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978-0-521-83096-6 - The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941

Rebecca M. McLennan

Excerpt

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INTRODUCTION

The Grounds of Legal Punishment

In 1913, amid the oppressive humidity of a mid-summer's evening in the lower Hudson Valley, a crowd of men, women, and children from the village of Ossining joined a bevy of reporters and photographers on a hill overlooking Sing Sing Prison. Roused by rumors that a large-scale prison break was imminent, they watched as 1,500-odd convicts shuffled quietly across the prison yard and into the old stone cellhouse, each clasping his nightly ration of a half-loaf of bread in hand. The keepers, townspeople, and reporters may well have heaved a sigh of relief as the last few prisoners filed into the cellhouse and the heavy iron door swung closed behind them. With its thick granite walls, double-shelled construction, and centralized locking system, this "bastille on the Hudson" was all but immune to escape; once entombed within its gloomy masonry, even the most ingenious of prisoners stood little chance of emancipation.¹

But a prison-break is only one kind of trouble convicts can concoct; and, on that tense July evening, as the last few stragglers were secured in the cellhouse, the guards and the free citizens of New York were about to be rudely reminded that, even under the condition of lockdown, prisoners are capable of turning the tables on their keepers and throwing the state into crisis. As reporters from the *New York Times* would recount the evening's events, the trouble began as hundreds of convicts simultaneously hurled their heels of bread through the cellhouse's outer window panes, causing a great shower of bread and glass to crash into the yard and street below. A cacophony of whistling and howling swiftly followed, and then a volley of raucous denunciations of the warden, the food, and the general conditions of incarceration. The convicts' point, rudely punctuated by bread so stale it could shatter thick glass, was unambiguous: "They are starving us!" the prisoners yelled at the reporters on the hill beyond; "give it a good write up in your paper!"²

The following morning, and for several days following, headlines, photographs, and detailed stories about the defenestration of one of America's most infamous prisons emblazoned the front pages of local, regional, and

¹ One of the first recorded uses of the term "bastille" in connection with Sing Sing can be found in ex-prisoner Levi S. Burr's 1833 publication, *A Voice From Sing Sing: Giving a General Description of the State Prison . . . A Synopsis of the Horrid Treatment of the Convicts in that Prison* (Albany, n.p., 1833).

² Unidentified prisoners, quoted in *New York Times*, Jul. 24, 1913, 1.

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national newspapers. Even the editors of the usually sedate *New York Times* splashed photographs and sensationalist headlines across their paper's front page through most of the following week. Back at Sing Sing, the bread throwing and cat-calling subsided after a few hours; but trouble continued to erupt sporadically over the following three days. Only after a series of tense negotiations between the warden and the prisoners, carried out under the forceful gaze of the National Guard and the critical scrutiny of the press corps, did the prisoners' unruliness come to an end. Sing Sing's troubles, however, would not end with the formal restoration of rule; they merely changed form. In the wake of the spectacle of the bread riot, a crowd of senators, prison commissioners, Grand Jurors, newspaper reporters, and social reformers from New York and beyond swept through the prison in search of explanations and culprits. As the investigations spurred accusations of mismanagement and corruption, from the office of Governor William Sulzer on down to the kitchens of prison cook Louis Beaulieu, the prisoners and keepers of Sing Sing found themselves embroiled in one of the fiercest political battles ever to have been fought in the Empire State.

Sing Sing, like most American prisons, had seen a number of strikes and riots in the course of its eighty-year history, and most of these had sparked political debate over the causes of the trouble, living conditions, and the general administration of the prisons. However, none had precipitated as divisive and embittered a crisis as that which unfolded in the summer of 1913. A deceptively simple act, the prisoners' bread riot had combined drama, protest, and a rather blunt demonstration of the convicts' grievances, to great – and eminently newsworthy – effect. In a few short minutes, and wielding nothing more than their paltry rations, the prisoners had managed to take possession of the very edifice that was supposed to guarantee the good order of both the state's prison and the state of New York. More than simply breaking the rules and disrupting the normal routine (which more commonplace acts of defiance, such as refusing to eat or resisting a lock-down, could have achieved just as well), the convicts had succeeded in turning their prison into a stage upon which to dramatize their grievances and publicly indict their captors. However fleetingly, the convicts had substituted a voice of their own for that of the state, and, with the aid of the press, they had made their voice heard well beyond the high walls of New York's stone "bastille."

Although, in the American imagination, Sing Sing has long stood apart from other prisons as an institution at once famous and infamous, the protest and ensuing political crisis of 1913 were neither unprecedented nor, in the context of the day, markedly exceptional. As I shall argue in the pages to follow, a long continuum of episodic instability, conflict, and political crisis has characterized prison-based punishment in the United States, from the early republican period, down through the nineteenth century, and deep into the twentieth. Far from being the exception to the norm, Sing Sing stood squarely within a long, broad, American tradition of debate, riot, and political and moral crisis over the rights and wrongs of legal punishment, the

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proper exercise of state power, and the just deserts of convicted offenders. This book traces the lineage, meaning, and consequences of popular conflicts over legal punishment, from the early republican penitentiary-house, through the great prison factories of the Gilded Age and the penal-social laboratories of the Progressive Era, to the ambitious, penal state-building programs of the New Deal era.

That the American prison has historically been an unstable and highly contested institution ought not to surprise us. Historically, it has been at once a highly visible apparatus of state coercion, a concentrated mass of human energies and desires, an official symbol of justice, security, and the state's presumed right over life and death, and the outstanding example of an unfree institution in a putatively free society. As such, this powerful and symbolically-laden institution has inevitably been both an object of debate and contestation in and of itself and a critical battleground and potent instrument in the larger social conflicts that have episodically shaken and recreated American government and society since the Revolution. While prisoners and their keepers were often at the forefront of these various struggles to remake and control the prison and the penal arm of the state, they were by no means alone in the fray. In the two centuries or more following independence from Great Britain, a remarkably diverse array of communities, classes, and sections of American society, animated by a variety of religious convictions, moral beliefs, and political affiliations, actively contested and struggled to determine the proper means and ends of legal punishment. As I argue in the pages to follow, many of these struggles had important and lasting consequences, not only for the practice and ideology of legal punishment and the penal arm of government, but for the structure and legitimating fictions of American social order more generally.

American lawmakers grappled with the twin questions of by what means and to what ends the state ought to punish convicted offenders almost as soon as the republic began the transition to peacetime, in the mid-1780s. In the wake of independence from Britain and her "royal" mode of punishment, strict Calvinists, liberal Quakers, common laborers, artisans, merchants, farmers, and jurists earnestly debated the meaning of a truly Christian and republican penal practice. Early republican efforts to establish such a practice eventually resulted in the founding of the house of repentance, and the penitential system of legal punishment. Although, initially, merchants, jurists, physicians, and lawmakers proclaimed the house of repentance (and the penitential mode of punishment more generally) an enlightened and humane alternative to the discredited penal practices of the old world monarchies, other Americans – including strict Calvinist clergy, laboring republicans, and the penitentiary's captive subjects – openly challenged its moral legitimacy. By the late 1810s, these strains of dissent and subversion had prompted such widespread public disillusionment with the penitentiary system that the penal arm of state government was plunged into a protracted crisis of legitimacy. In state after state, that crisis proved fatal; in the early

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1820s, lawmakers began to cast around, once again, for a new approach to legal punishment.

The mode of punishment that lawmakers, jurists, and keepers eventually substituted in the troubled penitentiary's stead was that of contractual penal servitude. Improvised earliest at Auburn prison in New York (in the 1820s), contractual penal servitude went on to become the dominant mode of legal punishment in almost all Northern (and, eventually, all Southern) states down through the turn of the nineteenth century. Combining cellular technology with hard, productive labor, the formal deprivation of political and civil rights, and liberal doses of the lash and paddle, it resolved many of the disciplinary, fiscal, and political crises that had beset the early republican house of repentance. By 1835, this system of contractual penal servitude had all but eclipsed the rival "Pennsylvania system" of perpetual isolation to become the dominant mode of legal punishment across the several states. Both at home and in Europe, lawmakers and penal reformers hailed it as the most enlightened and economic penal system of its day. The apparent stability of the new mode of legal punishment, however, proved short-lived. At the same time that Alexis de Tocqueville and his fellow European investigators were touting its peculiar advantages, that system had been quietly sowing the seeds of its own set of controversies and crises. As we shall see, the source of contractual penal servitude's instability was the practice upon which that system of punishment was founded and the interests of which it had increasingly come to serve: that is, the sale of prisoners' labor power to private business interests. In the course of the nineteenth century, prison labor contracting would provoke, first, a series of small-scale, local protests among free workingmen and, eventually, a large-scale, popular campaign for its abolition. As that campaign gathered momentum in the late Gilded Age, state after state would ultimately be compelled to abolish or otherwise severely retrench the offending practice. Like a prisonhouse of cards, the larger edifice of contractual penal servitude would first list and then collapse in the wake of the destruction of the labor contracting practice that had been its fiscal, disciplinary, and ideological foundation.

Although, with the notable exception of historians of the American South,³ few scholars have commented upon the abolition of prison labor contracting, that event proved a watershed in American penal history. Abolition defused the mounting popular outrage at the remarkably profitable, and often gruesomely exploitative use of sweated prison labor in industry,

³ See, for example, David M. Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996); Alex Lichtenstein, *Twice the Work of Labor: The Political Economy of Convict Labor in the New South* (London: Verso, 1996); C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1951); and Edward Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth Century American South* (New York: Oxford University Press, 1984). See also, Blake McKelvey, "Penal Slavery and Southern Reconstruction," *Journal of Negro History* 20:2 (Apr. 1935), 153-79; Karin Shapiro, *A New South Rebellion: The Battle Against Convict Labor in the Tennessee Coalfields, 1871-1896* (Chapel Hill: University of North Carolina Press, 1998).

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and it carved a wide moat between the sphere of the market and that of legal punishment. (It also reined in and partially “civilized” the market, as we will see). But, at the same time, abolition opened up a remarkably intractable set of disciplinary, fiscal, and ideological problems within the penal arm of the state and spurred an outpouring of discourse around the social question that contemporaries referred to as “the prison labor problem.” Most critically, abolition activated and deeply conditioned the progressive prison reform movement and the penal state-building initiatives of the late-nineteenth and early-twentieth centuries.

Far from being an exceptional and isolated event, the Sing Sing protest of 1913 was a particularly acute instantiation, both of the crises into which the penal arms of most Northern states were propelled following the abolition (or, in some states, severe scaling back) of prison labor contracting, and of the power struggles that progressives’ efforts to solve the prison labor problem set in motion. When, in the late Gilded Age, Massachusetts, Ohio, California, New York, and other Northern legislatures moved to abolish or significantly scale back contractual penal labor, they, in effect, destroyed the linchpin of everyday prison discipline, the foundation of nineteenth-century penal ideology, and a critical source of funding for the penal arm of government. Despite the strenuous efforts of prison administrators in the first two decades of the twentieth century to erect a state-use system of penal labor upon the grave of the old contractual system, the vacuum of discipline and ideology, and the uncertain basis of prison funding, persisted well into the twentieth century. What unfolded, first within the penal arm of state government itself, and, eventually, in courtrooms, voting booths, union halls, the popular Northern press, and the U.S. Congress, was a complex and, at times, bitter series of struggles to determine the content of the new, postcontractual prison order. In New York’s case, the first wave of these struggles would climax at Sing Sing, in riot and scandal. Eventually, those conflicts would engender the formation of a new penal state – a process that would be greatly accelerated by new federal legislation and court rulings in the New Deal era.

The history I narrate in the following pages builds upon, and is indebted to, the expansive and richly varied field of crime and punishment history. But it also seeks to inject into that field greater awareness of certain key, neglected or undeveloped themes within American penal history; I hope, in addition, to offer up a fresh and illuminating way of conceptualizing legal punishment as an object of historical inquiry (chiefly by extending the scope of the inquiry beyond the institution of the prison proper to the legal, political, economic, and cultural dimensions of legal punishment), and to cast new light upon legal punishment’s place in the broader sweep of American history. The ten chapters that follow touch upon many themes, but the most important of these are: first, the centrality of productive labor, both as an activity and as an element of penal ideology, to the nineteenth-century American penal system; second, the practical and formal reinvention, in the nineteenth century, of legal punishment as a species of involuntary servitude; third, the workings of power within and around the penal systems

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of the nineteenth and early twentieth centuries; and, finally, the critical role that the abolition of contractual prison labor played in the making of the modern American penal state.

Although, as I illustrate in the pages to follow, the activity and ideology of forced productive labor, and the legal condition of penal servitude with which that labor was tightly entwined, hung, like a heavy iron chain, across a century-and-a-half of American legal punishment, most scholars of penal history have either glossed over it, treated it as a peculiar affliction of the New South (made symptomatic in chain gangs, convict leasing, and penal farms), or denied it played any significant role in prison life, administration, or politics north of the Mason-Dixon Line. We have several excellent accounts of the place of hard labor in early republican penal practice and ideology,⁴ and, at the other end of the nineteenth century, a number of deeply researched studies of the New South's penal labor camps and prisons.⁵ However, we still know relatively little about the expansive, industrial prison contracting systems that flourished in almost all the Northern states between 1820 and 1890, and that gave concrete substance to the ubiquitous legal sentence of confinement to hard labor. There are but two systematic histories of prison labor contracting in the North: Larry Goldsmith's nuanced history of life, labor, and resistance in the Massachusetts State Prison at Charlestown, and Glen A. Gildemeister's doctoral dissertation on competition between free workers and prison labor in industrializing America.⁶ These impressive

⁴ Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760–1835* (Chapel Hill: The University of North Carolina Press, 1996); Adam Jay Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America* (New Haven: Yale University Press, 1992); Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776–1865* (New York: Oxford University Press, 1989); Michael S. Hindus, *Prison and Plantation: Crime, Justice and Authority in Massachusetts and South Carolina, 1767–1878* (Chapel Hill: The University of North Carolina Press, 1980).

⁵ Supra, n. 3. See also, Mary Ellen Curtin, *Black Prisoners and Their World, Alabama, 1865–1900* (Charlottesville and London: University Press of Virginia, 2000); Matthew Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866–1928* (Columbia: University of South Carolina Press, 1996); Robert Perkinson, "The Birth of the Texas Prison Empire, 1865–1915" (Ph.D. diss., Yale University, 2001); and Donald R. Walker, *Penology for Profit: A History of the Texas Prison System, 1867–1912* (College Station, Texas: Texas A & M University Press, 1988).

⁶ Larry Goldsmith, "Penal Reform, Convict Labor, and Prison Culture in Massachusetts, 1800–1880" (Ph.D. diss., University of Pennsylvania, 1987); Glen A. Gildemeister, "Prison Labor and Convict Competition with Free Workers in Industrializing America, 1840–1890" (Ph.D. diss., Northern Illinois Press, 1977/New York: Garland, 1987). See also, Larry Goldsmith, "'To Profit by His Skill and Traffic in His Crime': Prison Labor in Early Massachusetts," *Labor History* 40 (Nov. 1999): 439. A few texts include a chapter on prison industries: See, for example, W. David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796–1848* (Ithaca, NY: Cornell University Press, 1965), 178–200, and Anne Butler, *Gendered Justice in the American West: Women Prisoners in Men's Penitentiaries* (Urbana: University of Illinois Press, 1997), 174–98. See also John A. Conley, "Prisons, Production, and Profit: Reconsidering the Importance of Prison Industries," *Journal of Social History* 14:2 (Winter 1980), 257–275. Interestingly, sociologists and criminologists have been more attuned than historians to the question of the social and political significance of convict labor and its

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works of scholarship suggest that the practice of selling the labor power of imprisoned men and women very probably played a critical role not only in the everyday life of American prisons, as a whole, but in the larger political field in which the prisons, as public institutions, were firmly anchored. As yet, however, these important insights have not been expanded upon and have had little appreciable impact on the master narrative of American penal history.

That master narrative was first penned, thirty-five years ago, by David J. Rothman, in his groundbreaking study of the origins of the ante-bellum prison; it has since been retold, largely without amendment, in the leading synthetic treatments of American crime and punishment history.⁷ In *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, Rothman provided what remains an unrivaled account of the élite reformers who guided the establishment of the first state prison systems proper (in the 1820s and 1830s) and of the social anxieties and moral ideals they brought to their work. Rothman's book tells us a great deal about the *weltanschauung* of Jacksonian elites, and the content of official prison rules and doctrines. However, framed chiefly as a study of norms and ideas, and drawing mainly on official reports and reform literature, his work discloses much less about the quotidian experience and rhythms of prison life, the push-and-tug of power relations among keepers, prisoners, and reformers, and the larger political force-field in which the state prisons, in the "Age of Democracy," were firmly grounded. As something that was practiced, more than written about by reformers, the hard labor of convicts is also rendered all but invisible in Rothman's account. Although noting that the idea and doctrine of labor were central to reformers' and officials' efforts to organize prison life, and conceding (in a typically pithy paragraph) that the contracting-out of prison labor "became increasingly popular" in the 1850s and 1860s, his book as a whole conveys the impression that prison labor was of negligible importance, both to prison life and to the legal and ideological structures of antebellum

discontents in the North: See for example, Christopher Adamson, "Toward a Marxist Penology: Captive Criminal Populations as Economic Threats and Resources," *Social Problems* 31:4 (Apr. 1984), 435–58; Henry Calvin Mohler, "Convict Labor Policies" (MA thes., University of Wisconsin, 1923), published in the *Journal of the American Institute of Criminal Law and Criminology* 15:4 (Feb. 1925), 530–97; and Rosalind P. Petchesky, "At Hard Labor: Penal Confinement and Production in Nineteenth-Century America," in *Crime and Capitalism: Readings in Marxist Criminology*, ed. David F. Greenberg (Palo Alto: Mayfield Pub. Co., 1981). Curiously, in their transnational history of legal punishment and its relation of "correspondence" with changing modes of production, Georg Rusche and Otto Kirchheimer make little mention of the great contract labor prisons of the American North. Rusche and Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939).

⁷ Rothman's book played a key role in establishing penal history as a legitimate field of inquiry within the American historical profession. David J. Rothman, *Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston and Toronto: Little, Brown and Co, 1971). For a leading synthetic treatment of American crime and punishment history, see Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic, 1993), espec. 77–82.

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punishment.⁸ A central objective of my work has been to trace the rise of contracting to “popularity;” another has been to assess the influence of prison labor contracting on what Alexis de Tocqueville and Gustave de Beaumont made famous at home and abroad as the so-called “American system”⁹ of legal punishment.

As part of the field’s general neglect of prison labor, the most influential of penal historians have also significantly underestimated the profitability of the contracting systems under which productive convict labor was generally organized between 1830 and 1890. Although David J. Rothman’s approach is fundamentally different from that of Michel Foucault,¹⁰ both claim that nineteenth-century prisons were generally unprofitable, and that the profit imperative was a negligible force within the life of the institution. Although it is certainly the case that elite prison reformers of the nineteenth century did not usually place much emphasis on making the prisons profitable, and that in both the American North and Western Europe, the *state* did not generally make significant profits from its prison industries, in America the private contractors who purchased convict labor power well below free-market rates and set up machinery in the prisons almost always profited handsomely from the traffic. Moreover, the profit imperative these businessmen quite logically took into the prison workshops with them was far more influential on prison life and administration than were either the well-heeled, well-intentioned reformers of the Boston Prison Discipline Society or the enlightened doctrines of convict rehabilitation and spiritual reform. (As we shall see in Chapters Two and Three, Northern prison labor was not quite as unprofitable or as irrelevant to state government as Foucault and Rothman infer, either; in the mid-1880s, for example, it was contributing almost two dollars for every three dollars the states spent on maintaining their prisons).¹¹ In exploring the rise of prison labor contracting, then, I also flesh out the impact of the profit imperative on various aspects of the nineteenth-century prison system, and the nature of the relation between the market and the penal arm of the state.

The second theme I foreground in the pages to follow is the reinvention of American legal punishment, after the Revolution and, particularly, after 1830, as a distinctive species of involuntary servitude. In almost every Northern state, by the middle of the nineteenth century, legal punishment had not only been “institutionalized” (in the form of the prison), but had

⁸ Rothman offers a paragraph on free labor’s protests against prison competition, but does not explore the upshot of that protest and its impact on the politics of legal punishment.

⁹ Gustave de Beaumont and Alexis de Tocqueville referred to the Philadelphia (or Pennsylvania) system of perpetual isolation and the Auburn (or New York) system of congregate labor and nightly isolation as two variants of a single “American system,” and recommended that France adopt the latter rather than the former (on the grounds that the Auburn plan was “much cheaper in its execution”). Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and Its Application in France* (Carbondale and Edwardsville: Southern Illinois University Press, 1964), 119, 134.

¹⁰ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon, 1977).

¹¹ See subsequent discussion, 90.

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assumed legal, symbolic, and practical status as a distinctive species of involuntary servitude. That system of penal servitude would go on to receive official recognition and implicit approval in the Thirteenth Amendment to the U.S. Constitution and all but four of the state constitutions. The justices of the U.S. Supreme Court would also repeatedly recognize it as constitutional.¹² (As late as 1914 the Court reiterated, with a discernible tone of exasperation: “There can be no doubt that the State has authority to impose involuntary servitude as a punishment for crime. This fact is recognized in the Thirteenth Amendment, and such punishment expressly excepted from its terms”).¹³

In tracing the fruition of this distinctive, American system of penal servitude, I engage and elaborate upon the insights of two legal historians, both of whom have grappled with the question of punishment’s reinvention, after the Revolution, as a system of bondage. In his original and conceptually dense study, *The Rise of the Penitentiary: Prisons and Punishment in Early America*, Adam Jay Hirsch argues both that the early republican penitentiary strongly resembled chattel slavery and that some early republican penal reformers believed the penitentiary imposed a “justifiable” form of slavery on convicted offenders.¹⁴ In a similar vein, James Q. Whitman writes that “the status of [American] prisoners came, by the time of the Thirteenth Amendment, to be explicitly assimilated to slaves” and that prisoners were “treated as slaves.”¹⁵ Although I take seriously these scholars’ basic insight that American penitentiaries and state prisons were institutions of bondage, and prisoners, the involuntary bondsmen of the state, my research suggests that the penal systems of the nineteenth century constituted a separate and distinct species of involuntary servitude, and not one that is usefully confounded with that of chattel slavery. Penal involuntary servitude drew, particularly in some Southern states after the Civil War, on the law and ideology of American chattel slavery, but it also drew, far more directly, on other variants of servitude (both voluntary and involuntary). Moreover, it generated its own legal form and its own particular fictions concerning the master–servant relationship. In the pages to follow, I track the reinvention of legal punishment as a form of involuntary servitude and tease out its

¹² Thirteenth Amendment, §1; Slaughter-House Cases, 83 U.S. 36, 69 (1873); *United States v. Reynolds* 235 U.S. 133, 149 (1914).

¹³ *United States v. Reynolds* 235 U.S. 133, 149 (1914).

¹⁴ Hirsch, *op cit.*, 71–92.

¹⁵ James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe* (New York: Oxford University Press, 2003), 173, 176. In his wide-ranging study of the impact of slavery on the evolution of penal practices from flogging in ancient Greece to the chain gangs, lease camps, and prison farms of the American South, sociologist J. Thorsten Sellin makes no mention of the Northern states’ forced labor prisons, while devoting three of twelve chapters to the American South. He thereby reinforces the orthodox (and, as I argue here, false) assumption that slavery and involuntary servitude left their imprint exclusively on Southern penal practice. J. Thorsten Sellin, *Slavery and the Penal System* (New York: Elsevier, 1976).

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relation to the practice of selling the labor power of convicts to private, typically industrial, manufacturing concerns.

Both involuntary servitude and contract prison labor are intimately related to the third theme of this book: the workings of power within and around the prison. The path by which legal punishment was reinvented as a system of involuntary servitude was neither smooth nor straight. In the early republican period, the very effort to cast free men and women into a condition of penal servitude or otherwise subject them to one or more of its badges precipitated diverse forms of protest, subterfuge, resistance, and evasion of authority, both among prisoners and their families and communities, and among the men who were supposed to be their “keepers.” Once the back of their defiance was broken (as it eventually was, by a variety of means, in the 1820s and 1830s), convict laborers nonetheless remained a mass of people who, under certain conditions, could – and did – strike tools or turn them into weapons to be wielded against masters. Although the contracting system was deeply entrenched in the prisons and highly profitable for the contractor, it was also prone to crisis and periods of instability. Paradoxically, the relations of dependency (however unequal) that developed among and between the contractors, the keepers, the prison authorities, and convict laborers, had the effect of empowering, in certain subtle but clearly discernible ways, the prisoners relative to the contractors. The same relations also enfeebled and involuted the state.

Outside the prison, meanwhile, the forced, sweated nature of productive prison labor provoked free workingmen to discourse, strike, petition, boycott, and vote in protest of the contract prison labor system, on grounds that were at once moral and economic. Although these protests had somewhat limited impact on the state penal systems before the Civil War, in the Gilded Age they attracted considerable support among the citizenry at large, and in every region of the country. They ultimately precipitated a far-reaching crisis of legitimacy for the penal arm of state government. The book fleshes out the ways in which organized labor’s popular movement against the private use of convict labor transformed the moral, political, and legal ground upon which legal punishment stood; as we shall see, the campaign to abolish the private sale of convicts’ labor power changed, in enduring ways, what was possible in the field of legal punishment, and what was not. State after state would resolve the crisis of legitimacy engulfing the penal arm of government by abolishing or severely scaling back the offending contract systems of prison labor and closing the open market to prisonmade goods.

It is at this juncture in the narrative, that the fourth, major theme of the book comes into view: that is, the making of the modern penal state. The abolition of contracting thrust forth old questions about how to organize, govern, and fund the penal arm of the state (now, in the absence of private capital and walled off from the open market). It also reinvigorated the country’s intermittent moral debates about the sources of crime, the just deserts of offenders, and the duties of the state toward its free citizens and imprisoned wards. At first, in the ten years either side of 1900, progressives attempted