

## The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941

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**Reviewer:** Vivien Miller

This is an ambitious and weighty study of prisons, prison labour and penology from the early Republican period through the Depression years which McLennan argues has been characterised by ‘a long continuum of episodic instability, conflict, and political crisis’ (p. 2). The defining or fundamental feature of US prison systems during the long 19th century was contractual penal servitude where the prisoners’ labour power was sold by state governments to private business interests. As a consequence, McLennan offers a different interpretation for the origins of ‘the prison’ to that of David J. Rothman, whose 1971 study *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (1) has dominated the historiography. Her study underlines also that the development of US prisons does not fit neatly with Foucault’s conception of a new disciplinary apparatus of power/knowledge as detailed in *Discipline and Punish: the Birth of the Prison*.(2)

McLennan observes that Rothman’s account of elite reformers guiding the establishment of asylums, orphanages, penitentiaries and reformatories to counter the effects of waning church membership, family disintegration and community disorder, increased incidence of insanity, crime and pauperism, and other sources of social and moral crises, has overlooked the centrality of forced labour to the establishment and extension of the Auburn ‘congregate’ system of punishment after 1820. Rothman’s interpretation has been subject to many valid criticisms over the years yet McLennan’s account does not necessarily offer a replacement (as suggested in some commentaries) but rather compliments and extends the earlier work.

McLennan offers a thorough and compelling critique of the relationship between the market, state politics, and prisons/prisoners, and an explanation as to how this relationship shaped power relations within the adult male prisons of New York state in particular. Divided loosely but not formally into three parts, the ten chapters trace the origins of rise of the US system of penal servitude from c.1776 to the 1890s, evaluate the impact of the abolition or scaling back of contract prison labour between 1895 and 1913, and appraise the progressive recasting of the prison labour problem after 1913 through the various crises of the 1920s and 1930s. The analysis rests on four main themes: the profitability of convict labour for private enterprise; the reinvention of punishment as a ‘distinctive species of involuntary servitude’ (p. 8) after 1830; the workings of power within and around the prison; and the making of the modern penal state from the 1890s.

The study focuses primarily on New York, particularly Auburn and Sing Sing prisons, but the author seeks

to relate developments in New York to the national context because 'New York remained on the vanguard of virtually every important development in the field of legal punishment in the industrial states between 1820 and 1940' (p. 12). The early republican penitentiary in Pennsylvania and New York was plagued by crises of discipline, finance and legitimacy which produced widespread public disillusionment. In an effort to counter these problems, from the 1820s, New York lawmakers, jurists, and keepers crafted a new penal order with distinctive characteristics: separation and concentration; hard productive labour; corporal punishments; and the abridgement of inmates' natural rights, freedoms, and common law liberties. Forced hard labour and the contract prison labour system underscored its fiscal and disciplinary foundations at Auburn. As more and more states adopted the Auburn system, the practice of selling the labour of convicts to private enterprise gradually became widely and deeply entrenched in penal ideology. New York's system of contractual penal servitude became the dominant mode of punishment in most Northern states by 1830, and many Southern states by 1860. At the same time, ideas about race, ethnicity, patriarchy and respectability (as well as class and economic status) clearly structured public and political discussions of prisons and prisoners in this period, and not just in the South.<sup>(3)</sup>

Inevitably, the establishment of private enterprise in these northern prisons (less so in the South) drew considerable protest from artisans, master craftsmen and skilled industrial workers, who rejected the devaluation of their labour and denounced the economic competition that threatened their livelihoods. The New York stonecutters and mechanics in particular offered robust opposition in the 1830s and 1840s that gained national support. Some legislative restrictions followed but a crisis was averted by the manufacturing needs of the Civil War effort and the willingness of manufacturers to utilise convict labourers to meet those demands.

It was generally accepted in the 1870s and 1880s that prisoners should be put to productive labour for large-scale, highly-organized, profit-seeking enterprises. This meant that contractors exerted enormous influence over the inmates' conditions of life, labour and discipline, and the drive for profit (and the instability of the market) was accompanied by a deleterious decline in these. States were required to maintain a steady stream of able-bodied prisoners but contractors had no incentive to offer paternalist treatment as each inmate was replaceable. McLennan observes that the push for profit was given freest reign in the redeemed states of the South where thousands of freedmen and women were convicted on non-existent or flimsy grounds and compelled to labour in coal, turpentine, lumber and railroad industries. It is worth noting however that many of the lessees of southern convicts in the Gilded Age were Yankee northerners or the infamous 'carpetbaggers' who came southward to profit from the bankruptcy (moral and financial) of the reconstructed and redeemed southern governments. Native-born Southerners were of course no less adept at exploiting African American and lower-class whites and in seeking functional replacements for slavery.

Prison labour was cheaper, steadier and more easily disciplined than free labour, and for many contractors these were all attractive in light of the unionisation of free workers and their increasingly vocal demands for higher wages and shorter hours. The key systems of contractual prison labour emerged after 1880: prison factories, piece-price, convict leasing, and public account. McLennan underlines the scale of this system: 'All told, by the mid-1880s, approximately 45,000 prisoners – or almost four in every five – laboured away on a daily basis for *private* interests, or a mix of public and private interests, under one or another of these prison labour systems. Two-thirds of these prisoners worked exclusively for private enterprise. More prisoners laboured under the prison factory variant than either the piece-price or lease variants or the contract system: On any one day in the mid-1880s, just over 15,000 convicts laboured in the prison factories, directly under the management of a contractor' (p. 105).

Prison factories saw relationships between inmates and civilian contractors and employees develop sometimes in opposition to or conflict with those with the guards and wardens. The realities of industrial labour rendered many of the older forms of discipline, particularly the rule of silent labour, increasingly obsolete, but also heralded particularly violent and brutal bodily punishments including 'stringing up' and 'ice-bathing' as well as the construction of purpose-built dark-cells and dungeons in the 1880s.

Internal and external opposition to the entrenchment of private prison enterprise gathered pace from the mid-1880s, expressed through for example, individual and collective prisoner defiance and silent sabotage, calls for legislative investigations of prisons, public outrage over evidence of systematic brutality in prison factories, mines and camps, and trade union and workingmen's campaigns to end unfair competition with convict labour. With its large numbers of prison labourers and history of labour activism, New York was the crucial battleground in a national conflict over penal servitude. (Penal reform also became enmeshed in the bitter wider political struggles, over machine politics, patronage, social justice and so on of the early 20th century.) In November 1883 New Yorkers voted two-to-one to abolish the state's 60-year-old system of contract penal labour and thus provoked a severe fiscal, disciplinary, and ideological crisis. For McLennan, this amounted to 'the single greatest watershed in the history of American legal punishment since the Jacksonian era and the states' wholesale adoption of prison labour contracting' that would ultimately destroy contract prison labour and give birth to the progressive reform movement.

The subsequent establishment of a network of state-owned and operated prison industries generated significant changes to the labour and disciplinary regimes at all New York's adult male prisons: Auburn, Sing Sing and Clinton. The production of goods for state agencies also required a unified, centralised, and bureaucratically administered prison system. While compulsory productive labour remained firmly entrenched in penal law, discourse, and ideology, and was a central preoccupation of the early progressive reformers, the period also saw various innovations, including introduction of new inmate classification systems, upgraded accommodation and cells, abolition of the silent rule, the use of privileges and incentives in a new disciplinary system, and the extension of literacy and vocational provision for inmates. Thus, the abolition crisis proved vital to the 'great project of progressive prison reform' and the emerging 'new penology.'

As progressive prison reform was aimed primarily at able-bodied adult men serving longer sentences, and accompanied by a rhetoric that emphasised the building of manly citizens, it generated massive administrative challenges in the classification and redistribution of inmates according to gender, age, severity of offence, and health. Similarly, adult male prisoners were divided into three hierarchical grades of labourer. It would have been useful at this point to better illustrate how ideas about race/ethnicity and class affected these classifications. For example, in the southern states the divisions into able-bodied and less-productive inmates often followed certain (mis)assumptions about the durability and temperaments of white/black, Northern/native-born Southerner, common African American labourer/ disgraced white professional inmates. McLennan certainly hints that similar assumptions were at play in New York (and indeed shows they were very evident during Osborne's wardenship at Sing Sing later on). Further, the concepts of 'manhood' and the goal of producing productive abiding citizens were constructed in distinct gendered ways. This is not to say that McLennan lacks awareness of this, rather that she must have more to say on these issues. Certainly, L. Mara Dodge's study of female offenders and inmates in Illinois in the 19th and 20th centuries underlines the importance of extralegal variables in social and penal constructions.<sup>(4)</sup>

McLennan looks in detail at the implementation of penal reform, the various power struggles between reformers and machine politicians, between keepers and inmates, between guards and wardens, and the prisoners' responses in Auburn and Sing Sing prisons. By the 1900s it was clear that state prison industries could not deliver either self-sustaining prisons or a full work day for the majority of adult male inmates, but prison system administrators and penologists had still to find lasting solutions to the financial, disciplinary and ideological problems that had emerged from the abolition of contract labour. The major unrest at Sing Sing in summer 1913 underlined the continued need for fundamental reforms in the physical conditions of the old stone Bastille-prison and to the disciplinary and labour regimes. By this time, inmates were deemed 'wards of the state'.

Thomas Mott Osborne's much publicized week of voluntary incarceration at Auburn in the fall of 1913 underlined the emergence of a new and more assertive prison reform movement between 1913 and 1917. The last three chapters explore its origins, development and impact. Osborne's week at Auburn was the first

step in the plan to foster support among the prisoners for the Mutual Welfare League (MWL), a self-government league and recreation program at Auburn. Osborne envisioned a new mode of penal discipline whereby the prisoners would take responsibility for policing the prison yard as well as the daily order in the workshops, mess hall, and marching lines. He viewed prisoner police powers as essential to prisoner self-discipline. This was prisoner self-government imposed from the top down but inmates were willing to embrace and utilise aspects of the new penology and disciplinary apparatus on their own terms. Clearly, the League was a crucial provider of organised sporting, musical, and other recreational activities (including movie screenings) from early 1914, all of which radically altered everyday life at the prison. The League was established also at Sing Sing even before Osborne became warden. Like their Auburn counterparts, inmates enjoyed for the first time organised athletic events, baseball games, screening of motion pictures, music and other entertainments. However, Sing Sing remained an overcrowded, dingy and depressing prison.

In her analyses of the League's impact at Sing Sing and Osborne's tenure as warden, McLennan directly addresses the relationship between the production of manly citizens and race/ethnicity. Sing Sing inmates whose English was deficient or non-existent were excluded from MWL membership and franchise. Further, the restructuring of labour and training and the establishment of job placement programmes for paroled or discharged inmates were underpinned by racial ideas about manly worker-citizens in an industrialised economy. Programmes designed to socialise prisoners as citizens were implicitly aimed at white native-born Americans and European immigrants. Black inmates did not enjoy the same access to prison education provision or to post-release employment. Racial segregation within the prisons was also formalised and more rigorously enforced. However, the reasons for this are not clear. Certainly, the new penologists' obsession with prison sex and, following the introduction of psychiatric and psychological testing, demands for the separation of sexual degenerates, psychopaths and other problem populations perhaps offers one reason. But, were there increasing numbers of non-white prisoners as a result of black migration out of the South? Was this a reaction to the Wilson administration's demands for racial segregation within the offices of the federal government? Obviously, disfranchisement and segregation were already firmly entrenched in the South.

Nevertheless, Sing Sing became a laboratory for new penal ideas and a demonstration of the new penology in action. McLennan notes that while the Sing Sing MWL is often referred to in prison historiography, she provides the first scholarly account of this particular experiment and its political context. In many ways, chapter nine provides the most compelling critique and persuasive arguments. McLennan underlines that the innovations were all without formal funding from the state but with financial support from the National Committee on Prisons and Prison Labor (NCPPL), philanthropic reform groups, and American corporations. This enabled Osborne to bypass Albany politicians and bureaucrats, and the leaders of organised labour.

While war mobilization (1917–8) revived temporarily the dream of full-time, waged, productive prison labour, it also generated the first federal efforts to shape state penal systems. Federal laws in the 1920s and 1930s effectively abolished the market for convict-made goods and pushed all states toward state-use even though it was clear that state-use could not deliver full employment. Recreation, education, athletics, music, the privilege system, and even the welfare leagues remained important features of prison life and discipline during the first third of the 20th century, in New York and beyond. Key to these developments were Sing Sing and the administration of Lewis E. Lawes: 'Within a few years of arriving at Sing Sing, Lawes had completed the transformation of the original new penological project into a new, managerialist penal order. Although elements of this penal managerialism could be found in other New York prisons (and in a number of other states, including Texas, Minnesota, Illinois, and California), nowhere was it as fully and systematically developed as at Sing Sing' (p. 448).

McLennan offers a compelling reworking of the history of US prisons during the long 19th and into the early 20th century and a detailed examination of New York. There is much to commend and to reflect upon. However, at 500 plus pages, it requires significant commitment from the reader. One would like to think that students (and colleagues) in History, Law, and Criminology would recognise the quality of the work here and be willing to make that commitment. Nevertheless, an abridged version for undergraduates might be a

project worth considering.

McLennan's study plugs crucial gaps in our knowledge of New York prisons and in the historical development of prison labour and leisure, and discipline and punishment. Yet, it also exposes worrying gaps in our historical knowledge and understanding of US prisons and prisoners, particularly in relation to Western state prison systems and penal ideology (There are of course several excellent studies of California, Colorado, Arizona, and New Mexico). Similarly, the growing body of southern prison history in recent years has reshaped our understanding of the connections between race, labour subordination and disciplinary punishment but clearly we know more about some southern states (e.g. Texas) than others. Prison historians should therefore view McLennan's study not as the last word on US prison history but as the throwing down of an ideological and epistemological gauntlet.

## Notes

1. David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New York, 1971).[Back to \(1\)](#)
2. Michel Foucault, *Discipline and Punish: the Birth of the Prison* (New York, 1977).[Back to \(2\)](#)
3. See Mark E. Kann, *Punishment, Prisons and Patriarchy: Liberty and Power in the Early American Republic* (New York, 2005).[Back to \(3\)](#)
4. See L. Mara Dodge, *'Whores and Thieves of the Worst Kind': A Study of Women, Crime, and Prisons, 1835–2000* (DeKalb, IL, 2002).[Back to \(4\)](#)

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