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# THE DISCOVERY OF THE ASYLUM

DAVID J. ROTHMAN

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In yet another historical account of the development of the penitentiary, David J. Rothman explores the development of the institution from colonial America to the 1820s. Again, the reader should observe a societal shift from a system based largely on interpersonal settling of disputes in an agrarian setting to an urbanized nation that requires state intervention for punishment. The reader should also take note that, in addition to the rise of the penitentiary, representing confinement as an end in and of itself, society held a belief that the institution could indeed change the individual for the better. Thus, penal institutions were designed to confine the offender while leading him to the skills necessary for a law-abiding life.

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### THE BOUNDARIES OF COLONIAL SOCIETY

The colonial attitudes and practices toward...the criminal...were in almost every aspect remarkably different from those Americans came to share in the pre-Civil war decades. Almost no eighteenth-century assumption about the origins or nature of...deviancy survived intact into the Jacksonian era, and its favorite solutions to these conditions also became outmoded. In fact, the two periods' perspectives and reactions were so basically dissimilar that only a knowledge of colonial precedents can clarify the revolutionary nature of the changes that occurred.

Eighteenth-century Americans did not define...crime as a critical social problem....They devoted very little energy to devising and enacting programs to reform offenders and had no expectations of eradicating crime. Nor did they systematically

attempt to isolate the deviant....While they excluded some persons, they kept others wholly inside their communities. At times they were...willing to allow offenders another chance; but they could also show a callousness and narrow-mindedness that was utterly cruel. From the viewpoint of nineteenth-century critics, their ideas and behavior seemed careless and inconsistent, irrational and injurious, but within their social and intellectual framework, the colonists followed clear and well-established guidelines....

The colonists judged a wide range of behavior to be deviant, finding the gravest implications in even minor offenses. Their extended definition was primarily religious in origin, equating sin with crime. The criminal codes punished religious offenses, such as idolatry, blasphemy, and witchcraft, and clergymen declared infractions against persons or property to be offenses against God. Freely mixing

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the two categories, the colonists proscribed an incredibly long list of activities. The identification of disorder with sin made it difficult for legislators and ministers to distinguish carefully between major and minor infractions. Both were testimony to the natural depravity of man and the power of the devil—sure signs that the offender was destined to be a public menace and a damned sinner....

To counteract the powerful temptations to misconduct and the inherent weakness of men, the colonists looked to three critical associations. They conceived of the family, the church, and the network of community relations as important weapons in the battle against sin and crime. If these bodies functioned well, the towns would be spared the turbulence of vice and crime and, without frequent recourse to the courts or the gallows, enjoy a high degree of order and stability. To these ends, families were to raise their children to respect law and authority, the church was to oversee not only family discipline but adult behavior, and the members of the community were to supervise one another, to detect and correct the first signs of deviancy....

These attitudes did not stimulate the colonists to new ways of controlling crime. The broad definition of potential offenders and improper behavior did not spur attempts to revise the patently inadequate formal mechanisms of law enforcement. Assemblies created a militia to contain mass disturbances and repel enemy forces but they did not intend it or use it for day-to-day supervision. Towns designated constables to protect their peace, but the force was inadequate both in the number and physical condition of its men. It was understaffed, poorly supervised, and filled with the elderly. Rather, the colonists' perspective on deviancy encouraged a dependence upon informal mechanisms which promoted a localism in many settlements. To an important degree the community had to be self-policing. The citizens themselves would be on guard to report and even

apprehend the offender. Just as churchgoers were to be diligent about one another's salvation, so too residents were to protect one another's lives and property. And given the popular sense of man's proclivities to sin and crime, they expected to be busy....

#### CHARITY AND CORRECTION IN THE EIGHTEENTH CENTURY

Eighteenth-century criminal codes fixed a wide range of punishments. They provided for fines, for whippings, for mechanisms of shame like the stocks, pillory and public cage, for banishment, and for the gallows. They used one technique or a combination of them, calling for a fine together with a period in the stocks, or for a whipping to be followed by banishment. The laws frequently gave the presiding magistrate discretion to choose among alternatives "to fine or to whip" or directed him to select the applicable one "to use the stocks if the offender could not pay his fine." They included some ingenious punishments, such as having a convicted felon mount the gallows, remain for an hour with a noose around his neck, and then go free.... The statutes defined a large number and variety of capital crimes and the courts were not reluctant to inflict the penalty. The gallows was the only method by which they could finally coerce obedience and protect the community. In the absence of punishments in the middle range, they depended extensively upon the discipline of the hangman....

Local jails were found throughout the colonies, and in decent repair. Some towns utilized part of the courthouse building, others erected a separate structure. But regardless of form, these institutions had only limited functions. They held persons about to be tried or awaiting sentence or unable to discharge contracted debts. They did not, however, except on rare occasions, confine convicted offenders as a means of correction. The jails facilitated the process of criminal

punishment but were not themselves instruments of discipline. They did not expand in function during the course of the eighteenth century to become a method for penalizing as well as detaining offenders.

The colonists might have adopted a penitentiary system in order to reform the criminal, or to terrify him, or simply to confine him. They could have attempted to mold him into an obedient citizen, or to frighten him into lawful conduct or, at least, to prevent him, if for only a limited period, from injuring the community. But given their conception of deviant behavior and institutional organization, they did not believe that a jail could rehabilitate or intimidate or detain the offender. They placed little faith in the possibility of reform. Prevailing Calvinist doctrines that stress the natural depravity of man and the powers of the devil hardly allowed such optimism. Since temptations to misconduct were not only omnipresent but practically irresistible, rehabilitation could not serve as the basis for a prison program. Moreover, local officials believed that a policy of expulsion offered the community some protection against recidivism. Institutionalization seemed unnecessary when numerous offenders could be marched beyond the town line and not be seen again.

The failure to broaden the functions of the jail also revealed the colonists' dependence upon the family model for organizing an institution. Since life in a prison would perforce duplicate that in a large household, they saw no reason to believe institutionalization would discourage the criminal or even offer the community a temporary respite. A household existence did not seem either painful or corrective....

The institutions already functioning in the colonies did not substantially depart from the family model. The almshouse ran like a large household. Since officials appropriately considered admission a privilege, penalizing anyone who tried to enter it illegally, the poorhouse was hardly an inspiration for a prison system. The occasional workhouse was

not a more useful guide; the few to be found in America had not established a disciplinary or punitive routine....

Eighteenth-century jails in fact closely resembled the household in structure and routine. They lacked a distinct architecture and special procedures.... True to the household model, the keeper and his family resided in the jail, occupying one of its rooms; the prisoners lived several together in the others, with little to differentiate the keeper's quarters from their own. They wore no special clothing or uniforms and usually neither cuffs nor chains restrained their movements. They walked "not marched" about the jail. The workhouse model was so irrelevant that nowhere were they required to perform the slightest labor.

Jail arrangements so closely replicated the household that some colonists feared that prisons would be comfortable enough to attract inmates. Far from striking terror, they would build a clientele willing to be decently supported in return for a temporary deprivation of liberty. This is why towns frequently required prisoners to provide their own food and "to use such bedding, linen and other necessities as they think fit, without their being purloined, detained, or they paying [the jailer] for the same." So long as they did not cost the town money, inmates could make living arrangements as pleasant and as homelike as they wished....

The colonial jails were not only unlikely places for intimidating the criminal, but even ill-suited for confining him. Security was impossible to maintain, and escapes were frequent and easy. Conditions were sometimes so lax that towns compelled a prisoner to post a bond that he would remain in the jail, especially if he wished the privilege of exercising in the yard....

No one placed very much confidence in these structures. Even at the close of the colonial period, there was no reason to think that the prison would soon become central to criminal punishment....

## THE CHALLENGE OF CRIME

Eighteenth-century notions of...deviancy did not survive for very long into the nineteenth, nor did its methods of dispensing...correction. The social, intellectual, and economic changes that differentiated the states of the new republic from the several colonies prompted a critical reappraisal and revision of the ideas and techniques of social control. Americans felt compelled to rethink inherited procedures and devise new methods to replace old ones. They devoted extraordinary attention to this issue, hoping to establish quickly and effectively alternatives to the colonial system.

Between 1790 and 1830, the nation's population greatly increased and so did the number and density of cities. Even gross figures reveal the dimensions of the change. In these forty years, the population of Massachusetts almost doubled, in Pennsylvania it tripled, and in New York it increased five times; border and midwestern states, practically empty in 1790, now held over three million people. At Washington's inauguration, only two hundred thousand Americans live[d] in towns with more than twenty-five hundred people; by Jackson's accession, the number exceeded one million. In 1790, no American city had more than fifty thousand residents. By 1830, almost half a million people lived in urban centers larger than that. During these same years factories began to dot the New England and mid-Atlantic rivers. The decade of the 1830s witnessed the first accelerated growth of manufacturing in the nation. At the same time, Enlightenment ideas challenged Calvinist doctrines; the prospect of boundless improvement confronted a grim determinism. But these general trends are not sufficient to explain the very specific reactions to the issue of deviant...behavior. To them must be added Americans' understanding of these changes. Under the influence of demographic, economic and intellectual developments, they perceived that the traditional mechanisms of social control were obsolete.

The premises upon which the colonial system had been based were no longer valid.

Each change encouraged Americans to question inherited practices and to devise new ones. Inspired by the ideals of the Enlightenment, they considered older punishments to be barbaric and traditional assumptions on the origins of deviant behavior to be misdirected. Movement to cities, in and out of territories, and up and down the social ladder, made it difficult for them to believe that a sense of hierarchy or localism could now stabilize society. When men no longer knew their place or station, self-policing communities seemed a thing of the past. Expanding political loyalties also made colonial mechanisms appear obsolete. Citizens' attachment to state governments promoted a broader definition of responsibility, so that a sentence of banishment seemed a parochial response. The welfare of the commonwealth demanded that towns no longer solve their problems in such narrow and exclusive ways.

This awareness provoked at least as much anxiety as celebration. Americans in the Jacksonian period could not believe that geographic and social mobility would promote or allow order and stability. Despite their marked impatience and dissatisfaction with colonial procedures, they had no ready vision of how to order society. They were still trapped in many ways in the rigidities of eighteenth-century social thinking. They knew well that the old system was passing, but not what ought to replace it. What in their day was to prevent society from bursting apart? From where would the elements of cohesion come? More specifically, would...criminals roam out of control?...This question became part of a full, intense, and revealing investigation of the origins of deviant...behavior. To understand why men turned criminal...would enable reformers to strengthen the social order. To comprehend and control abnormal behavior promised to be the first step in establishing a new system for stabilizing the community, for binding citizens together. In this effort, one finds the clearest indications of how



large-scale social changes affected thinking and actions of Americans in the Jacksonian period. And here one also finds the crucial elements that led to the discovery of the [penitentiary].

In the immediate aftermath of independence and nationhood, Americans believed that they had uncovered both the prime cause of criminality in their country and an altogether effective antidote. Armed with patriotic fervor, sharing a repugnance for things British and a new familiarity with and faith in Enlightenment doctrines, they posited that the origins and persistence of deviant behavior would be found in the nature of the colonial criminal codes. Established in the days of oppression and ignorance, the laws reflected British insistence on severe and cruel punishments....

These conceptions had an immediate and widespread appeal. The reform seemed worthy of the new republic, and feasible, so that by the second decade of the nineteenth century, most of the states had amended their criminal codes. The death sentence was either abolished for all offenses save first-degree murder or strictly limited to a handful of the most serious crimes. Instead, the statutes called for incarceration, the offender to serve a term in prison. Construction kept apace with legal stipulations. Pennsylvania led the way, turning the old Philadelphia jail at Walnut Street into a state prison. In 1796, the New York legislature approved funds for building such institutions, and soon opened the Newgate state prison in Greenwich Village. The New Jersey penitentiary was completed in 1797, and so were others in Virginia and Kentucky in 1800. That same year, the Massachusetts legislature made appropriations for a prison at Charlestown, and in short order Vermont, New Hampshire, and Maryland followed suit. Within twenty years of Washington's inaugural, the states had taken the first steps to alter the traditional system of punishment.

In this first burst of enthusiasm, Americans expected that a rational system of correction, which made punishment certain but humane, would dissuade all but a few offenders from a life in crime.

They located the roots of deviancy not in the criminal, but in the legal system. Just as colonial codes had encouraged deviant behavior, republican ones would now curtail, or even eliminate it. To pass the proper laws would end the problem.

This perspective drew attention away from the prisons themselves. They were necessary adjuncts to the reform, the substitutes for capital punishment, but intrinsically of little interest or importance. A repulsion from the gallows rather than any faith in the penitentiary spurred the late-eighteenth-century construction. Few people had any clear idea what these structures should look like or how they should be administered—or even addressed themselves seriously to these questions. To reformers, the advantages of the institutions were external, and they hardly imagined that life inside the prison might rehabilitate the criminal. Incarceration seemed more humane than hanging and less brutal than whipping. Prisons matched punishment to crime precisely: the more heinous the offense, the longer the sentence. Juries, fully understanding these advantages, would never hesitate to convict the guilty, so that correction would be certain. The fact of imprisonment, not its internal routine, was of chief importance.

By the 1820s, however, these ideas had lost persuasiveness. The focus shifted to the deviant and the penitentiary, away from the legal system. Men intently scrutinized the life history of the criminal and methodically arranged the institution to house him. Part of the cause for this change was the obvious failure of the first campaign. The faith of the 1790s now seemed misplaced; more rational codes had not decreased crime. The roots of deviancy went deeper than the certainty of a punishment. Nor were the institutions fulfilling the elementary task of protecting society, since escapes and riots were commonplace occurrences. More important, the second generation of Americans confronted new challenges and shared fresh ideas. Communities had undergone many critical changes between 1790 and 1830, and so had men's thinking. Citizens

found cause for deep despair and yet incredible optimism. The safety and security of their social order seemed to them in far greater danger than that of their fathers, yet they hoped to eradicate crime from the new world. The old structure was crumbling, but perhaps they could draw the blue prints for building a far better one.

... Although the colonists had blamed inadequate parental and religious training for crime, they were preoccupied with the sinner himself. Convinced that the corrupt nature of man was ultimately at fault, they did not extensively analyze the role of the criminal's family or the church or the general society. Furthermore, they shared a clear understanding of what the well-ordered community *ought to* look like, and this too stifled any inclination to question or scrutinize existing arrangements. Their religious and social certainty covered the discrepancies between ideas and realities, obviating new approaches and theories. Americans in the Jacksonian period stood in a very different position. They learned that men were born innocent, not depraved, that the sources of corruption were external, not internal, to the human condition. Encouraged by such doctrines to examine their society with acute suspicion, they quickly discovered great cause for apprehension and criticism....

Holding such a position, American students of deviant behavior moved family and community to the center of their analysis. New York officials accumulated and published biographies because this technique allowed them to demonstrate to legislators and philanthropists the crucial role of social organizations. Accordingly, almost every sketch opened with a vivid description of an inadequate family life and then traced the effects of the corruptions in the community....

The pessimism and fear underlying this outlook pointed to the difficulty Americans had in fitting their perception of nineteenth-century society as mobile and fluid into an eighteenth-century definition of a well-ordered community. Their first reaction was not to disregard the inherited concept but

to condemn present conditions. Hence, in these biographies a dismal picture emerged of a society filled with a myriad of temptations. It was almost as if the town, in a nightmarish image, was made up of a number of households, frail and huddled together, facing the sturdy and wide doors of the tavern, the gaudy opening into a house of prostitution or theater filled with dissipated customers; all the while, thieves and drunkards milled the streets, introducing the unwary youngster to vice and corruption. Every family was under siege, surrounded by enemies ready to take advantage of any misstep. The honest citizen was like a vigilant soldier, well trained to guard against temptation. Should he relax for a moment, the results would be disastrous. Once, observers believed, neighbors had disciplined neighbors. Now it seemed that rowdies corrupted rowdies.

Yet for all the desperation in this image, Americans shared an incredible optimism. Since deviant behavior was a product of the environment, the predictable result of readily observable situations, it was not inevitable. Crime was not inherent in the nature of man, as Calvinists had asserted; no theological devils insisted on its perpetuation. Implicit in this outlook was an impulse to reform. If one could alter the conditions breeding crime, then one could reduce it to manageable proportions and bring a new security to society.

One tactic was to advise and warn the family to fulfill its tasks well. By giving advice and demonstrating the awful consequences of an absence of discipline, critics would inspire the family to a better performance. (The biographical sketches, then, were not only investigations but correctives to the problem.) One might also organize societies to shut taverns and houses of prostitution, an effort that was frequently made in the Jacksonian period. But such measures, while important, were slow-working, and by themselves seemed insufficient to meet the pressing needs of this generation. Another alternative then became not only feasible but essential: to construct a special setting for the deviant. Remove

him from the family and community and place him in an artificially created and therefore corruption-free environment. Here he could learn all the vital lessons that others had ignored, while protected from the temptations of vice. A model and small-scale society could solve the immediate problem and point the way to broader reforms....

### THE INVENTION OF THE PENITENTIARY

Americans' understanding of the causes of deviant behavior led directly to the invention of the penitentiary as a solution. It was an ambitious program. Its design "external appearance, internal arrangement, and daily routine" attempted to eliminate the specific influences that were breeding crime in the community, and to demonstrate the fundamentals of proper social organization. Rather than stand as places of last resort, hidden and ignored, these institutions became the pride of the nation. A structure designed to join practicality to humanitarianism, reform the criminal, stabilize American society, and demonstrate how to improve the condition of mankind, deserved full publicity and close study.

In the 1820s New York and Pennsylvania began a movement that soon spread through the Northeast, and then over the next decades to many midwestern states. New York devised the Auburn or congregate system of penitentiary organization, establishing it first at the Auburn state prison between 1819 and 1823, and then in 1825 at the Ossining institution, familiarly known as Sing-Sing. Pennsylvania officials worked out the details of a rival plan, the separate system, applying it to the penitentiary at Pittsburgh in 1826 and to the prison at Philadelphia in 1829....

The doctrines of separation, obedience, and labor became the trinity around which officials organized the penitentiary. They carefully instructed inmates that their duties could be "comprised in a few words"; they were "*to labor diligently, to obey all orders, and preserve an unbroken silence.*" Yet to achieve these goals, officers had to establish a total

routine, to administer every aspect of the institution in accord with the three guidelines, from inmates' dress to their walk, from the cells' furnishings to the guards' deportment. The common solution was to follow primarily a quasi-military model. The regulations based on this model promised to preserve isolation, to make labor efficient, and to teach men lacking discipline to abide by rules; this regimented style of life would inculcate strict discipline, precision, and instantaneous adherence to commands. Furthermore, a military model in a correctional institution seemed especially suitable for demonstrating to the society at large the right principles of organization. Here was an appropriate example for a community suffering a crisis of order....

Reformers never spelled out the precise nature and balance of this reformation. They hoped that families, instead of overindulging or neglecting their children, would more conscientiously teach limits and the need for obedience to them. Assuming that social stability could not be achieved without a very personal and keen respect for authority, they looked first to a firm family discipline to inculcate it. Reformers also anticipated that society would rid itself of corruptions. In a narrow sense this meant getting rid of such blatant centers of vice as taverns, theaters, and houses of prostitution. In a broader sense, it meant reviving a social order in which men knew their place. Here sentimentality took over, and critics in the Jacksonian period often assumed that their forefathers had lived together without social strain, in secure, placid, stable, and cohesive communities. In fact, the designers of the penitentiary set out to re-create these conditions. But the results, it is not surprising to discover, were startlingly different from anything that the colonial period had known. A conscious effort to instill discipline through an institutional routine led to a set work pattern, a rationalization of movement, a precise organization of time, a general uniformity. Hence, for all the reformers' nostalgia, the reality of the penitentiary was much closer to the values of the nineteenth than the eighteenth century.

### STUDY QUESTIONS

1. How did the American colonists' views on the nature of man and crime shape punishment?
2. Why didn't the colonists conceive of incarceration as a form of punishment?
3. Discuss social changes occurring at the turn of the nineteenth century that would change Americans' thoughts on crime and punishment within a generation or two.
4. How did Americans' views on the nature of man, crime, and punishment during the Jacksonian era differ from the views of their colonial counterparts?
5. In what way did Jacksonian Americans believe that the trinity of the penitentiary (separation, obedience, and labor) would act as an appropriate example for a community in crisis?