In the Age of Jackson, private enterprise set up shop in the American penal system. Working hand in glove with state government, by 1900 contractors in both the North and the South would go on to put more than half a million imprisoned men, women, and youth to hard, sweated toil for private gain. Held captive, stripped of their rights, and subjected to lash and paddle, these convict laborers churned out vast quantities of goods and revenue, in some years generating the equivalent of more than $30 billion worth of work. By the 1880s, however, a growing cross-section of American society came to regard the prison labor system as morally corrupt and unbefitting of a free republic: it fostered torture and other abuses, degraded free citizen-workers, corrupted the government and the legal system, and defeated the supposedly moral purpose of punishment. The Crisis of Imprisonment tells the remarkable story of this controversial system of penal servitude – how it came into being, how it worked, how the popular campaigns for its abolition were ultimately victorious, and how it shaped and continues to haunt America’s modern penal system. The author takes the reader into the vital, robust world of nineteenth-century artisans, industrial workers, farmers, clergy, convicts, machine politicians, and labor leaders and shows how prisons became a lightning rod in a determined defense of republican values against the encroachments of an unbridled market capitalism. She explores the vexing moral questions that prisons posed then and that are still exigent today: What are the limits of state power over the minds, bodies, and souls of citizens – is torture permissible under certain circumstances? What, if anything, makes the state morally fit to deprive a person of life or liberty? Are prisoners slaves and, if so, by what right? Should prisoners work? Is the prison a morally defensible institution? The eventual abolition of prison labor contracting plunged the prisons into deep fiscal and ideological crisis. The second half of the book offers a sweeping reinterpretation of Progressive Era prison reform as above all a response to this crisis. It concludes with an exploration of the long-range impact on the modern American penal system of both penal servitude and the movement for its abolition.

Rebecca M. McLennan is Associate Professor of History at The University of California, Berkeley. In 1999, she received Columbia University’s Bancroft Award for her doctoral dissertation on the rise of the American penal state.
CAMBRIDGE HISTORICAL STUDIES IN AMERICAN LAW AND SOCIETY

Series Editor
Christopher Tomlins, American Bar Foundation

Previously published in the series:
Tony A. Freyer, Antitrust and Global Capitalism, 1930–2004
Davison Douglas, Jim Crow Moves North
Andrew Wender Cohen, The Racketeer’s Progress
Michael Willrich, City of Courts, Socializing Justice in Progressive Era Chicago
Barbara Young Welke, Recasting American Liberty: Gender, Law and the Railroad Revolution, 1865–1920
Michael Vorenberg, Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment
Robert J. Steinfeld, Coercion, Contract, and Free Labor in Nineteenth Century America
David M. Rabban, Free Speech in Its Forgotten Years
Michael Grossberg, A Judgment for Solomon: The d’Hauteville Case and Legal Experience in the Antebellum South
The Crisis of Imprisonment

PROTEST, POLITICS, AND THE MAKING OF THE AMERICAN PENAL STATE, 1776–1941

Rebecca M. McLennan

The University of California, Berkeley
For Ásta, Felicity, and Roy
# Contents

Acknowledgments  xi

Introduction: The Grounds of Legal Punishment  1

1 Strains of Servitude: Legal Punishment in the Early Republic  14

2 Due Convictions: Contractual Penal Servitude and Its Discontents, 1818–1865  53

3 Commerce upon the Throne: The Business of Imprisonment in Gilded Age America  87

4 Disciplining the State, Civilizing the Market: The Campaign to Abolish Contract Prison Labor  137

5 A Model Servitude: Prison Reform in the Early Progressive Era  193

6 Uses of the State: The Dialectics of Penal Reform in Early Progressive New York  239

7 American Bastille: Sing Sing and the Political Crisis of Imprisonment  280

8 Changing the Subject: The Metamorphosis of Prison Reform in the High Progressive Era  319

9 Laboratory of Social Justice: The New Penologists at Sing Sing, 1915–1917  376

10 Punishment without Labor: Toward the Modern Penal State  417

Conclusion: On the Crises of Imprisonment  469

Select Bibliography  473

Index  485
This book originated, more years ago than I care to admit, as a doctoral dissertation in Columbia University’s Department of History. It matured as a book manuscript at Harvard University and was finally put to rest at the University of California, Berkeley. Each of these institutions generously funded its research and writing. Columbia’s Richard Hofstadter and Whiting fellowships provided funding and release from teaching for the first phase of the work. Subsequently, faculty research grants from the History Department at Harvard University, the Charles Warren Center for Studies in American History, the Committee on Degrees in Social Studies, and Harvard’s Cooke-Clark and Dunwalke funds enabled me to undertake the fresh research needed to turn a doctoral dissertation into a book manuscript. A sabbatical and research funding from the UC Berkeley History Department made it possible for me to write up the new material and to completely overhaul, polish, and, finally, dispatch the manuscript.

Colleagues, staff, and students at these universities and others played an instrumental role in the book’s fruition. Sven Beckert, Elizabeth Blackmar, Lizabeth Cohen, Nancy Cott, Elizabeth Dale, Timothy J. Gilfoyle, Jon Gjerde, David Hollinger, Akira Iriye, Pratap Mehta, Michael Meranze, Ira Katz Nelson, Anders Stephanson, Chris Sturr, Charles Tilly, and Michael Willrich all generously read and commented upon one or other version or section of the manuscript. Eric Foner repeatedly turned around dissertation chapters with lightning speed and impressed upon me time and again the importance of relating my story of penal crisis and conflict to the broader sweep of American political and social history. I am particularly indebted to my doctoral advisor, Barbara J. Fields, for her years of deep and patient engagement, close reading, criticism, guidance, and mentorship. It is no exaggeration to say that neither the dissertation nor the book would have been possible without her. Fellow graduate students Michael Berkowitz, Eliza Byard, Sam Haselby, Mae Ngai, Adam Rothman, Mike Sappol, Nathalie Silvestre, Jeffrey Sklansky, David Suisman and members of the Americanist dissertation reading group at Columbia engaged early drafts with the dedication and ruthless honesty that are the graduate student’s prerogative.
Their insights proved indispensable to the task of strengthening and sharpening the book’s central arguments. Colleen Lye’s critical acumen, unflagging friendship, and good humor carried me through more than one crisis of *The Crisis of Imprisonment*. Thanks also to Michael Berkowitz, Hillary Kunins, Despina Kakoudaki, and Linda Voris for their true friendship and for being such generous sources of intellectual and culinary sustenance. In a different, but equally vital, vein, Molly Sullivan and Margaret Hornick played no small role in the book’s fruition.

Sometimes, the simplest of questions and the shortest of dialogues can expose the weakest point in a book manuscript’s argument or structure and bring to light alternative, perhaps more fruitful, paths of inquiry. Over the years, a number of people generously wreaked this type of creative havoc on the project. Conversations with David Blackburn, Daniel Botsman, Joseph Cleary, James Currie, Robin Einhorn, Paula Fass, Kathleen Frydl, David Henkin, Carla Hesse, Martin Jay, Kevin Kenny, Thomas Laqueur, Lisa McGirr, Marla Reed, Lisa Rivera, Julie Saville, Margo Schlanger, Daniel Shearer, Susanna Siegel, Jonathan Simon, Nikhil Pal Singh, Jacqueline Stevens, James Vernon, and Peter Zinoman prompted me to rethink and refine some parts of the book, and to significantly extend others. Likewise, discussions with a number of gifted graduate and undergraduate students, including Nina Billone, at UC Berkeley, and Zachary Ramirez, Ria Tabacco, Ezra Tesler, and other members of my “Rule of Law” seminar at Harvard, helped me discover what was – and wasn’t – working in the argument. In a similar vein, faculty forums at the American Bar Foundation; the University of Texas, Austin; the University of Chicago; New York University; Columbia University; York University; and Harvard Law School significantly influenced my thinking and the book. I have tried my best to incorporate or otherwise engage the critiques and insights that these various and ongoing encounters afforded. I should add that, while my interlocutors undoubtedly helped me improve the book, I take sole responsibility for any errors of fact or interpretation that may remain.

A special thanks is due Christopher Tomlins, the legal historian and series editor at Cambridge University Press, who challenged me to write the best book I could, and who later – much later – graciously accepted a far longer, far more ambitious manuscript than the one for which he had bargained. Thanks also to Frank Smith and his Cambridge staff, most especially Simina Calin and Jessica Schwarz, and to the project manager, Mary Cadette, and my indexer, Teri Grimwood, for expertly ushering the text through to publication. James Zimmerman, David Pickell, and Nancy Shaw of the Provincetown Art Association and Museum deserve special mention for their assistance with the cover artwork. At the opposite end of the process, the task of research was significantly eased by the expert help and guidance of the staff of the Special Collections Research Center at Syracuse University Library; Teresa Capone and her colleagues at the Lloyd Sealy Library, John Jay College of Criminal Justice; the archivists at the New York State Archives; and my dedicated research assistants, Ari Waldman and Judy Collins. Many
thanks, also, to the many dedicated administrators, including Janet Hatch and Corey Paulson at Harvard and Linda Finch Hicks, Deborah Kerlegon, and fellow staff of the UC Berkeley History Department, for providing essential infrastructural support over the years.

Although conceived in New York, a great deal of encouragement and preparation for the writing of this book originated a continent and an ocean away. In New Zealand, my father, the late Roy McLennan, engaged the dissertation critically and thoughtfully in its earlier stages. My mother, Felicity McLennan, was a vital source of support and encouragement throughout. Thanks also to Claudia Geiringer, Jackie Hay, Kate O’Keeffe, Barbara Middleton, Peter Middleton, and Peter McLennan for their moral and material support in connection with the project. Recognition is also due the late John Omer-Cooper, and his colleagues, Barbara Brookes, Tom Brooking, Erik Olsson, the late Hugh McLeod, Dorothy Page, Roberto Rabel, and Ann Trotter, of the History Department at the University of Otago for giving me an unusually good berth from which to embark on advanced studies in the field of modern history. Finally, I owe a profound debt of gratitude to Ásta Kristjana Sveinsdóttir. Her careful reading of multiple early drafts, philosopher’s insistence upon analytic precision, and ást og umhyggja made all the difference.