that replicate the structures and regimes of the prison. When children attend schools that place a greater value on discipline and security than on knowledge and intellectual development,

they are attending prep schools for prison. If this is the predicament we face today, what might the future hold if the prison system acquires an even greater presence in our society? In the nineteenth century, antislavery activists insisted that as long as slavery continued, the future of democracy was bleak indeed. In the twenty-first century, antiprison activists insist that a fundamental requirement for the revitalization of democracy is the long-overdue abolition of the prison system.

Imprisonment and Reform

"One should recall that the movement for reforming the prisons, for controlling their functioning is not a recent phenomenon. It does not even seem to have originated in a recognition of failure. Prison 'reform' is virtually contemporary with the prison itself: it constitutes, as it were, its programme."

—Michel Foucault³⁶

It is ironic that the prison itself was a product of concerted efforts by reformers to create a better system of punishment. If the words "prison reform" so easily slip from our lips, it is because "prison" and "reform" have been inextricably linked since the beginning of the use of imprisonment as the main means of punishing those who violate social norms. As I have already indicated, the origins of the prison are associated with the American Revolution and therefore with the resistance to the colonial power of England. Today this seems ironic, but incarceration within a penitentiary was assumed to be humane—at least far more humane than the capital and corporal punishment inherited from England and other European countries. Foucault opens his study, *Discipline and Punish: The Birth of the Prison*, with a graphic description of a 1757 execution in Paris. The man who was put to death was first forced to undergo a series of formidable tortures ordered by the court. Red-hot pincers were

used to burn away the flesh from his limbs, and molten lead, boiling oil, burning resin, and other substances were melted together and poured onto the wounds. Finally, he was drawn and quartered, his body burned, and the ashes tossed into the wind.³⁷ Under English common law, a conviction for sodomy led to the punishment of being buried alive, and convicted heretics also were burned alive. "The crime of treason by a female was punished initially under the common law by burning alive the defendant. However, in the year 1790 this method was halted and the punishment became strangulation and burning of the corpse."³⁸

European and American reformers set out to end macabre penalties such as this, as well as other forms of corporal punishment such as the stocks and pillories, whippings, brandings, and amputations. Prior to the appearance of punitive incarceration, such punishment was designed to have its most profound effect not so much on the person punished as on the crowd of spectators. Punishment was, in essence, public spectacle. Reformers such as John Howard in England and Benjamin Rush in Pennsylvania argued that punishment—if carried out in isolation, behind the walls of the prison—would cease to be revenge and would actually reform those who had broken the law.

It should also be pointed out that punishment has not been without its gendered dimensions. Women were often punished within the domestic domain, and instruments of torture were sometimes imported by authorities into the household. In seventeenth-century Britain, women whose husbands identified them as quarrelsome and unaccepting of male dominance were punished by means of a gossip's bridle, or "pranks," a headpiece with a chain attached and an iron bit that was introduced into the woman's mouth.³⁹ Although the branding of women was often linked to a public parade, this

contraption was sometimes hooked to a wall of the house, where the punished woman remained until her husband decided to release her. I mention these forms of punishment inflicted on women because, like the punishment inflicted on slaves, they were rarely taken up by prison reformers.

Other modes of punishment that predated the rise of the prison include banishment, forced labor in galleys, transportation, and appropriation of the accused's property. The punitive transportation of large numbers of people from England, for example, facilitated the initial colonization of Australia. Transported English convicts also settled the North American colony of Georgia. During the early 1700s, one in eight transported convicts were women, and the work they were forced to perform often consisted of prostitution.⁴⁰

Imprisonment was not employed as a principal mode of punishment until the eighteenth century in Europe and the nineteenth century in the United States. And European prison systems were instituted in Asia and Africa as an important component of colonial rule. In India, for example, the English prison system was introduced during the second half of the eighteenth century, when jails were established in the regions of Calcutta and Madras. In Europe, the penitentiary movement against capital and other corporal punishments reflected new intellectual tendencies associated with the Enlightenment, activist interventions by Protestant reformers, and structural transformations associated with the rise of industrial capitalism. In Milan in 1764, Cesare Beccaria published his *Essay on Crimes and Punishments*,⁴¹ which was strongly influenced by notions of equality advanced by the philosophes—especially Voltaire, Rousseau, and Montesquieu. Beccaria argued that punishment should never be a private matter, nor should it be arbitrarily violent; rather, it should be public, swift, and as

lenient as possible. He revealed the contradiction of what was then a distinctive feature of imprisonment—the fact that it was generally imposed prior to the defendant's guilt or innocence being decided.

However, incarceration itself eventually became the penalty, bringing about a distinction between imprisonment as punishment and pretrial detention or detention until the infliction of punishment. The process through which imprisonment developed into the primary mode of state-inflicted punishment was very much related to the rise of capitalism and to the appearance of a new set of ideological conditions. These new conditions reflected the rise of the bourgeoisie as the social class whose interests and aspirations furthered new scientific, philosophical, cultural, and popular ideas. It is thus important to grasp the fact that the prison as we know it today did not make its appearance on the historical stage as the superior form of punishment for all times. It was simply—though we should not underestimate the complexity of this process—what made most sense at a particular moment in history. We should therefore question whether a system that was intimately related to a particular set of historical circumstances that prevailed during the eighteenth and nineteenth centuries can lay absolute claim on the twenty-first century.

It may be important at this point in our examination to acknowledge the radical shift in the social perception of the individual that appeared in the ideas of that era. With the rise of the bourgeoisie, the individual came to be regarded as a bearer of formal rights and liberties. The notion of the individual's inalienable rights and liberties was eventually memorialized in the French and American Revolution. “*Liberté, Egalité, Fraternité*” from the French Revolution and “We hold these truths to be self-evident: all men are cre-

ated equal . . . " from the American Revolution were new and radical ideas, even though they were not extended to women, workers, Africans, and Indians. Before the acceptance of the sanctity of individual rights, imprisonment could not have been understood as punishment. If the individual was not perceived as possessing inalienable rights and liberties, then the alienation of those rights and liberties by removal from society to a space tyrannically governed by the state would not have made sense. Banishment beyond the geographical limits of the town may have made sense, but not the alteration of the individual's legal status through imposition of a prison sentence.

Moreover, the prison sentence, which is always computed in terms of time, is related to abstract quantification, evoking the rise of science and what is often referred to as the Age of Reason. We should keep in mind that this was precisely the historical period when the value of labor began to be calculated in terms of time and therefore compensated in another quantifiable way, by money. The computability of state punishment in terms of time—days, months, years—resonates with the role of labor-time as the basis for computing the value of capitalist commodities. Marxist theorists of punishment have noted that precisely the historical period during which the commodity form arose is the era during which penitentiary sentences emerged as the primary form of punishment.⁴²

Today, the growing social movement contesting the supremacy of global capital is a movement that directly challenges the rule of the planet—its human, animal, and plant populations, as well as its natural resources—by corporations that are primarily interested in the increased production and circulation of ever more profitable commodities. This is a challenge to the supremacy of the commodity form, a rising

resistance to the contemporary tendency to commodify every aspect of planetary existence. The question we might consider is whether this new resistance to capitalist globalization should also incorporate resistance to the prison.

Thus far I have largely used gender-neutral language to describe the historical development of the prison and its reformers. But convicts punished by imprisonment in emergent penitentiary systems were primarily male. This reflected the deeply gender-biased structure of legal, political, and economic rights. Since women were largely denied public status as rights-bearing individuals, they could not be easily punished by the deprivation of such rights through imprisonment.⁴³ This was especially true of married women, who had no standing before the law. According to English common law, marriage resulted in a state of "civil death," as symbolized by the wife's assumption of the husband's name. Consequently, she tended to be punished for revolting against her domestic duties rather than for failure in her meager public responsibilities. The relegation of white women to domestic economies prevented them from playing a significant role in the emergent commodity realm. This was especially true since wage labor was typically gendered as male and racialized as white. It is not fortuitous that domestic corporal punishment for women survived long after these modes of punishment had become obsolete for (white) men. The persistence of domestic violence painfully attests to these historical modes of gendered punishment.

Some scholars have argued that the word "penitentiary" may have been used first in connection with plans outlined in England in 1758 to house "penitent prostitutes." In 1777, John Howard, the leading Protestant proponent of penal reform in England, published *The State of the Prisons*,⁴⁴ in which he conceptualized imprisonment as an occasion for

religious self-reflection and self-reform. Between 1787 and 1791, the utilitarian philosopher Jeremy Bentham published his letters on a prison model he called the panopticon.⁴⁵ Bentham claimed that criminals could only internalize productive labor habits if they were under constant surveillance. According to his panopticon model, prisoners were to be housed in single cells on circular tiers, all facing a multi-level guard tower. By means of blinds and a complicated play of light and darkness, the prisoners—who would not see each other at all—would be unable to see the warden. From his vantage point, on the other hand, the warden would be able to see all of the prisoners. However—and this was the most significant aspect of Bentham's mammoth panopticon—because each individual prisoner would never be able to determine where the warden's gaze was focused, each prisoner would be compelled to act, that is, work, as if he were being watched at all times.

If we combine Howard's emphasis on disciplined self-reflection with Bentham's ideas regarding the technology of internalization designed to make surveillance and discipline the purview of the individual prisoner, we can begin to see how such a conception of the prison had far-reaching implications. The conditions of possibility for this new form of punishment were strongly anchored in a historical era during which the working class needed to be constituted as an army of self-disciplined individuals capable of performing the requisite industrial labor for a developing capitalist system.

John Howard's ideas were incorporated in the Penitentiary Act of 1799, which opened the way for the modern prison. While Jeremy Bentham's ideas influenced the development of the first national English penitentiary, located in Millbank and opened in 1816, the first full-fledged effort to create a panopticon prison was in the United States.

The Western State Penitentiary in Pittsburgh, based on a revised architectural model of the panopticon, opened in 1826. But the penitentiary had already made its appearance in the United States. Pennsylvania's Walnut Street Jail housed the first state penitentiary in the United States, when a portion of the jail was converted in 1790 from a detention facility to an institution housing convicts whose prison sentences simultaneously became punishment and occasions for penitence and reform.

Walnut Street's austere regime—total isolation in single cells where prisoners lived, ate, worked, read the Bible (if, indeed, they were literate), and supposedly reflected and repented—came to be known as the Pennsylvania system. This regime would constitute one of that era's two major models of imprisonment. Although the other model, developed in Auburn, New York, was viewed as a rival to the Pennsylvania system, the philosophical basis of the two models did not differ substantively. The Pennsylvania model, which eventually crystallized in the Eastern State Penitentiary in Cherry Hill—the plans for which were approved in 1821—emphasized total isolation, silence, and solitude, whereas the Auburn model called for solitary cells but labor in common. This mode of prison labor, which was called congregate, was supposed to unfold in total silence. Prisoners were allowed to be with each other as they worked, but only under condition of silence. Because of its more efficient labor practices, Auburn eventually became the dominant model, both for the United States and Europe. Why would eighteenth- and nineteenth-century reformers become so invested in creating conditions of punishment based on solitary confinement? Today, aside from death, solitary confinement—next to torture, or as a form of torture—is considered the worst form of punishment imaginable.

ble. Then, however, it was assumed to have an emancipatory effect. The body was placed in conditions of segregation and solitude in order to allow the soul to flourish. It is not accidental that most of the reformers of that era were deeply religious and therefore saw the architecture and regimes of the penitentiary as emulating the architecture and regimes of monastic life. Still, observers of the new penitentiary saw, early on, the real potential for insanity in solitary confinement. In an often-quoted passage of his *American Notes*, Charles Dickens prefaced a description of his 1842 visit to Eastern Penitentiary with the observation that "the system here is rigid, strict, and hopeless solitary confinement. I believe it, in its effects, to be cruel and wrong."

In its intention I am well convinced that it is kind, humane, and meant for reformation; but I am persuaded that those who devised this system of Prison Discipline, and those benevolent gentlemen who carry it into execution, do not know what it is that they are doing. 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 am only the more convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow-creature. I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body. . . . because its wounds are not upon the surface, and it extorts few cries that human ears can hear; therefore I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay.⁴⁶

Unlike other Europeans such as Alexis de Tocqueville and Gustave de Beaumont, who believed that such punishment would result in moral renewal and thus mold convicts into better citizens,⁴⁷ Dickens was of the opinion that "[t]hose who have undergone this punishment MUST pass into society again morally unhealthy and diseased."⁴⁸ This early critique of the penitentiary and its regime of solitary confinement troubles the notion that imprisonment is the most suitable form of punishment for a democratic society.

The current construction and expansion of state and federal super-maximum security prisons, whose putative purpose is to address disciplinary problems within the penal system, draws upon the historical conception of the penitentiary, then considered the most progressive form of punishment. Today African-Americans and Latinos are vastly overrepresented in these supermax prisons and control units, the first of which emerged when federal correctional authorities began to send prisoners housed throughout the system whom they deemed to be "dangerous" to the federal prison in Marion, Illinois. In 1983, the entire prison was "locked down," which meant that prisoners were confined to their cells twenty-three hours a day. This lockdown became permanent, thus furnishing the general model for the control unit and supermax prison.⁴⁹ Today, there are approximately sixty super-maximum security federal and state prisons located in thirty-six states and many more supermax units in virtually every state in the country.

A description of supermaxes in a 1997 Human Rights Watch report sounds chillingly like Dickens's description of Eastern State Penitentiary. What is different, however, is that all references to individual rehabilitation have disappeared.

Inmates in super-maximum security facilities are usually held in single cell lock-down, commonly referred to as solitary confinement. . . [C]ongregate activities with other prisoners are usually prohibited; other prisoners cannot even be seen from an inmate's cell; communication with other prisoners is prohibited or difficult (consisting, for example, of shouting from cell to cell); visiting and telephone privileges are limited.⁵⁰

The new generation of super-maximum security facilities also rely on state-of-the-art technology for monitoring and controlling prisoner conduct and movement, utilizing, for example, video monitors and remote-controlled electronic doors.⁵¹ "These prisons represent the application of sophisticated, modern technology dedicated entirely to the task of social control, and they isolate, regulate and surveil more effectively than anything that has preceded them."⁵²

I have highlighted the similarities between the early U.S. penitentiary—with its aspirations toward individual rehabilitation—and the repressive supermaxes of our era as a reminder of the mutability of history. What was once regarded as progressive and even revolutionary represents today the marriage of technological superiority and political backwardness. No one—not even the most ardent defenders of the supermax—would try to argue today that absolute segregation, including sensory deprivation, is restorative and healing. The prevailing justification for the supermax is that the horrors it creates are the perfect complement for the horrifying personalities deemed the worst of the worst by the prison system. In other words, there is no pretense that rights are respected, there is no concern for the individual, there is no sense that men and women incarcerated in super-

maxes deserve anything approaching respect and comfort. According to a 1999 report issued by the National Institute of Corrections,

Generally, the overall constitutionality of these [supermax] programs remains unclear. As larger numbers of inmates with a greater diversity of characteristics, backgrounds, and behaviors are incarcerated in these facilities, the likelihood of legal challenge is increased.⁵³

During the eighteenth and nineteenth centuries, absolute solitude and strict regimentation of the prisoner's every action were viewed as strategies for transforming habits and ethics. That is to say, the idea that imprisonment should be the main form of punishment reflected a belief in the potential of white mankind for progress, not only in science and industry, but at the level of the individual member of society as well. Prison reformers mirrored Enlightenment assumptions of progress in every aspect of human—or to be more precise, white Western—society. In his 1987 study *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England*, John Bender proposes the very intriguing argument that the emergent literary genre of the novel furthered a discourse of progress and individual transformation that encouraged attitudes toward punishment to change.⁵⁴ These attitudes, he suggests, heralded the conception and construction of penitentiary prisons during the latter part of the eighteenth century as a reform suited to the capacities of those who were deemed human.

Reformers who called for the imposition of penitentiary architecture and regimes on the then existing structure of the prison aimed their critiques at the prisons that were primari-

ly used for purposes of pretrial detention or as an alternative punishment for those who were unable to pay fines exacted by the courts. John Howard, the most well known of these reformers, was what you might today call a prison activist. Beginning in 1773, at the age of forty-seven, he initiated a series of visits that took him "to every institution for the poor in Europe . . . [a campaign] which cost him his fortune and finally his life in a typhus war of the Russian army at Cherson in 1791."⁵⁵ At the conclusion of his first trip abroad, he successfully ran for the office of sheriff in Bedfordshire. As sheriff he investigated the prisons under his own jurisdiction and later "set out to visit every prison in England and Wales to document the evils he had first observed at Bedford."⁵⁶

Bender argues that the novel helped facilitate these campaigns to transform the old prisons—which were filthy and in disarray, and which thrived on the bribery of the wardens—into well-ordered rehabilitative penitentiaries. He shows that novels such as *Moll Flanders* and *Robinson Crusoe* emphasized "the power of confinement to reshape personality"⁵⁷ and popularized some of the ideas that moved reformers to action. As Bender points out, the eighteenth-century reformers criticized the old prisons for their chaos, their lack of organization and classification, for the easy circulation of alcohol and prostitution they permitted, and for the prevalence of contagion and disease.

The reformers, primarily Protestant, among whom Quakers were especially dominant, couched their ideas in large part in religious frameworks. Though John Howard was not himself a Quaker—he was an independent Protestant—nevertheless

[h]e was drawn to Quaker asceticism and adopted the dress "of a plain Friend." His own brand of piety

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was strongly reminiscent of the Quaker traditions of silent prayer, "suffering" introspection, and faith in the illumining power of God's light. Quakers, for their part, were bound to be drawn to the idea of imprisonment as a purgatory, as a forced withdrawal from the distractions of the senses into silent and solitary confrontation with the self. Howard conceived of a convict's process of reformation in terms similar to the spiritual awakening of a believer at a Quaker meeting.⁵⁸

However, according to Michael Ignatieff, Howard's contributions did not so much reside in the religiosity of his reform efforts.

The originality of Howard's indictment lies in its "scientific," not in its moral character. Elected a Fellow of the Royal Society in 1756 and author of several scientific papers on climatic variations in Bedfordshire, Howard was one of the first philanthropists to attempt a systematic statistical description of a social problem.⁵⁹

Likewise, Bender's analysis of the relationship between the novel and the penitentiary emphasizes the extent to which the philosophical underpinnings of the prison reformer's campaigns echoed the materialism and utilitarianism of the English Enlightenment. The campaign to reform the prisons was a project to impose order, classification, cleanliness, good work habits, and self-consciousness. He argues that people detained within the old prisons were not severely restricted—they sometimes even enjoyed the freedom to move in and out of the prison. They were not

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compelled to work and, depending on their own resources, could eat and drink as they wished. Even sex was sometimes available, as prostitutes were sometimes allowed temporary entrance into the prisons. Howard and other reformers called for the imposition of rigid rules that would "enforce solitude and penitence, cleanliness and work."⁶⁰

"The new penitentiaries," according to Bender, "supplanting both the old prisons and houses of correction, explicitly reached toward . . . three goals: maintenance of order within a largely urban labor force, salvation of the soul, and rationalization of personality."⁶¹ He argues that this is precisely what was narratively accomplished by the novel. It ordered and classified social life, it represented individuals as conscious of their surroundings and as self-aware and self-fashioning. Bender thus sees a kinship between two major developments of the eighteenth century—the rise of the novel in the cultural sphere and the rise of the penitentiary in the socio-legal sphere. If the novel as a cultural form helped to produce the penitentiary, then prison reformers must have been influenced by the ideas generated by and through the eighteenth-century novel.

Literature has continued to play a role in campaigns around the prison. During the twentieth century, prison writing, in particular, has periodically experienced waves of popularity. The public recognition of prison writing in the United States has historically coincided with the influence of social movements calling for prison reform and/or abolition. Robert Burns's *I Am a Fugitive from a Georgia Chain Gang*,⁶² and the 1932 Hollywood film upon which it was based, played a central role in the campaign to abolish the chain gang. During the 1970s, which were marked by intense organizing within, outside, and across prison walls, numerous works authored by prisoners followed the 1970 publica-

tion of George Jackson's *Soledad Brothers*⁶³ and the anthology I coedited with Bettina Aptheker, *If They Come in the Morning*.⁶⁴ While many prison writers during that era had discovered the emancipatory potential of writing on their own, relying either on the education they had received prior to their imprisonment or on their tenacious efforts at self-education, others pursued their writing as a direct result of the expansion of prison educational programs during that era. Mumia Abu-Jamal, who has challenged the contemporary dismantling of prison education programs, asks in *Live from Death Row*,

What societal interest is served by prisoners who remain illiterate? What social benefit is there in ignorance? How are people corrected while imprisoned if their education is outlawed? Who profits (other than the prison establishment itself) from stupid prisoners?⁶⁵

A practicing journalist before his arrest in 1982 on charges of killing Philadelphia policeman Daniel Faulkner, Abu-Jamal has regularly produced articles on capital punishment, focusing especially on its racial and class disproportions. His ideas have helped to link critiques of the death penalty with the more general challenges to the expanding U.S. prison system and are particularly helpful to activists who seek to associate death penalty abolitionism with prison abolitionism. His prison writings have been published in both popular and scholarly journals (such as *The Nation* and *Yale Law Journal*) as well as in three collections, *Live from Death Row*, *Death Blossoms*,⁶⁶ and *All Things Censored*.⁶⁷

Abu-Jamal and many other prison writers have strongly criticized the prohibition of Pell Grants for prisoners, which

was enacted in the 1994 crime bill,⁶⁸ as indicative of the contemporary pattern of dismantling educational programs behind bars. As creative writing courses for prisoners were defunded, virtually every literary journal publishing prisoners' writing eventually collapsed. Of the scores of magazines and newspapers produced behind walls, only the *Argolite* at Louisiana's Angola Prison and *Prison Legal News* at Washington State Prison remain. What this means is that precisely at a time of consolidating a significant writing culture behind bars, repressive strategies are being deployed to dissuade prisoners from educating themselves.

If the publication of Malcolm X's autobiography marks a pivotal moment in the development of prison literature and a moment of vast promise for prisoners who try to make education a major dimension of their time behind bars,⁶⁹ contemporary prison practices are systematically dashing those hopes. In the 1950s, Malcolm's prison education was a dramatic example of prisoners' ability to turn their incarceration into a transformative experience. With no available means of organizing his quest for knowledge, he proceeded to read a dictionary, copying each word in his own hand. By the time he could immerse himself in reading, he noted, "months passed without my even thinking about being imprisoned. In fact, up to then, I never had been so truly free in my life."⁷⁰ Then, according to Malcolm, prisoners who demonstrated an unusual interest in reading were assumed to have embarked upon a journey of self-rehabilitation and were frequently allowed special privileges—such as checking out more than the maximum number of books. Even so, in order to pursue this self-education, Malcolm had to work against the prison regime—he often read on his cell floor, long after lights-out, by the glow of the corridor light, taking care to return to bed each

hour for the two minutes during which the guard marched past his cell.

The contemporary disestablishment of writing and other prison educational programs is indicative of the official disregard today for rehabilitative strategies, particularly those that encourage individual prisoners to acquire autonomy of the mind. The documentary film *The Last Graduation* describes the role prisoners played in establishing a four-year college program at New York's Greenhaven Prison and, twenty-two years later, the official decision to dismantle it. According to Eddie Ellis, who spent twenty-five years in prison and is currently a well-known leader of the antiprison movement, "As a result of Attica, college programs came into the prisons."⁷¹

In the aftermath of the 1971 prisoner rebellion at Attica and the government-sponsored massacre, public opinion began to favor prison reform. Forty-three Attica prisoners and eleven guards and civilians were killed by the National Guard, who had been ordered to retake the prison by Governor Nelson Rockefeller. The leaders of the prison rebellion had been very specific about their demands. In their "practical demands" they expressed concerns about diet, improvement in the quality of guards, more realistic rehabilitation programs, and better education programs. They also wanted religious freedom, freedom to engage in political activity, and an end to censorship—all of which they saw as indispensable to their educational needs. As Eddie Ellis observes in *The Last Graduation*,

Prisoners very early recognized the fact that they needed to be better educated, that the more education they had, the better they would be able to deal with themselves and their problems, the problems

of the prisons and the problems of the communities from which most of them came.

Lateef Islam, another former prisoner featured in this documentary, said, "We held classes before the college came. We taught each other, and sometimes under penalty of a beat-up."

After the Attica Rebellion, more than five hundred prisoners were transferred to Greenhaven, including some of the leaders who continued to press for educational programs. As a direct result of their demands, Marist College, a New York state college near Greenhaven, began to offer college-level courses in 1973 and eventually established the infrastructure for an on-site four-year college program. The program thrived for twenty-two years. Some of the many prisoners who earned their degrees at Greenhaven pursued postgraduate studies after their release. As the documentary powerfully demonstrates, the program produced dedicated men who left prison and offered their newly acquired knowledge and skills to their communities on the outside.

In 1994, consistent with the general pattern of creating more prisons and more repression within all prisons, Congress took up the question of withdrawing college funding for inmates. The congressional debate concluded with a decision to add an amendment to the 1994 crime bill that eliminated all Pell Grants for prisoners, thus effectively defunding all higher educational programs. After twenty-two years, Marist College was compelled to terminate its program at Greenhaven Prison. Thus, the documentary revolves around the very last graduation ceremony on July 15, 1995, and the poignant process of removing the books that, in many ways, symbolized the possibilities of freedom. Or, as one of the Marist professors said, "They see books as

full of gold." The prisoner who for many years had served as a clerk for the college sadly reflected, as books were being moved, that there was nothing left to do in prison—except perhaps bodybuilding. "But," he asked, "what's the use of building your body if you can't build your mind?" Ironically, not long after educational programs were disestablished, weights and bodybuilding equipment were also removed from most U.S. prisons.