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Early US Prison History  
Beyond Rothman: Revisiting  
*The Discovery of the Asylum*

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**Abstract**

David J. Rothman's *The Discovery of the Asylum*, one of the first major works to critically interrogate the beginning of America's extensive reliance on institutionalization, effectively launched the contemporary field of prison history. Rothman traced the first modern prisons' (1820s–1850s) roots to the post-Revolution social turmoil and reformers' desire for perfectly ordered spaces. In the nearly 50 years since his pioneering work, several generations of historians, inspired by Rothman, have amassed a wealth of information about the early prisons, much of it correcting inaccuracies and blind spots in his account. This review examines the knowledge about the rise of the prison, focusing on this post-Rothman work. In particular, this review discusses this newer work organized into three categories: the claim that prisons were an invention of Jacksonian America, reformers' other motivations for creating and supporting prisons, and the frequently gendered and racialized experiences of prisoners. The review closes by reflecting on the importance of prison history in the contemporary context and suggesting areas for future research.

## INTRODUCTION

If someone interested in learning about prison history sought a good first book to get started, they would very likely begin with David J. Rothman's [1990 (1971)] *The Discovery of the Asylum*. This book describes the rise of the first modern prisons (1820s–1850s), as well as other institutions (mental institutions, poor houses) of the same period, relating their birth to contemporaries' anxiety about significant social change following the American Revolution.

Specifically, Rothman argued that reformers<sup>1</sup> turned to institutions—perfectly ordered spaces—to combat what they saw as evidence of social decay. Written before Ignatieff's (1978) work on English prisons or Foucault's (1977, translated from the 1975 original) examination of continental European prisons, *The Discovery of the Asylum* was one of the first books to critically assess the rise of the prison in the American context. Moreover, Rothman was one of the first US prison scholars in recent times to identify the birth of the prison not as a benevolent transformation of criminal justice from capital and corporal punishment toward more humane and civilized punishment but as a repressive transformation grounded in nostalgic longing.

Rothman's text is thus a staple in the prison history literature, and yet, nearly 50 years later, it is also outdated. With a large and growing field of scholars studying prison history, several generations of newer work have addressed blind spots and mistakes in Rothman's early account, including earlier important prisons in the United States and abroad, as well as the influence of British and European ideas and antecedents; the substantial role of prisoner labor; issues of gender, race, and sexuality; and other motivations driving the prison's development throughout this era. Moreover, although Rothman's account was a radical insight at the time, it is now commonplace; on this bedrock, scholars have created further insights, including even more critical examinations of reformers and greater attention to the prisoners themselves—not just the white men (and a few white women) who created the conditions of prisoners' captivity.

Consequently, when nonspecialists rely on Rothman as their entrée into American prison history (as they frequently do), they often proceed with serious misconceptions about the birth of the prison. Meanwhile, because Rothman's account remains so central to the literature, new works of prison history continue to take Rothman's account as the starting point, even when more recent work has offered alternatives. In either case, this reliance on Rothman has led scholars to variously over- or understate their own contributions.

This review uses Rothman's classic account as a lens for reviewing the state of knowledge surrounding early US prison history, emphasizing those elements of his account that have since been revised by subsequent scholars. This review proceeds in five sections. First, it begins by summarizing Rothman's account and the context in which he wrote to emphasize his work's continuing significance for the field. The review then uses limitations in Rothman's account to introduce work that has emerged in the nearly five decades since. The second section highlights historical inaccuracies relating to Rothman's temporospatial focus on American Jacksonian-Era prisons. The third section takes his focus on Jacksonian prisons and reformers for granted but critically reexamines the reformers' motivations and expectations for the prison. The fourth section illuminates blind

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<sup>1</sup>For the purposes of this review, I use the term reformers to describe private citizens who lobbied for penal change, as well as legislators, intellectuals, and prison administrators who contributed to the debate over and efforts to shape contemporary punishment. This terminology is both more concise and in many ways more accurate, as these groups frequently overlapped.

spots stemming from Rothman's myopic focus on penal reformers and prisons' formal regimes and turns our attention to prisoners and their gendered and racialized experiences. The review closes by discussing possible futures for prison history scholarship.

## THE IMPORTANCE OF ROTHMAN'S ACCOUNT

Before Rothman, works of American prison history primarily offered Whiggish accounts celebrating early penal reforms and reformers' progressiveness and humanity. These reformers, the standard narrative explained, had rescued punishment from the cruel grasp of monarchy (and its reliance on capital and corporal punishments) and created the more humane punishment of incarceration. These works were encyclopedic in their detail and staunch in their praise, refusing to condemn any acts of cruelty that came to light or to consider any darker motives for the prison.<sup>2</sup> By contrast, Rothman asked why institutionalization became the solution, rather than taking for granted the prison's presence as part of humanity's natural progression. He argued that the prison was social elites' response to the collapse of traditional social controls—the tight-knit community, churches, families, and the general watchfulness of small towns—following rapid social changes such as urbanization and industrialization. To combat what they saw as the loss of social order in their growing towns and cities, middle- and upper-class reformers sought to construct perfectly ordered environments within the walls of asylums, prisons, and hospitals. Rather than the logical response to Enlightenment ideals, prisons were one response to significant social change—a less-than-benevolent attempt to restore order. Notably, Rothman's account moved away from notions that incarceration was simply a better approach to punishment and toward the idea that profound social change shaped reformers' ideas about the need for new punishments.

Although the prison was not Rothman's sole or primary focus, his account left a lasting legacy for prison history. In part because Rothman's work predated most of the revisionist histories and critical sociology by several years, it was revolutionary for the time. Most scholars writing about prisons since Rothman have adopted a similarly critical lens, examining how the social, political, economic, and cultural context shapes punishment—often in ways that have little to do with crime control. With the advantage of nearly five decades of subsequent research, however, problems in Rothman's account, especially relating to his selective focus on Jacksonian-Era American reformers, are now visible, as the rest of this review explains.

But why, given this other research, has *The Discovery of the Asylum* continued to dominate? It was the first of the major revisionist works that critically analyzed the birth of the prison in the US context. Its thesis is tremendously compelling and borne out by the data he provided. But there is another factor: It is a national overview. Much of the prior and subsequent work has focused on individual states, especially Pennsylvania, New York, and Massachusetts (e.g., Hirsch 1992, Lewis 1965, Meranze 1996; for an important exception, see Kann 2005; for a work that splits the difference, offering an in-depth analysis of one state with a national overview, see McLennan 2008).<sup>3</sup> Other national overviews (e.g., Blomberg & Lucken 2000, Friedman 1993, McKelvey 1977, Staples 1990) examine the early prisons as only one or two chapters of a longer arc of prison history extending into the present, leaving out much detail and analysis for the sake of comprehensiveness. For a good first read, offering an incisive overview of the early prisons,

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<sup>2</sup>An important exception to this trend is Lewis's (1965) study of New York's early prisons, which anticipated some of Rothman's argument, but which has been far less influential. Another exception is Platt's (1969) study of the rise of juvenile justice, focusing mainly on the Progressive Era.

<sup>3</sup>State-based case studies are also available for Maryland (Shugg 2000), Virginia (Keve 1986), Louisiana (Carleton 1971), Texas (Perkinson 2008), and California (Bookspan 1991); however, most of these studies devote only one or a few chapters to the early prisons in a larger treatment of the state's prison history.

Rothman's work remains the go-to recommendation. This article aspires to supplement, if not replace, that recommendation (for other reviews, see Gibson 2011, Meranze 2016).

## DISCOVERING THE PRISON? PRE-JACKSONIAN ERA DEVELOPMENTS

Rothman focused on the Jacksonian Era (1820s and 1830s) specifically, and the antebellum period more generally (1810s–1850s), because a wide variety of institutions, including hospitals, mental asylums, and almshouses, emerged at this time. However, as subsequent scholars have demonstrated, the prison emerged earlier in the form of Early Republican proto-prisons (1785–1822) and English and Dutch workhouses (sixteenth through eighteenth centuries). Indeed, several scholars have questioned whether the prison was truly an American invention, given the European precedents and their influence on US developments. Moreover, by focusing on the Jacksonian Era, Rothman elevates the influence of the American Revolution as an engine of social change, but he downplays the Revolution's other, more disruptive or ideological consequences. This section revisits questions about the birth of the prison in America and beyond: What/when were the first prisons in America and in the Western World? In what sense was the prison an American invention? What role did the American Revolution play in the prison's emergence?

### An American Invention?

The question of which country, in which era, created the first prisons is one that has sparked much debate among prison historians. Having described the discovery of the prison in Jacksonian America, Rothman is usually the foil against which most of these accounts are pitched (Foucault is the other most common foil). Although incarceration or confinement of various kinds has been used throughout human history (Peters 1998), scholars have pointed out that Early Modern Europe (especially England and the Netherlands) and Colonial America experimented with long-term confinement in something like a prison (e.g., Langbein 1976).<sup>4</sup> These facilities (mostly jails and workhouses) usually contained a diverse population (not just people convicted of serious crimes), and they tended to be adjuncts to the main forms of punishment (rather than viewed explicitly as punishment). Depending on how one defines a prison, these early experiments with confinement are contenders for the title of the first prison.

Spierenburg (1991) has described the rise of the Dutch workhouses beginning in the sixteenth century, which he has argued were the first prisons on the Continent. These workhouses developed in different varieties—the rasphouse (*rasphuis* or *tuchthuis*), in which prisoners rasped wood, or the spinhouse (*spinbuis*), in which prisoners spun yarn at spinning wheels—with somewhat different populations. Although Spierenburg refers to these facilities as prisons from their origin, it is important to note that, at their origins, workhouses did not receive their inmates for punishment, nor did they contain only criminals. Instead, workhouses contained a mixed population of beggars, vagrants, others convicted of low-level crimes, and even the wayward sons of wealthy families. In addition, these workhouses were viewed as charitable institutions and ran on a family model, in contrast to other scholars' descriptions of the Dutch workhouses as proto-factories oriented around labor and intended to profit [e.g., Rusche & Kirchheimer 1968 (1939)].

These workhouses did, however, come to resemble prisons over time, and Spierenburg traces that history. The workhouse population increasingly narrowed to criminals only: In contrast to the first workhouse (an Amsterdam rasphouse opened in 1596), a subsequent Amsterdam rasphouse

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<sup>4</sup>Some accounts go as far back as Medieval Italy (e.g., Geltner 2014).

opened in 1664 for low-level offenders, and a Hamburg spinhouse opened in 1669 was designed exclusively for criminals. As their functions narrowed, both their population and the number of workhouses grew—and spread. These models also spread to Germany as the *zuchtbaus* in the 1600s and then became the basis for revising Ghent's famous *Maison de Force* in the 1770s.

England also developed a variety of workhouses even earlier than the Dutch. Although these facilities have not been chronicled in the same depth, their history has been reviewed by more scholars [e.g., Ignatieff 1978, Melossi & Pavarini 1981, Rusche & Kirchheimer 1968 (1939)]. England's first workhouse, a bridewell or house of correction, opened in London in 1555 to host a similarly diverse population of socially marginal people as in the Dutch workhouse—beggars, vagrants, and other petty offenders. In the intervening centuries, these facilities underwent a series of transitions and name changes but maintained their commitment to hard labor and a focus on minor offenders and other socially marginal groups (e.g., the poor, the feeble). They were also fairly rare, restricted to cities or large population centers. Most serious offenders, in the city or country, continued to receive corporal or capital punishments or other kinds of forced labor, such as convict transportation to the New World. English workhouses, by contrast, were not generally places of punishment, much like their Dutch counterparts. In the 1770s, however, the English workhouses became popular points of inquiry for growing efforts to revise jails (gaols) and county “prisons”; even so, the workhouses themselves remained distinct from the prisons that would soon emerge.

As Rothman himself has noted, jails in Colonial America were quite different from the later prisons. Modeled on county jails (or “county prisons”) in England, American jails were administrative apparatuses designed to contain people for a variety of reasons, but not for punishment: Debtors were held to ensure they paid their debts; witnesses and the accused were held to ensure they appeared for trial; convicted criminals were held until their punishment (execution or the administration of corporal punishment) or, if they had already been physically punished, until they had paid off their court fees or punitive fines.

However, several colonies attempted to authorize incarceration as punishment. Most such efforts remained at the level of idea and discussion, failing to yield substantive results (see, e.g., Hirsch 1982, 1992). The most significant and influential attempt, however, began in 1682 in Pennsylvania, when William Penn authorized incarceration at hard labor and called for each county to build prisons. In practice, this law had little effect. Only Philadelphia complied, and its facility continuously posed structural challenges to efforts to confine the convicted until it was formally abolished in 1718. However, Penn's law would continue to be an inspiration for future generations [e.g., Barnes 1968 (1927), Dumm 1987, Rubin 2018a]. Ultimately, it would not be until the period during and after the American Revolution that something approximating a prison would be adopted and fully implemented in North America.

Whether one counts these predecessors as examples of the first prisons depends to a large extent on one's definition of the prison. I have argued that prisons should be understood as state- (or country-)run facilities designed for the long-term confinement of those convicted of serious crimes for punishment (Rubin 2018a,b). Under this definition, I have argued, the United States was home to the first prisons (indeed, many people around the Atlantic world at the turn of the eighteenth century said as much). However, I would disagree with Rothman that it was the Jacksonians who created the first prisons (see below). That said, a broader definition of prison would likely identify the Dutch workhouse, particularly the spinhouse, as the first prison. We should also take seriously the lengthy history of efforts to use incarceration for various purposes and how these models eventually influenced the design of prisons. Indeed, various European workhouses and prisonlike facilities were described in pamphlets that were circulated widely, such that even US reformers who had not visited them were inspired by them and could draw upon them

for further innovation. In any case, simply locating the origin of the prison in Jacksonian America overstates the revolutionary innovativeness of that time and place.<sup>5</sup>

### THE DISCOVERY OF THE PRISON—OR OF MODERN PRISONS?

In locating the prison's discovery in the Jacksonian Era, Rothman goes to great lengths to contrast the primitive, informal, underdeveloped nature of colonial jails (and their offshoots, the workhouse and the house of correction) to the well-planned, carefully organized, modern prisons of the 1820s–1850s. In doing so, he also downplays the significance of proto-prisons—those facilities, authorized following the American Revolution, that set the stage for the modern prisons of the Jacksonian Era.<sup>6</sup>

After the dawn of the American Revolution, several states authorized incarceration as punishment or revised their constitutions to call for penal reforms to reduce or end their reliance on corporal and capital punishment. Connecticut went so far as to authorize a gaol and workhouse to receive select convicted criminals from around the state for long-term confinement as punishment; however, the gaol was converted soon after it opened in 1773 to contain prisoners of war. At the end of the Revolution, beginning in 1785, several states began authorizing incarceration as a punishment, typically in local jails, bridewells, or houses of correction—using either existing facilities or those newly authorized by the same statute (Rubin 2018a). Massachusetts not only authorized local houses of correction around the state but also authorized a state prison on Castle Island (in the Boston Harbor) to hold select criminals from around the state. Although it would not last long, Castle Island became the first state prison in the United States (Hirsch 1992, Rubin 2018a). In 1790, Connecticut revised its older statute and also authorized a new state prison, Newgate, on an old copper mine. Although these facilities constitute the first two state prisons, neither was particularly well-known, respected, or influential (Rubin 2018a).

The most important facility of this era—arguably not only in the United States but around the Atlantic world—was Walnut Street Prison, which has been carefully chronicled by several scholars, most especially Meranze (1996). Built in 1773 as a colonial jail, Walnut Street was the subject of much criticism after the American Revolution for its filth, the jailer's corruption, rampant disease, and—penal reformers' new pet peeve—the mutual contamination of its inmates. Like other colonial jails, Walnut Street initially held a mixed population of vagrants, debtors, petty criminals, and people awaiting their trial or punishment, among others. Reformers believed the mixture of criminals and noncriminals, across sexes and ages, was harmful to morals and bred further criminality. Their concerns were bolstered by the growing reliance on incarceration as a punishment and the swelling population within the jail—particularly after a failed attempt to use public labor as an alternative to corporal and capital punishment.

Intent on improving the conditions of the jail and using incarceration as the primary punishment for people convicted of serious crimes, reformers repeatedly remodeled Walnut Street between 1786 and 1794, when it officially became a state prison—the third in the country (not the first, as is often said). The new regime included labor, which reformers declared was profitable;

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<sup>5</sup>Note that Rothman responded to this criticism in the introduction to the revised edition; however, although he recognized that other countries experimented with penal incarceration [Rothman 1990 (1971), p. xliii], in this response and elsewhere (Rothman 1998), he maintained that Jacksonian Americans “discovered” the prison.

<sup>6</sup>Although some scholars use the term penitentiary house to describe prisons of this era, I have avoided using this term, as there was great regional variation in its use. Instead, I adopted the term proto-prison to signify that they were the first, but also somewhat distinct from the subsequent generations. These prisons did have much in common with the colonial jails, but they were also a new development in their own right.

separation of inmates by sex and criminal status; efforts at preventing disease; and a jailer supervised by reformers and paid by the state rather than by the fees, bribes, and room and board paid by prisoners [see also, e.g., Barnes 1968 (1927), Dumm 1987, Manion 2015]. Widely heralded as a revolutionary development—one that promised to maintain itself through prisoner labor, reduce disease, reform prisoners, deter would-be criminals, and ultimately reduce crime—Walnut Street became a model for prisons around the country (Rubin 2018a) and the face of what some reformers abroad called the American system (Rubin 2020). Importantly, proto-prisons modeled on Walnut Street were even adopted in states that did not reduce or fully abandon their reliance on capital punishment (Rubin 2016).

These proto-prisons—Massachusetts’ Castle Island, Connecticut’s Newgate, Pennsylvania’s Walnut Street, and the more than a dozen other state prisons authorized between 1796 and 1822—figure little in Rothman’s account.<sup>7</sup> For Rothman, the signal development of this earlier post-Revolution era was legal reform—the declining reliance on capital and corporal punishments solidified in the constitutions and new penal codes. Rothman [1990 (1971), pp. 61–62] described proto-prisons as “necessary adjuncts” to these postrevolutionary legal reforms. Reformers were motivated not by “faith in the penitentiary” but by “a repulsion from the gallows” [Rothman 1990 (1971), p. 62]. Rather than the center of “attention,” proto-prisons were afterthoughts, according to Rothman: “To [first-generation] reformers, the advantages of the institutions were external, and they hardly imagined that life inside the prison might rehabilitate the criminal.... The fact of imprisonment, not its internal routine, was of chief importance.” Not only were the proto-prisons’ designs minimal, but, he argued, they contained “minor or confused departures from colonial arrangements” [Rothman 1990 (1971), p. 89]. The subsequent research has illustrated how much faith reformers had in the new proto-prisons, and how much effort they put into their design. As I discuss more below, these scholars have also demonstrated the multiplicity of motivations behind proto-prisons’ innovation and diffusion—proto-prisons were much more than an adjunct to legal reform.

Perhaps because of Rothman’s influence, most general treatments and state-level case studies have given short shrift to proto-prisons, which they describe as minor developments on the path to modern prisons. Clearly, they have not been ignored entirely: Other scholars have provided rich, local-level social histories of punishment in this period, focusing in particular on the proto-prison’s rise and early years, and focusing especially on Pennsylvania (Dumm 1987, Manion 2015, Meranze 1996), New York (Graber 2014, Lewis 1965, McLennan 2008), and Massachusetts (Hindus 1980, Hirsch 1992). Too often, however, scholars outside the area begin their discussions of prisons, following Rothman, in the 1820s and 1830s. The proto-prisons should get much more attention than they do.

More than their role as a predecessor, the proto-prisons are particularly important for understanding the development of modern prisons. When the proto-prisons began to fail visibly and dramatically in the 1800s, but especially the 1810s, their successes and failures formed the contours of reformers’ ideas for how to design the modern prisons that opened in the 1820s. Two elements of this trajectory merit emphasizing.

First, the proto-prisons themselves were quite different in practice than the initial ideas that inspired them. Philadelphia-based Founding Father Benjamin Rush had described a “penitentiary house” that kept its prisoners in solitude; Walnut Street was authorized to use solitary

<sup>7</sup> Given Rothman’s attention to the American Revolution as a source of significant social change, it is odd that he so downplays the proto-prisons. It is difficult to argue that Jacksonian America witnessed more social change than the period immediately after the Revolution that produced these prisons. In this sense, exploring the proto-prisons might have bolstered his account.

confinement, but it had only 16 solitary cells—not enough to keep its more “hardened” offenders in long-term solitary (Meranze 1996). Moreover, demand for the proto-prisons quickly outstripped space, leading to overcrowding and necessitating violations of the rules for separation by category, careful supervision, and hard labor for all (see, e.g., Lewis 1965, Meranze 1996, Shugg 2000). When the proto-prisons failed, reformers argued that it was not the failure of the prisons themselves; rather, the original plan had never been implemented, while resources frustrated efforts to stick to the plan.

Second, the proto-prison’s failure was important for both the timing and shape of the modern prisons that followed. Disorder was common in the proto-prisons, but sometimes it was spectacular: Prisoners set fires to their workshops, escaped from the prison, and rioted. There were significant riots in both New York’s and Philadelphia’s proto-prisons (McLennan 2008, Meranze 1996). When state officials discussed replacing their proto-prisons, they sought bigger, stronger, more orderly prisons. Notably, Rothman has interpreted the emphasis on order as a response to the chaos of the rapidly changing American society. However, we can trace reformers’ concerns with order and security in these discussions directly to the failure of the proto-prisons (Rubin 2020). Moreover, the proto-prisons’ failure was directly tied to the authorization of the new modern prisons. Almost every state that had built a proto-prison by 1820 also adopted a modern prison by 1835; those states that adopted a modern prison after 1835 had no proto-prison to replace and thus had no direct need for a modern prison—many of these late adopters were still relying on capital and corporal punishments and had small populations and thus little need for a modern prison (Rubin 2015a).

### **Competing Influences: The American Revolution and the British**

For Rothman, the prison was not only an American invention but a homegrown one at that. His conclusion results to some extent from his focus on the Jacksonian Era. It is much easier to see the influence of European precedents and ideas in the earlier era. His conclusion also results to some extent from his focus on social disorder as a motivator for asylum development generally, to the exclusion of the other motivations that inspired jail reform and other penal reforms in this era. As a result, Rothman downplays the important influence of European, and especially British, ideas in the development of American prisons. He writes that Americans were aware of British developments, “[b]ut borrowing was not the heart of the story; they had to work out for themselves the administration and organization of the penitentiary, and they did so in novel ways” [Rothman 1990 (1971), p. 334, footnote 20]. Although Rothman is correct that Americans worked out the internal administration of the prisons, particularly the Jacksonian prisons, this claim is misleading in at least two ways: First, American penal reformers did not work out the details of prison administration either—prison administrators did, given substantial ambiguity in the laws and reformers’ misconceptions about the practical realities of maintaining humans in cages (e.g., McLennan 2008, Meranze 1996, Rubin 2020). Second, many of the proto-prison developments that Rothman skips over were borrowed.

As other scholars have demonstrated, British ideas in particular were profoundly influential among US reformers (see especially Hirsch 1992; see also Lewis 1965). As mentioned above, England did not yet have clear models for prisons in the 1770s, but British reformers were discussing plans for prisons and lobbying the government for such facilities throughout the eighteenth century. In the 1770s, Jonas Hanway called for using solitary confinement—an idea that would be tremendously popular and elaborated upon in the United States. Shortly thereafter, John Howard published a treatise detailing the results of his tour of British jails. Howard both described jail conditions in gruesome detail and called for several specific reforms to avoid the



corruption, disease, mistreatment, and neglect that he described. His treatise was particularly influential in the 1779 passage of the Penitentiary Act (that Howard wrote with William Blackstone), which called for incarceration instead of transportation or a death sentence. Although initially the Act was less influential than hoped, counties around the country reformed their jails based on the Act's recommendations (Ignatieff 1978).<sup>8</sup>

The writings and developments occurring in England were a source of inspiration and ideas to US reformers. As Hirsch (1992) has argued, American discussions about including labor in prison regimes were very much shaped by British discussions about and experiments with prisons and workhouses. Likewise, the inclusion of solitary confinement at Walnut Street illustrates Hanway's influence. But the single biggest British influence was John Howard himself. Howard was a favorite among US reformers, many of whom voraciously read his pamphlets and some of whom corresponded with him (e.g., Hirsch 1992, Meranze 1996, Rubin 2018a). The Philadelphia-based reformers incorporated his ideas almost whole cloth into their own schemes as they reformed Walnut Street Jail: The ideas about separating sexes, making a more healthful atmosphere, separating people by their criminality, and using hard labor all came from Howard (e.g., Meranze 1996).

Curiously, Rothman omits mention of John Howard, the most influential British reformer to Americans. Instead, Rothman uses philosopher-reformer Jeremy Bentham as a test case for British influence. Although he references Bentham only briefly in the original edition, Rothman [1990 (1971), p. xlv] explains in the introduction to the 1990 edition, "Few Americans (and not very many Englishmen) read Bentham, and even fewer took him seriously." Rothman is correct that Bentham had little influence, but given his minimal influence in England as well (e.g., Ignatieff 1978, p. 116), Bentham is not a good test case for British influence. It is also worth noting that Bentham's most well-known work was published in 1791—more than a decade after John Howard's influential *State of the Prisons* and Jonas Hanway's design for a new prison (e.g., Ignatieff 1978, p. 54).

Rothman's contention that the British influence was minimal may have been confused by an interesting contradiction among American reformers. Americans used the ideology of the Revolution to bolster support for their revolutionary penal reforms. As Meranze (1996) has illustrated, Republican ideology was central to reformers' motivations and shaped their ideas (see also Masur 1989). American reformers frequently referred to Penn's failed attempt to impose incarceration in lieu of executions. Rather than the counties' apathy toward building prisons and the architectural difficulties Philadelphia faced, reformers emphasized Parliament's role in overturning Penn's law in 1718. Famously, Pennsylvania Attorney General Thomas Bradford referred to "the severity of our criminal law" as "an exotic plant, and not the native growth of Pennsylvania" (cited in Rubin 2018a, p. 206). Reformers referred to public corporal and capital punishments as "monarchical." In this context, one could easily believe that Americans would shun British ideas. Thus, Rothman (1998, p. 108) was only partially right when he later clarified, "The English experience could have provided guidance in resolving these issues, but both because of their own insularity and because of their dislike of things foreign, officials were not well informed about developments there....In the end, the Americans' intellectual debt to England was not great." As noted, Americans were curiously quite well informed about British penal reform efforts—and they would continue to be, corresponding (and sometimes even exchanging barbs) with British reformers, some of whom grew critical of American developments in the 1810s and 1820s (Rubin 2020).

Indeed, Rothman's focus on the influence of the American Revolution as a catalyst of social change—albeit one that Rothman argues bore penal fruit 50 years later—has led Hirsch (1992) to argue that the roots of prison development started even earlier and were hampered by the American Revolution. Hirsch points out that early British ideas about the workhouse and calls for

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<sup>8</sup>England would not have a true state prison, a "national penitentiary," until 1816.

incarceration as a formal punishment had already generated discussion in the colonies before the outbreak of war. This discussion had intensified in the 1760s but stopped with the outbreak of Revolution. For Hirsch, prisons might have developed earlier but for the Revolution. Whether or not the Revolution delayed the rise of the prison, certainly the revolutionary rhetoric and the opportunity for American control over the law provided an optimal platform for their development—in a way Rothman did not appreciate (e.g., Dumm 1987; Masur 1989; Meranze 1996; Rubin 2016, 2018a).

## CRITICALLY EXAMINING REFORMERS' MOTIVATIONS

Although Rothman's account was a major improvement over extant prison histories at the time, it was surprisingly uncritical relative to other punishment scholarship that followed shortly after (with the renaissance of Marxist scholarship). Since his writing, scholars have explored the role of class, race, nativist, gender, and sexual hierarchies in shaping the prison regime. Perhaps Rothman's biggest omission was the central role prison labor played in the Jacksonian prisons' inauguration, spread, and persistence. These newer accounts suggest that reformers' ideas of social order were related more generally to solidifying particular social hierarchies and were heavily influenced by concerns about cost and profit. Finally, additional work has questioned the generalizability of Rothman's claims that well explain early penal change in northern seaboard cities but cannot account for changes in some Deep Southern and frontier states. This section revisits questions about the reformers' motivations for the prisons built in America between 1785 and 1860: To what extent did social hierarchies influence the prison's emergence and contours? What role did labor play in the prison's emergence and subsequent functioning? How did reformers' motivations vary across time and place?

### Hierarchies and Ideologies

Since Rothman's account, several scholars have revealed alternative motivations for the rise of the prison. In some cases, scholars have continued to focus on the social context, linking various social (political, economic, cultural) changes to why elites were so enthusiastic for the prison and why the prison took the shape it did. Meranze (1996) offers an excellent holistic account of how several changes—for instance, the rise of a democratic republic with its need for virtuous citizens, a market-based economy, and the middle class's changing preference for a private sphere—encouraged and shaped the rise of the prison (particularly after the failure of other punishments). Extending elements of Foucault's analysis to the American context, Meranze describes the prisons as a disciplinary training ground that fit well with emerging ideologies.<sup>9</sup> Kann (2005) goes further, arguing that prisons became tools to help establish (or reinforce) white male patriarchy, solidifying (native) white male political power over marginalized Americans: women, African Americans, immigrants, and the poor. Both of these studies focus particular attention on the contradiction of imposing a punishment that removes liberty at the very moment the United States celebrated liberty above all else. More recent works (e.g., Manion 2015, Smith 2009) continue to extend these themes. Finally, Graber (2014) has explored evangelical Protestants' efforts to institutionalize Christianity in the new prisons to convert prisoners. In each case, scholars have gone beyond Rothman's description of middle-class reformers' concerns with social disorder and articulated even more specific, often more sinister motivations.

<sup>9</sup>For a related, if more narrowly focused, work focusing on the role of market logics shaping ideas about punishment leading to the development of the prison, see Harcourt (2012).

## The Sway of Labor

Given Rothman's focus on the influence of elites' fears of social disorder, and their focus on perfectly ordered institutions, his account largely ignores the substantial role that labor played in the early prisons. In the years right before and soon after Rothman's work, Marxist scholars [e.g., Ignatieff 1978, Melossi & Pavarini 1981, Rusche & Kirchheimer 1968 (1939), Sellin 1976] published works tracing the affinity between labor markers, labor technologies, or class conflict and penal technologies around the Western world. Although each of these studies included a discussion of US prison history, demonstrating the role of economic considerations in that setting, other scholars followed Rothman's lead and generally ignored the importance of labor. As McLennan (2008) has demonstrated, this was a monumental oversight: Prisoner labor was, she argues, the dominant organizing force of American prisons from their origin into the twentieth century. Indeed, as others (e.g., Melossi & Pavarini 1981) have noted, the early prisons were, in many ways, modeled on factories. In the introduction to the revised edition of his book, however, Rothman [1990 (1971), p. xxxvii] rejects the importance of this parallel, explaining, "In the United States, ...the vision that animated the asylum looked back, nostalgically, to the eighteenth-century community, not to the new factories of the nineteenth century." However nostalgic reformers were, though, most modern prisons (those following New York's Auburn system<sup>10</sup>) were run very much like factories.

McLennan demonstrates that both the early proto-prisons and the subsequent modern prisons were organized around prisoner labor. Labor was an important technology in the Foucaultian sense: It could train recalcitrant prisoners to be productive members of society—that is, workers (see also Meranze 1996). Even more importantly, however, the promise that prisoners could repay the costs of their incarceration was one of the more convincing arguments in favor of undertaking these mammoth public works projects—prisons at the time, as today, were tremendously expensive to build and maintain. Moreover, the possibility that prisons may even be profitable—as advocates of the Auburn system suggested—was a particular lure to states with their minimal tax revenues. In practice, states did not generally profit. The state leased the prison facility and/or the prisoners therein to entrepreneurs; it was they who profited [Ayers 1984, p. 67; Barnes 1968 (1927), p. 177; McLennan 2008, pp. 8, 63–64]. The states' paltry earnings did not, however, discourage their insistence on prisoner labor. As McLennan (2008, p. 8) has pointed out, Rothman's recognition that prisons were unprofitable encouraged him to think labor was not important.

## Temporal and Regional Variation

One of the limitations of most accounts of this era in prison history is its disproportionate focus on the places of penal innovation—primarily Philadelphia and New York State, or more generally the North (Rubin 2015a).<sup>11</sup> As a consequence, however, many of our accounts about the early prison relate disproportionately to the North's unique setting: urbanized, industrializing states with large (especially seaport) cities with high rates of immigration and comparatively small black populations (relative to the South) and with a declining (eventually severed) reliance on slavery.

<sup>10</sup>America's modern prisons followed one of two models: the Auburn system of factory-style work during the day and solitary confinement at night or the Pennsylvania system of long-term solitary confinement interrupted by in-cell labor, education, and visitation from prison staff and local reformers. Outside of its namesake state, the Pennsylvania system was adopted only in Rhode Island (briefly) and New Jersey, both of which eventually copied the Auburn system (Rubin 2015a, 2020).

<sup>11</sup>This focus on innovative jurisdictions or bellwethers is not unique to studies of the early prisons—in the period of the correctional institutions and now the warehouse prisons, for example, California has received more than its fair share of interest.

Whereas many of these works focusing on the North, including Rothman's account, used examples from the rest of the country (that is, the South and the frontier states to the west, around or just past the Appalachians), recent work has examined to what extent these accounts explain the prison's development in the rest of the country.

Specifically, I have argued that the modern prison was adopted for different reasons in different times and places. Early adopters of the prison in both the North and the South, the coast and the frontier, adopted modern prisons to replace their failing proto-prisons. Later adopters, however, were motivated to conform to the emerging standard of what was then considered progressive, enlightened, civilized punishment: Southern states, especially newer states in the Deep South, adopted the prison to overcome their reputation as barbaric backwater states that still relied on slavery, whereas frontier states adopted the prison, one of several symbols that increasingly denoted statehood, to strengthen their status as states. Thus, earlier explanations about the role of social hierarchies, ideology, and labor can be revised as explaining the rise of the prison in the urbanized, coastal North, but legitimacy concerns help explain the prison's diffusion to states with vastly different cultures, demographics, economies, and politics (Rubin 2015a).

## **ALTERNATIVE FOCI: FROM REFORMERS TO PRISONERS**

Rothman's focus primarily on penal reformers and their plans for, rather than the realities of, the prison's tightly ordered routines contributed to other important blind spots in his account. Prisoners as a whole, but especially female and ethno-racial minority prisoners, are largely absent from Rothman's account, as are their refusals to submit to the new prison regime. However, subsequent research has illustrated the variety of prisoners' experiences as well as the problems they created for reformers attempting to implement the new prisons. This section introduces questions about prisoners, their experiences, and their impact on the prison regime: How did prisoners respond to the new prison regime and with what consequences? What was the prison experience for female prisoners? To what extent and in what ways was the prison a racialized and race-making institution?

### **Beyond Reformers: Agentic Prisoners**

Following Rothman, much of the prison history research has sought to understand why prisons emerged when and how they did. Consequently, the primary focus has been on the social (economic, political) context and the actors responsible for shaping penal change—the overlapping categories of penal reformers, legislators, governors, other politicians, and prison administrators. A growing subset of prison history research, however, has started to focus on the prisoners themselves and their experiences of incarceration, detailing the routines of their daily existence (for examples beyond the United States, see, e.g., O'Brien 1982, Spierenburg 1991). One popular aspect of prisoners' daily lives has been their sex lives (e.g., Kunzel 2008, Manion 2015; see also O'Brien 1982). Other scholars have explored in detail the role of both official and lay visitors to the prisons (Miron 2011) and the role of reading and literacy in prison design and experience (Schorb 2014).

As part of this focus on prisoners' daily existence, scholars have taken great pains, particularly in the last few decades, to demonstrate that prisoners were agentic actors rather than passive recipients of the carceral order imposed on them (e.g., Hayden 2013, Janofsky 2012, Manion 2015, McLennan 2008, Newman & Smith 2012, Rubin 2015b). Whereas some of this research has simply sought to demonstrate prisoners' agency, some of it has also sought to illustrate how prisoners' refusal to cooperate with, or even attempts to actively sabotage, prison regimes made life difficult

for reformers and prison administrators and ultimately frustrated the prison's ability to achieve its goals (e.g., McLennan 2008, Newman & Smith 2012, Rubin 2017). This is an important corrective to the record; indeed, Rothman has argued elsewhere that the prisons conformed to the models to which they aspired until the 1860s (Rothman 1998, p. 124). Prisoners' various forms of noncooperation reveal one of several ways in which the theory never matched actual practice. However, more work can be done to investigate how prisoners' various forms of refusal had consequences for the prison's development.

## Incarcerated Women

Female prisoners play a very small role in Rothman's account, as well as other accounts from his era (e.g., Foucault 1977, Ignatieff 1978). Since then, several scholars have focused particular attention on the experiences of women (see especially Butler 1999, Dodge 2006, Freedman 1981, Rafter 1985). Unlike contemporary prisons segregated by sex, the early prisons contained a mixed-sex population; although women were incarcerated in small numbers, they were incarcerated. However, the prisons were largely designed for male prisoners, which had profound consequences for female prisoners. As Rafter (1985) has demonstrated, these women were often maintained in separate wings or attics in the prison, exempted from the regime of silence and factory-style labor. Neglected and left to their own devices, women could be easily preyed upon by each other or by guards, but they also had somewhat more control over their existence than their male counterparts. However, women were still expected to work, just in different ways than their male counterparts worked. Women were often given gendered work—cooking, laundry, sewing—that was less profitable; consequently, prison administrators resented the female prisoners, believing they were not covering their share of the prison's costs (see also Dodge 2006, Manion 2015). When states eventually authorized female prisons later in the nineteenth century, prison administrators were more than happy to see the women go (Rafter 1985). Finally, beyond focusing on female prisoners specifically, several more recent scholars have examined the role of gender in the development of the early prisons (Kann 2005, Manion 2015, Meranze 1996).

## Prisons as Race-Making Institutions

Race likewise plays a minor role in Rothman's account and, again, in most other accounts from his era.<sup>12</sup> In fact, many accounts of social control in the Early Republic and Jacksonian Era have contrasted or juxtaposed the prison and slavery (e.g., Hindus 1980). Likewise, many accounts of Southern punishment, and the role of race in other regions, have primarily focused on the period after the Civil War, when prisons were explicitly redesigned to control the newly freed population of former slaves and other African Americans (e.g., Bahde 2014, Childs 2015, Curtin 2000, LeFlouria 2015, Lichtenstein 1996, Mancini 1996, Miller 2012, Muhammad 2010, Oshinsky 1997, Perkinson 2008, Shapiro 1998, Ward 2012; for an important exception, see Ayers 1984).<sup>13</sup> However, race has not been absent from all accounts of the early prisons (Ayers 1984, Dodge 2006, Kann 2005, Rafter 1985).

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<sup>12</sup>As the focus here is on the early prisons, race primarily refers to blacks (or people with African heritage) and whites. There has been very little work on Asian incarceration (Butler 1999, McKanna 2002, Merry 1999) or the role of Latino ethnicity (e.g., Hernández 2017); the scant work on each tends to focus on the West in the late nineteenth and early twentieth centuries.

<sup>13</sup>Indeed, many works, both national overviews and state-based case studies, will include a single chapter on the early prisons but focus their primary attention on the half-century or so after the Civil War.

One theme of this period is the way in which African Americans, perceived (under the racism at the time) as an inferior race, were considered unfit subjects for incarceration. Prison was intended to be a reformatory or rehabilitative technology; groups who were predisposed to inferiority could not be reformed, and therefore states should not squander scarce resources incarcerating such groups. Although this mythos prevented the use of incarceration for African Americans in some places, particularly in the South (e.g., Hindus 1980), it did not stop local authorities from convicting and sentencing a disproportionate number of African Americans to prison in other places, particularly in the post-slavery North. Thus, whereas African Americans were virtually (but not entirely) absent from Southern antebellum prisons (Ayers 1984), they were heavily overrepresented in Northern prisons from the very beginning (Manion 2015).

Although scholars have been paying more attention to race beyond the US South after the Civil War, it remains an underdeveloped focus. Indeed, histories of northern prisons tend to focus on race as one factor among many—gender, class, nativity—rather than exploring race specifically. The lack of focus on race in the early prisons may have led to the mistaken impression that the early prisons were not as racialized as they were. Although reformers and prison administrators focused their energies on white male prisoners, male and female black prisoners not only were overrepresented in the prison population but also were the subjects of racialized treatment, and their experiences were used to perpetuate racial stereotypes (Rubin 2020; A.T. Rubin, manuscript in progress).

## FUTURE DIRECTIONS

### Prison History in an Era of Mass Incarceration

Much of the classic work that launched contemporary prison history—by Rothman, Foucault, Ignatieff, and others—emerged in a moment of turmoil in prisons around the Western world, including a prisoners’ rights movement, prison riots like the one at New York’s Attica State Prison (in the same year that Rothman published his book), and a growing opposition to institutionalization of all kinds. The deinstitutionalization movement, which succeeded in closing mental hospitals (but with mixed consequences), initially saw declines in the incarceration rate but was soon followed by an increase in and eventually mass incarceration, in part inspired by the very reforms developed to reduce reliance on institutionalization (Cohen 1985, Scull 1984). In that era when people were discussing ways to limit prison, scholars returned to the prison’s roots.

At present, we are in a similar moment of transition. The United States has experienced record-level incarceration rates for the last four decades, and around 2010, scholars and politicians alike were increasingly discussing methods to end American mass incarceration. Because the initial changes have been mixed, the prison’s future is still unclear. In this context, prison history has seen a resurgence, but most of this new generation of prison historians has focused special attention on the twentieth century and the origins of mass incarceration, whether located in the 1970s, 1950s, or 1910s. This trend is not limited to disciplinarily trained historians; as Garland (2017, p. 10) has pointed out, punishment scholars more generally have shifted their attention from the birth of the prison to the birth of mass incarceration.

With far more historians today than in the 1970s, and far more prison historians at that, why the diminished attention to the early prisons? Is the field tapped out? Admittedly, it is exceedingly difficult to develop new insights and empirical details about this period. Most states’ prison histories have been chronicled in monographs, and some have been mined repeatedly. Is the early era no longer relevant to a penal landscape so distinct from the one we see today? When states were

just beginning to authorize prisons, contemporaries faced a different set of moral and pragmatic questions than their counterparts face today. Are contemporary scholars simply less enamored with the long Revolutionary Era? Certainly, the twentieth century's characters, often characterized as heroes or villains, seem to be more relevant in shaping the contemporary landscape.

Although prison history today increasingly means twentieth-century prison history, I suggest the early prisons' history still has something to offer. Although new historians face a rather intimidating group of predecessors who seem to have mined all the archival data available, they can provide new insights with data others have analyzed already. As this article demonstrates, even the classics got some things wrong—and very likely, some of the newer works can further be corrected and supplemented. In the process, the field could admit the reality of the situation—the difficulty of finding new archival documents—and remove the stigma associated with rehashing the same empirical data in favor of better analyses. Indeed, some scholars have combined primary and secondary data to construct new theoretical insights that are generalizable to other eras (e.g., Goodman et al. 2017, Rubin 2015a). Others have pointed out that apparently new phenomena, such as the transcarceration seen in the 1970s and again more recently, were also present in this earlier period (Tillotson & Colanese 2017). Of course, other elements of the early prisons and the era in which they emerged remain to be documented and analyzed. For example, more work could be done to understand the indistinct relationship between jails and prisons (and what determined, in practice, which prisoners were sent to prison rather than jail) and the lingering role of fines supplementing prison sentences.

## Beyond the United States

This article has primarily focused on state prisons in the United States from the time of the American Revolution to the Civil War—roughly the period and jurisdiction of Rothman's study. However, in the spirit of updating our knowledge on prison history, it is important to note a growing emphasis on the rise of prisons beyond the United States (and Europe), including the origins of the prison in Vietnam (Zinoman 2001), modern Japan (Botsman 2005), Mexican California (Hernández 2017), Jamaica (Paton 2004), and modern Peru (Aguirre 2005). More work can certainly be done to explore the development of carceral penalties and facilities in other countries. In addition to traditional questions about the influence of the social (political, economic, cultural) context; the theory of incarceration versus the experience; and attention to class, race, and gender, scholars should examine the mixture of old and new ideas. In the US case, penal reformers borrowed ideas from elsewhere and transformed them to fit their own purposes, innovating as they went. In other times and places, penal actors have copied new punishments whole cloth from other places. Scholars can investigate under what conditions penal actors innovate, copy, or engage in bricolage. Appreciating the connections across time and place will improve our understanding of the early US prison's significance and, more generally, the dynamics of prison development.

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## Errata

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